



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 30

Paperless issues and transfers under a global debenture

June 2009

About this guide

This guide is for companies who make use of global debentures to facilitate 'paperless' issues or transfers of debentures.

It sets out our policy on granting relief from the obligation under s1071H of the *Corporations Act 2001* (Corporations Act) for an issuer to provide certificates or other title documents for a paperless issue or transfer under a global debenture.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This version was issued on 12 June 2009 and is based on legislation and regulations as at 12 June 2009.

This document can also be referred to as Policy Statement 30 Paperless issues and transfers under a global debenture (PS 30).

Previous versions:

- Superseded Policy Statement 30, issued 17 August 1992, rebadged as a regulatory guide 5 July 2007

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Relief for paperless issues and transfers under a global debenture

Key points

Some issuers use global debentures to facilitate paperless issues and transfers of debentures.

We may provide case-by-case relief from the requirement for an issuer to provide certificates or other title documents for issues and transfers of global debentures, subject to certain conditions.

A global debenture should comply with requirements for the appropriate description of debentures under the Corporations Act.

How are global debentures used?

RG 30.1 A global debenture is an undertaking by a corporation (e.g. in a deed poll or trust deed) to repay money deposited with or lent to the corporation as a debt to each person named for the amounts noted in the register. Interests created under a global debenture and recorded in the register are debentures, whether or not there is a separate document acknowledging indebtedness for each debenture holder's interest.

Note: Under the Corporations Act, a company that issues debentures must maintain a register of debentures: see s171.

RG 30.2 By using a global debenture in this way, debentures may be issued and transferred without relying on a document that represents title to, or ownership of, the relevant debenture. Such an issue or transfer is generally referred to as a 'paperless' issue or transfer of debentures.

RG 30.3 A special system of 'marked' transfers that are normally valid only for a fixed period may also be provided to facilitate settlement of sales and to provide security under financing arrangements.

What relief is available?

RG 30.4 We may grant debenture issuers case-by-case relief from the following requirements under s1071H:

- (a) within two months after issuing a debenture, to provide the holder with all the appropriate certificates or other title documents; and
- (b) where a valid transfer is lodged with the issuer, to deliver the appropriate transfer and title documents to the transferee within one month.

Note: See s1071H(1) and (3).

What are the conditions of our relief?

RG 30.5 Any relief we grant to facilitate paperless issues and transfers of debentures will generally be subject to the conditions in Table 1.

Table 1: Conditions of relief for paperless issues and transfers under a global debenture

Condition	Description
Register of debenture holders	<p>A register of debenture holders must be:</p> <ul style="list-style-type: none"> maintained by a competent, independent commercial registrar; and audited by an auditor who would be eligible to audit both the registrar and the debenture issuer.
Professional indemnity insurance	<p>The registrar must maintain professional indemnity insurance for:</p> <ul style="list-style-type: none"> an amount that is at least 1% of the indebtedness under the global debenture; or an amount otherwise approved by ASIC.
Custody of debenture	<p>The global debenture must be held in safe custody for the debenture holders:</p> <ul style="list-style-type: none"> by the trustee; or if there is no trustee, by an authorised trustee corporation or a person approved by ASIC.
Holders' rights	<ul style="list-style-type: none"> Each debenture holder and the trustee for the debenture holders must have standing to enforce the holder's or the holders' rights (as the case may be) under the global debenture in their own name. The terms of the global debenture and the deed appointing the trustee must not restrict the holder from taking action to enforce the holder's rights for more than 21 days after giving the trustee notice of the holder's intention to do so unless the trustee takes action within that time.
Documentation	<ul style="list-style-type: none"> On request, the registrar must issue to a debenture holder a document that sets out the debenture holder's entry in the register of debenture holders. As soon as practicable after receipt of an application for the global debentures, the issuer must: <ul style="list-style-type: none"> issue the debentures; or to the extent the application is declined, return the application money. Similarly, upon receipt of a valid transfer, the registrar must make the relevant entries in the register without delay. As soon as practicable after the issue of debentures to an investor, the issuer must provide the investor with a letter that is not a certificate of title but that acknowledges the receipt of money and entitlements of the investor to the debentures as recorded in the register.
Disclosure documents	<p>Any disclosure document required for the debentures under Ch 6D must contain certain information: see RG 30.6.</p>

What must disclosure documents contain under our relief?

RG 30.6 Under our relief, any disclosure document required under Ch 6D for the debentures must contain the information in Table 2.

Note: A disclosure document for unlisted debentures should also address the benchmarks described in *Regulatory Guide 69 Debentures—improving disclosure for retail investors* (RG 69).

Table 2: What disclosure documents must contain under our relief

Area	Description
Letter of acknowledgement	The disclosure document must contain a statement to the effect that as soon as practicable after the issue of debentures to an investor, the issuer will provide the investor with a letter that is not a certificate of title but that acknowledges the receipt of money and the entitlement of the investor to the debentures as recorded in the register.
Description of debenture	The disclosure document must contain a description of the global debenture and its operation, including a description of the mechanisms enabling transfers and transmissions of debentures. See also RG 30.11–RG 30.12.
Explanation of register	The disclosure document must contain a statement to the effect that: <ul style="list-style-type: none"> certificates of title are not issued; an entry in the register of the details of a debenture holder and the amount of the debt owed to the debenture holder are conclusive evidence of title subject to rectification for fraud or error; and the issuer of the disclosure document undertakes to ensure that each investor's details are entered in the register of debenture holders.
Custodian's details	The disclosure document must contain a statement setting out the name and address of the person who has custody of the global debenture.
Document available on request	The disclosure document must contain statements to the effect that: <ul style="list-style-type: none"> on request, the registrar will issue to the debenture holder a document that sets out the debenture holder's entry in the register of debenture holders; and any such document issued is not a certificate of title or an acknowledgement of debt.
Information about transfers	Where a system of marked transfers operates, the disclosure document must also contain a statement that describes that system and includes details of how requests for marked transfers will be affected by the closure of the register of debenture holders.

How do you apply for relief?

RG 30.7 Applications for relief must be in writing and should address the requirements set out in *Regulatory Guide 51 Applications for relief* (RG 51). Relief applications can be submitted electronically to applications@asic.gov.au. More information on applying for relief is available at www.asic.gov.au/fsrrelief and www.asic.gov.au/cfrelief.

Why are we giving relief?

- RG 30.8 Providing certificates or other title documents, particularly where a debenture issuer has a large retail investor base, involves significant time and expense in preparing, issuing, moving and storing large volumes of paper. We consider that the requirement under s1071H was not intended to prohibit alternative methods of documenting or transferring debt obligations, provided investor protection is not diminished. In view of our role in facilitating the reduction of costs and increasing efficiencies in the securities market, we may grant relief so that alternative methods of documenting holdings can be used.
- RG 30.9 The issue and transfer of global debentures and establishment of a paperless system in certain circumstances will provide debenture holders with adequate protection and make the transfer of securities more efficient. Where we consider that relief from s1071H for a paperless issue or offer of debentures is appropriate, it will usually be on the terms set out in Table 1.
- RG 30.10 Debenture issuers should note that, under the operating rules of some prescribed clearing and settlement (CS) facilities (e.g. the CHESS system operated by ASX Settlement and Transfer Corporation), certificates or other title documents need not be issued in some circumstances. If this is the case, the operating rules of the CS facility have effect and the requirements of the Corporations Act will therefore be satisfied: see s1071H(2) and (4).

Note: Class Order [CO 07/183] *Transfer of Australian securities traded in New Zealand* exempts issues and transfers of the securities of Australian companies effected through the FASTER system in New Zealand in the same way that s1071H(2) and (4) exempt issues and transfers covered by CHESS.

How may debentures be described?

- RG 30.11 A global debenture should comply with requirements for the appropriate description of debentures under the Corporations Act: see s283BH. We will not grant relief from s283BH merely because debentures are offered or issued under a global debenture.
- RG 30.12 If the issuer complies with s283BH and does not breach the prohibition against misleading or deceptive conduct in s1041H, an investment product may have a specific marketing name (e.g. 'X Co. Registered Bonds' or 'Y Ltd Unsecured Notes').

Note: When advertising debentures, issuers should comply with the standards described in *Regulatory Guide 156 Debenture advertising* (RG 156).

Key terms

Term	Meaning in this document
[CO 07/183] (for example)	An ASIC class order (in this example, numbered 07/183)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
global debenture	An undertaking by a corporation (e.g. in a deed poll or trust deed) to repay money deposited with or lent to the corporation as a debt to each person named for the amounts noted in the register. Interests created under a global debenture and recorded in the register are debentures, whether or not there is a separate document acknowledging indebtedness for each debenture holder's interest
paperless issue or transfer	An issue or transfer of debentures without relying on a document that represents title to, or ownership of, the relevant debenture
RG 69 (for example)	An ASIC regulatory guide (in this example, numbered 69)
s1071H (for example)	A section of the Corporations Act (in this example, numbered 1071H)

Related information

Headnotes

Global debenture, debentures, issue of securities, transfer of securities, certificate of title, describing debentures

Class orders

[CO 07/183] *Transfer of Australian securities traded in New Zealand*

Regulatory guides

RG 69 *Debentures—improving disclosure for retail investors*

RG 156 *Debenture advertising*

Legislation

Corporations Act 2001 Ch 2L, Pt 7.11 Div 2, s171, 283BH, 1041H, 1071H, 1071H(1), 1071H(2) 1071H(3), 1071H(4)