

CHECKLIST FOR HARDSHIP WITHDRAWALS RELIEF

Do you understand ASIC's new hardship relief for responsible entities (REs) of registered managed investment schemes that have become 'frozen funds'? Are you clear on the requirements to process hardship withdrawals? Do you know what steps to take if your fund can't meet the requirements?

Working your way through the maze can be challenging. So, we have created a practical checklist to help guide you through the new requirements.

WHAT IS THE NEW HARDSHIP RELIEF?

A fund is 'frozen' if redemptions are suspended or cancelled and the fund is closed to new applications.

ASIC's new relief measures are designed to permit withdrawals by members facing financial hardship due to the pandemic and are similar to the hardship relief previously granted by ASIC on a case-by-case basis only.

The new relief provides a framework for REs to permit withdrawals by members facing financial hardship while balancing the interests of members remaining in the fund. This relief is in addition to existing individual hardship relief and 'rolling' withdrawal relief measures already available to registered schemes. For more details please [click here](#) for a recent article.

CHECKLIST

Our checklist sets out a step-by-step guide for what REs need to do to process hardship withdrawals:

- Board resolves the fund is 'frozen'.
- Board resolves it is satisfied the fund has adequate cash to fulfill expected hardship withdrawal requests and continue day-to-day operations of the fund over the following six months.
- Submit a notice of reliance to ASIC.
- Publish a statement on the fund's website about the relief and send this statement to all members directly.
- Amend the fund's constitution (if necessary) to allow hardship withdrawals for members. Publish notice of the proposed amendments on the fund's website and send this notice to all members directly.
- Provide prescribed information to ASIC each quarter in the required form.
- Ensure withdrawing members meet at least one of the four hardship criteria set by ASIC - urgent financial hardship, unemployment, compassionate grounds, and permanent incapacity.
- Ensure withdrawing members adhere to caps on withdrawals set by ASIC. A member may make up to four hardship withdrawals not exceeding a total of \$100,000 in any calendar year.
- Ensure legal and compliance requirements under the Corporations Act, which are not addressed by the relief, are satisfied. This includes that the RE acts in the best interests of members and if there is a conflict between its interests and members' interests, then priority is given to members' interests.
- Monitor the position of the frozen fund.
- Consider whether options such as restructuring or winding up the fund are in the best interests of members.
- Submit a notice of cessation of reliance to ASIC if the fund ceases to be frozen.

WE CAN HELP YOU

We can help you determine—

- whether your fund should be frozen
- whether relief is appropriate and, if it is, how to comply with the conditions of the relief, including drafting constitution amendments
- how hardship withdrawals can be dealt with, and
- how to ensure ongoing compliance with your obligations.

If your fund is unable to meet the requirements, then we can help you apply to ASIC for individual hardship withdrawals relief for your fund's circumstances.



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