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## NEWS

# Liquidity and withdrawal rights during the COVID-19 pandemic

In light of the recent market events associated with the outbreak of COVID-19, there is significant pressure on responsible entities (REs) to manage liquidity in the face of underlying assets becoming difficult to value or illiquid and increasing numbers of withdrawal requests being received from members.

Here, partner Sean McMahon takes a closer look at the RE's duties, assessing liquidity, options for managing liquidity, and ASIC relief.

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## WHAT ARE MY DUTIES AS RESPONSIBLE ENTITY?

As RE, you owe duties to the members of the registered schemes you operate, including a duty to act in the best interests of the scheme members. This may require you to not sell the assets of the scheme in order to preserve the capital for all members of the scheme. If you decide you are unable to sell assets and the scheme becomes illiquid, then you need to consider whether to suspend redemptions to protect the interests of all members.

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## IS MY SCHEME LIQUID AND WHAT OPTIONS DO I HAVE TO MANAGE LIQUIDITY?

It is important you actively review the terms of your withdrawal facility and assess whether your scheme remains liquid. Under the Corporations Act, your scheme will be liquid if at least 80 percent of the scheme's assets comprise cash, bills, marketable securities or other property you reasonably consider is able to be realised for market value within the period specified in the scheme's constitution.

The constitution is also likely to provide the following options for you to manage liquidity:

- The power to extend time for making redemption payments (eg you may decide to process redemptions less frequently).
- The power to suspend redemptions for a period.
- The power to determine that the fund has ceased to be 'liquid', so you will only be able to offer withdrawals in accordance with the procedure outlined in the Corporations Act.

In assessing the liquidity of your scheme, you should have regard to the scheme's ability to meet withdrawal requests both in the short-term and in the future.

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## ASIC RELIEF

If you determine your scheme is illiquid or decide to suspend withdrawals for an extended period of time, then you may wish to consider applying to ASIC for relief.

ASIC has the power to grant the following forms of relief in relation to redemptions:

- Hardship relief—ASIC can modify the law to facilitate partial access to investor funds in cases of hardship.
  - Rolling withdrawal relief—ASIC can also provide relief to REs to simplify the procedure for periodic withdrawal offers (out of available cash) in some circumstances.
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## HOW WE CAN HELP?

Our funds management team has extensive experience and expertise advising clients on issues relating to liquidity and redemptions and can help with any queries. We also have experience preparing applications for these forms of ASIC relief and can advise you on the factors ASIC may consider when determining whether to grant relief.

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### Authors



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