

# ASIC CLASS ORDER [09/437]

## EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (*ASIC*) makes Class Order [09/437] *Departed former temporary residents superannuation – Disclosure relief* under paragraph 1020F(1)(a) of the *Corporations Act 2001 (the Act)*.

Paragraph 1020F(1)(a) of the Act provides that ASIC may exempt a person or class of persons from all or specified provisions of Part 7.9 of the Act.

### 1. Background

Part 3A of the *Superannuation (Unclaimed Moneys and Lost Members) Act 1999 (the Unclaimed Money Act)* provides a specific regime in relation to the superannuation benefits held for a wide range of departed former temporary residents. Part 3A of the Unclaimed Money Act generally requires the trustee of a regulated superannuation fund, upon receiving notice from the Australian Taxation Office (*ATO*), to pay the benefits of such departed former temporary resident fund members to the ATO where the departed former temporary resident has not claimed the benefits within 6 months of departure from Australia<sup>1</sup>. Under the Unclaimed Moneys Act, payment of the amount to the ATO discharges the trustee from any further liability to the departed former temporary resident and the departed former temporary resident may seek payment of the amount of the benefit from the ATO.

For the purposes of the periodic statement provisions in Part 7.9 of the Act, the payment of benefits to the ATO under the Unclaimed Money Act causes the departed former temporary resident, as the holder of a superannuation product, to cease to hold the product under paragraph 1017D(2)(d) of the Act. As a result, the trustee for the superannuation fund becomes obliged to give to the departed former temporary resident a periodic statement (known as an *exit statement*) in accordance with the detailed requirements in Subdivision 5.12 of Division 5 of Part 7.9 of the *Corporations Regulations 2001*.

The operation of the Unclaimed Moneys Act to compulsorily end the former temporary resident's membership of the fund and shift liability for the amount paid to the ATO will also trigger the requirement for the trustee to notify the former temporary resident of a significant event or material change under section 1017B of the Act.

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<sup>1</sup> The regime under Part 3A the Unclaimed Moneys Act does not apply to public sector superannuation schemes, unfunded defined benefit schemes or to a range of persons including Australian or New Zealand citizens or persons holding certain visas or applying for permanent residency

Concerns have arisen in the superannuation industry in relation to the value and expense of attempting to give exit statements and notices to such departed former temporary residents.

There are existing exceptions in the Act to the requirement to give these and other disclosure documents in cases where the trustee has been unable to obtain an address for the fund member or the trustee is satisfied on reasonable grounds that an address held is incorrect. However, before the exception can apply, fund trustees are additionally required to have failed to locate the member, after taking reasonable steps to do so.

## **2. Purpose of the Class Order**

The purpose of Class Order [09/437] is to provide fund trustees with relief from the requirement to notify and give exit statements to departed former temporary residents in the circumstances of the Unclaimed Moneys Act on conditions that reduce the potential for adverse impact on those persons ultimately being reunited with their benefits.

The relief responds to industry concerns that a fund trustee will generally not be aware which of its members have been temporary residents until advised by the ATO and will generally not have overseas addresses for a temporary resident member. The relief also responds to concerns that, given the fact of the departure of the temporary resident member, if the fund trustee currently has no address there will not be an opportunity to obtain one and any Australian address held will be incorrect.

## **3. Operation of the Class Order**

Class Order [09/437] provides an ongoing conditional exemption for superannuation fund trustees from the requirement to give notices and exit statements under s 1017B and s 1017D of the Act where a fund member ceases to hold a superannuation product in the circumstances of Part 3A of the Unclaimed Moneys Act<sup>2</sup>.

The exemption is conditional on a fund trustee disclosing in the Product Disclosure Statement for the relevant superannuation product, Fund Report to members and, if they maintain a website, prominently on that website:

- the circumstances in which the benefits of temporary residents will be paid to the ATO;
- that the trustee is relying on the relief and will not provide departed former temporary resident members whose benefits are paid to the ATO with notices or exit statements at the time of or after the benefits are paid to the ATO.

There is a further condition that the fund trustee, if contacted by the departed former temporary resident after the benefits have been paid to the ATO, must provide the

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<sup>2</sup> Relief from the requirement to provide confirmation of this transaction under s 1017F of the Act is not required by virtue of the exception in paragraph 7.9.62(4)(a) of the *Corporations Regulations 2001* that confirmation of a transaction is not required for transactions that are required under Commonwealth, State or Territory laws.

departed former temporary resident with information about the payment of the interest such that will allow them to apply to the ATO to claim the benefit.

#### **4. Consultation**

ASIC determined to make Class Order [09/437] after receiving applications for relief from both the Association of Superannuation Funds of Australia and the Investment and Financial Services Association. ASIC further consulted with those industry bodies and the Department of the Treasury. Wider consultation was not considered necessary on the basis of the nature of the relief.