

ASIC Corporations (Superannuation: Accrued Default Amount and Intra-Fund Transfers) Instrument 2016/64

I, Grant Moodie, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 23 February 2016

Grant Moodie

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Part 1—Preliminary

1 Name of legislative instrument

This instrument is *ASIC Corporations (Superannuation: Accrued Default Amount and Intra-Fund Transfers) Instrument 2016/64*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Note: The register may be accessed at [www.comlaw.gov.au](http://www.comlaw.gov.au).

3 Authority

This instrument is made under subsection 1020F(1) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

***accrued default amount*** has the meaning given by section 20B of the SIS Act.

***Act*** means the *Corporations Act 2001*.

***intra-fund transfer***, in relation to a regulated superannuation fund, means:

1. a disposal of an interest in the fund and the acquisition of an interest in the fund of a different class in substitution for the interest disposed of; or

(b) any other circumstance where a person’s membership of the fund in relation to a financial product or a sub-plan changes to membership of the fund in relation to another financial product or sub-plan.

***MySuper product*** has the meaning given by subsection 10(1) of the SIS Act.

***regulated superannuation fund***has the meaning given by section 19 of the SIS Act.

***SIS Act***means the *Superannuation Industry (Supervision) Act 1993.*

Part 2—Exemptions

5 Application forms

(1) A trustee of a regulated superannuation fund in which a MySuper product is held does not have to comply with section 1016A of the Act where an accrued default amount is attributed to or transferred to the MySuper product, irrespective of whether the attribution or transfer is an intra-fund transfer.

(2) A trustee of a regulated superannuation fund does not have to comply with section 1016A of the Act in relation to the issue of a superannuation product in the course of any other kind of intra-fund transfer within the fund in the circumstances specified in subsection 1019A(1B) of the Act.

Note: Subsection 1019A(1B) is notionally inserted into the Act by this instrument.

Part 3—Declaration

6 Cooling-off periods

Part 7.9 of the Act applies in relation to all persons as if section 1019A were modified or varied by, after subsection (1), inserting:

“(1A) This Division does not apply to an issue of a superannuation product in the course of:

(a) an attribution or transfer of an accrued default amount to a MySuper product, irrespective of whether the attribution or transfer is an intra-fund transfer; or

(b) any other kind of intra-fund transfer within a regulated superannuation fund in the circumstances specified in subsection (1B).

(1B) For the purposes of paragraph (1A)(b), the circumstances are:

(a) the trustee of the fund holds an RSE licence that is subject to conditions to the following effect:

(i) the governing rules of the fund must contain a provision to the effect that the benefits of a member of the fund must not be transferred by way of an intra-fund transfer without the member’s consent unless:

(A) the transfer is to a section, division or plan of the fund which confers on the member equivalent rights to the rights that the member had under the original section, division or plan in respect of the benefits; or

(B) the transfer could, in the absence of any condition on the RSE licence, have lawfully been made without the member’s consent; and

(ii) the trustee must not transfer the benefits of a member of the fund by way of an intra-fund transfer unless the member consents to the transfer or the transfer is of one of the types referred to in sub-subparagraph (i)(A) or (i)(B);

(b) the governing rules of the fund contain the provision referred to in subparagraph (a)(i);

(c) the trustee has not obtained the member’s consent for the intra-fund transfer; and

(d) the trustee has taken all reasonable steps to ensure that:

(i) the condition on its RSE licence referred to in subparagraph (a)(ii) has been satisfied in relation to the intra-fund transfer; and

(ii) one of the following applies:

(A) each interest in the fund that is, immediately before the disposal, in the same class as the interest disposed of in the course of the intra-fund transfer, is also disposed of and substituted at substantially the same time and no further interests in that class are issued;

(B) where the intra-fund transfer is otherwise than by way of the disposal of and substitution of an interest—each person who has a membership of the fund in relation to a financial product (the ***original product***) of the same class or the same sub-plan (the ***original sub-plan***) to which the intra-fund transfer relates changes to membership of the fund in relation to another financial product or another sub-plan at substantially the same time and no person subsequently becomes a member of the fund in relation to the original product or original sub‑plan; and

(iii) at least 30 days before the superannuation product is issued to a person in the course of the intra-fund transfer, the person is given:

(A) a notice in relation to the proposed transfer in accordance with section 1017B of the Act; and

(B) a Product Disclosure Statement for the product.

(1C) In subsections (1A) and (1B):

***accrued default amount*** has the meaning given by section 20B of the *Superannuation Industry (Supervision) Act 1993*.

***intra-fund transfer***, in relation to a regulated superannuation fund, means:

(a) a disposal of an interest in the fund and the acquisition of an interest in the fund of a different class in substitution for the interest disposed of; or

(b) any other circumstance where a person’s membership of the fund in relation to a financial product or a sub-plan changes to membership of the fund in relation to another financial product or sub-plan.

***MySuper product*** has the meaning given by subsection 10(1) of the *Superannuation Industry (Supervision) Act 1993*.

***regulated superannuation fund*** has the meaning given by section 19 of the *Superannuation Industry (Supervision) Act 1993*.

***RSE licence*** means a licence granted under section 29D of the *Superannuation Industry (Supervision) Act 1993*.”.