

Australian Securities and Investments Commission
Corporations Act 2001 — Paragraph 1020F(1)(a) — Exemptions

Enabling legislation

1. The Australian Securities and Investments Commission (*ASIC*) makes this instrument under paragraph 1020F(1)(a) of the *Corporations Act 2001* (the *Act*).

Title

2. This instrument is ASIC Class Order [CO 09/437].

Commencement

3. This instrument commences on the date it is registered under the *Legislative Instruments Act 2003*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (*FRLI*) in electronic form: see *Legislative Instruments Act 2003*, s 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

Exemptions

4. A trustee of a regulated superannuation fund (the *fund*) that pays an amount (the *unclaimed superannuation*) to the Commissioner of Taxation under Division 3 of Part 3A of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* does not have to comply with:
 - (a) section 1017B of the Act to the extent that section requires the trustee to notify a person (the *non-resident*) in relation to the payment of the unclaimed superannuation and the non-resident ceasing to hold an interest in the fund; or
 - (b) section 1017D of the Act to the extent that section requires the trustee to give the non-resident a periodic statement (*exit statement*) for the reporting period under paragraph 1017D(2)(d) of the Act because the non-resident ceased to hold an interest in the fund as a result of the payment of the unclaimed superannuation.

Conditions

5. The trustee must ensure that:
 - (a) any Product Disclosure Statement for an interest in the fund that is prepared after the commencement of this instrument;
 - (b) any Supplementary Product Disclosure Statement prepared after the commencement of this instrument which supplements a Product Disclosure Statement for an interest in the fund that is being used as at the commencement of this instrument; and

- (c) any document containing the fund information required under Subdivision 5.6 of Division 5 of Part 7.9 of the *Corporations Regulations 2001* in relation to a fund reporting period that ends on or after 31 December 2009, includes the following statement and information:
- (d) a statement that the trustee relies on ASIC relief to the effect that the trustee is not obliged to notify or give an exit statement to a non-resident in circumstances where the trustee pays unclaimed superannuation to the Commissioner of Taxation under Division 3 of Part 3A of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*;
- (e) information about:
- (i) the obligation of the trustee to pay unclaimed superannuation of a non-resident to the Commissioner of Taxation under Division 3 of Part 3A of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and
 - (ii) the right of a non-resident to make an application to the Commissioner of Taxation to claim the unclaimed superannuation under Division 4 of Part 3A of that Act.
6. If the trustee has a website, it must ensure that the statement and information specified in subparagraphs 5(d) and (e) are prominently disclosed on the website.
7. If, after the trustee has paid unclaimed superannuation in relation to the non-resident's interest in the fund to the Commissioner of Taxation under Division 3 of Part 3A of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, the non-resident enquires about their interest in the fund, the trustee must provide the non-resident with:
- (a) the information specified in subparagraph 5(e); and
 - (b) if requested, any other information or documents that the non-resident reasonably requires for the purpose of making an application to the Commissioner to claim the unclaimed superannuation under Division 4 of Part 3A of that Act.
8. The trustee must provide the information and documents mentioned in paragraph 7 as soon as practicable, and in any event must make reasonable efforts to provide the information and documents within 1 month, after being contacted by the non-resident.

Interpretation

9. In this instrument:

regulated superannuation fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

trustee has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

Dated this 2nd day of July 2009

Signed by Stephen Yen PSM
as a delegate of the Australian Securities and Investments Commission