



ASIC

Australian Securities & Investments Commission

ASIC Email Lodgement Service: User Agreement for ASIC Corporations (Wholly-owned Companies) Instrument 2016/785

24 June 2020

About this agreement

This agreement sets out the terms and conditions that apply to your use of ASIC's Email Lodgement Services for documents submitted electronically to ASIC under *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785*.

Contents

Recitals	3
Purpose of this document	3
Part A – Email Lodgement Service Terms and Conditions	4
Terms and conditions for using the ELS	4
Your general obligations	4
False and misleading information	4
Submitting documents using the ELS	5
Signing documents	7
Privacy	7
Security	7
Prohibited uses of the ELS	8
Disclaimer and liability	8
Changes to this ELS User Agreement - LI 2016/785	9
Miscellaneous	9
Part B—Definitions and interpretation	10
Interpretation	10
Definitions	10
Schedule A – Documents that may be submitted using the ELS	12
Schedule B – Email Lodgement Form	13

Recitals

Purpose of this document

- A. ASIC (**we or us**) has created the email address of Corporations. Lodgements@asic.gov.au (the **Email Address**) as a means of providing an electronic lodging service (**ELS**) for the people and entities we regulate (**Regulated Entity or you**) and for those acting on behalf of a Regulated Entity. The ELS is available to you if you are submitting any of the documents set out in Schedule A to this document.
- B. The ELS will allow you to submit regulatory information to us, including documents that the *Corporations Act 2001* (**Corporations Act**) requires to be lodged with us or given to us. We refer to lodging, giving, providing or submitting documents, forms or information to ASIC through the as ‘**submitting a document**’.
- C. This document is the ASIC Email Lodgement Service: User Agreement for *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785* (**ELS User Agreement - LI 2016/785**). It contains important information. It sets out the terms and conditions of your use of the ELS.
- D. We must approve electronic lodgement for any document that is required to be ‘lodged’ with us under the Legislation. We have approved email lodgement of documents under *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785* for the purposes of paragraph 352(1)(b) of the Corporations Act. These documents are listed in Schedule A. The approval is given under *ASIC Corporations (COVID-19 Email Lodgment Service—ASIC Corporations (Wholly-owned Companies) Instrument 2016/785) Instrument 2020/612*. This approval permits you to submit these documents that would otherwise have to be lodged in paper form to be lodged by email instead (and signed electronically).

Part A – Email Lodgement Service Terms and Conditions

Terms and conditions for using the ELS

1. We agree to provide the ELS to you in relation to documents submitted under *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785* on the terms and conditions contained in this ELS User Agreement – LI 2016/785.
2. You agree to comply with the terms and conditions contained in this ELS User Agreement – LI 2016/785. Each use of the ELS by you also constitutes acceptance of this ELS User Agreement – LI 2016/785.

Your general obligations

3. You agree:
 - 3.1. to use only an email address that identifies you personally (and not a generic or group email address) to submit documents to us using the ELS;

Note: For example: bilbo.baggins@asic.gov.au, and not admin@asic.gov.au.
 - 3.2. that you will only use the Email Address for the purposes of submitting a document for lodgement and confirming cheque delivery, and not for any other correspondence with us, whether it relates to a document submitted using the ELS or not;
 - 3.3. to take reasonable steps to prevent and detect both unlawful and unauthorised access to or use of your email address and your email account (including sent items showing your submissions to us using the ELS);
 - 3.4. to provide information that is complete, true and correct, to the best of your knowledge, when submitting documents using the ELS (see paragraph 4 below regarding providing false and misleading information);
 - 3.5. that ASIC may monitor your access to and use of the ELS;
 - 3.6. to supply your own compatible hardware, software and internet connection, at your own expense, to use the ELS and that you will not damage or compromise the ELS's operation in any way when doing so; and
 - 3.7. that you, and each Regulated Entity you act on behalf of, are responsible for ensuring that you comply, and the entity complies, with any applicable obligations about retaining records under the Legislation.

False and misleading information

4. You understand that:

- 4.1. giving false or misleading information or documents to ASIC is a serious offence;
- 4.2. failure to give information, which renders the information or documents given to ASIC false or misleading, is also a serious offence; and
- 4.3. giving false or misleading information or documents to ASIC could lead to a criminal prosecution of you personally and any Regulated Entity on whose behalf you are acting.

Submitting documents using the ELS

5. For the purposes of paragraph 352(1)(b) of the Corporations Act and *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785* and for all other purposes, emailing a document to us using the ELS from your email address is the electronic equivalent of you:

- 5.1. lodging a document with us, subject to our right to refuse to register or receive the document under the Legislation (see paragraph 14);
- 5.2. giving a document to us under the Legislation; or
- 5.3. submitting a document to us under the Legislation.

Note: An electronic copy of a hard copy of an original signed deed of cross guarantee, assumption deed, revocation deed or certificate may not be lodged electronically via the ELS.

6. To submit a document using the ELS, you must:

- 6.1. send an email to the Email Address;
- 6.2. attach to your email the completed and signed electronic document (or documents) you wish to submit;
- 6.3. complete and electronically sign the Email Lodgement Form contained in Annexure B to this ELS User Agreement - LI 2016/785, and attach it to your email. When you complete and electronically sign the Email Lodgement Form, you will make certain declarations in that form which include but are not limited to the following:
 - 6.3.1. you are authorised to submit the document to ASIC by the relevant Regulated Entity (unless you are acting on your own behalf);
 - 6.3.2. if you have applied an individual's electronic signature (that is not your own) to any of the electronic documents attached to your submission email, you have done so on the express authority of that individual;
 - 6.3.3. you have read this ELS User Agreement - LI 2016/785 and understand that each use of the ELS - LI 2016/785 by you

- constitutes your acceptance of the terms and conditions in this agreement;
- 6.3.4. you have read and understood [ASIC's Privacy Policy](#);
- 6.3.5. to the best of your knowledge, the information contained in the document, including any attachments, is complete, true and correct, and you have taken reasonable steps and made reasonable enquiries to confirm this.
7. If the total size of your email and attachments exceeds 10MB, you may send multiple emails using the ELS, provided that you:
- 7.1. identify, in the first email in the submission sequence, the total number of emails to be provided in the submission sequence;
- 7.2. attach the Electronic Lodgement Form to the first email;
- 7.3. clearly identify each other subsequent email that forms part of the submission and their sequence; and
- 7.4. ensure that no email in the submission sequence exceeds 10MB.
8. When you send a document to us using the ELS, we will email you a document receipt to acknowledge our receipt of your email through the ELS.
9. The email receipt is not our acceptance of any attachments for lodgement or confirmation that you, or the Regulated Entity you are acting on behalf of, have complied with the law.

Time zone for submitting documents on a particular day

10. The date and time of submission of the document, being Eastern Standard Time, or Eastern Standard Daylight Saving time (whichever applies in the Australian Capital Territory) at the time we receive your email to our Email Address, will be recorded on the document receipt.
11. If you are, or a Regulated Entity that you act on behalf of is, required to submit a document on a particular day, it is your responsibility to ensure that you submit the document on that day in the time zone referred to in paragraph 10, regardless of your physical location when using the ELS.

Authority to submit and our reliance on submitted documents

12. If you submit a document to us on behalf of a Regulated Entity you must be duly authorised to submit the document for that entity.
13. We will rely on your email for submission of a document unless you notify us that the email communication is not authorised.

Our ability to refuse to receive some documents

14. We may refuse to register or receive a document submitted for lodgement in accordance with subsection 1274(8) of the Corporations Act.
15. We may also require you to produce to us any other document, or give us any other information that we think necessary in order to form an opinion whether we may refuse to receive or register a document submitted for lodgement under subsection 1274(9) of the Corporations Act.

What happens when you submit a document using the ELS

16. After you have submitted a document using the ELS, we may check the document to ascertain whether we might refuse to receive or register it (for example, if it is incomplete because the attachments are illegible or it has not been electronically signed in accordance with *ASIC Corporations (COVID-19 Email Lodgment Service – ASIC Corporations (Wholly-owned Companies) Instrument 2016/785) Instrument 2020/612* or it is not accompanied by the forms required under paragraph 6.3). Nothing in this paragraph limits the circumstances in which ASIC may refuse to register or receive a document under s1274(8).

Retaining copies of documents submitted

17. You must keep a copy of your email and attachments submitted to us using the ELS for a period of not less than 7 years from the date of submission and you must make them available to us if we requested them.

Signing documents

18. For the purposes of the relevant Legislation and all other purposes, the electronic method for signing a document submitted using the ELS is a method permitted under subsection 5(3) of *ASIC Corporations (COVID-19 Email Lodgment Service for documents required to be lodged or submitted to ASIC for relief under ASIC Corporations (Wholly-owned Companies) Instrument 2016/785) Instrument 2020/612*.

Privacy

19. Information provided to us using the ELS may include personal information. We will collect and use personal information in accordance with ASIC's Privacy Policy. This collection notice also contains information about how we handle personal information, rights to seek access to and correct personal information, and to complain about breaches of privacy by us.

Security

20. You agree to tell us immediately by calling ASIC's Customer Contact Centre (on 1300 300 630 in Australia or +61 3 5177 3988 from outside Australia) if you believe or suspect that:

- 20.1. your email address has been accessed or used by someone other than you; or

- 20.2. someone is acting outside their authority to act on behalf of a Regulated Entity using the ELS; or
- 20.3. if you detect some other fault, error or problem in your access to the ELS.

Prohibited uses of the ELS

21. You must not use the ELS:

- 21.1. to disclose information for any purpose unconnected to the purpose for which it is made available;
- 21.2. to participate in any illegal or fraudulent activity;
- 21.3. to cause disruption or adverse effects to our review processes (for example, by submitting multiple versions of a document);
- 21.4. to infringe a person's rights;
- 21.5. to harass, cause distress or inconvenience others;
- 21.6. to send unlawful, defamatory, offensive or scandalous material or material that breaks or encourages breaking the law;
- 21.7. to provide false and misleading information to us and you acknowledge that doing so may result in prosecution, administrative action and civil or criminal penalties; or
- 21.8. in any other unauthorised manner.

Disclaimer and liability

- 22. You understand and agree that email is not a secure form of communication and we will not be liable to you or any other person in respect of any loss or damage that might be suffered that is directly or indirectly related to submitting a document with us using the ELS.
- 23. You agree that:
 - 23.1. we do not guarantee the availability of the ELS at any given time; and
 - 23.2. your use of the ELS depends on external factors such as internet service providers.
- 24. You acknowledge that the ELS may not be available from time to time and you may experience technical issues with the ELS.
- 25. We will endeavour to, but may not in every instance, provide reasonable notice of unavailability of, interruptions to and other technical issues with the ELS. We may post such notice on our website.

26. We will not be liable to you or any other person or Regulated Entity for any loss, damage, costs or expenses of any kind arising out of or in connection with any delay, omission, default, negligence or error by us in relation to the availability, functionality or performance of the ELS.

Changes to this ELS User Agreement - LI 2016/785

27. We may vary the terms and conditions in this ELS User Agreement - LI 2016/785 at any time by publishing notice of the variation on our website.

Miscellaneous

28. The law in force in the Australian Capital Territory governs this ELS User Agreement - LI 2016/785.
29. Except where the legislation provides otherwise, we may notify you of any matter relating to the ELS on our website, by telephone, SMS, email or mail to any relevant address you have provided.
30. If any provision of this ELS User Agreement - LI 2016/785 is found to be invalid or unenforceable by a Court of law, that provision is severed from the ELS User Agreement - LI 2016/785 and the remainder of the ELS User Agreement - LI 2016/785 will continue in force and effect.

Part B—Definitions and interpretation

Interpretation

31. In this ELS User Agreement - LI 2016/785, unless the contrary intention appears:

- 31.1. the singular includes the plural and vice versa;
- 31.2. another grammatical form of a defined word or expression has a corresponding meaning;
- 31.3. a reference to this Agreement, or another agreement, instrument or transaction includes any variation or replacement of any of them; and
- 31.4. a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

Definitions

32. In this ELS User Agreement - LI 2016/785, the following terms have the following meaning, unless the context in this Agreement indicates otherwise.

ASIC	The Australian Securities and Investments Commission.
Corporations Act	<i>Corporations Act 2001</i> .
Corporations Legislation	The <i>Australian Securities and Investments Commission Act 2001</i> , Corporations Act, <i>Corporations Regulations 2001</i> , and any instruments made under that legislation, including <i>ASIC Corporations (Wholly-owned Companies) Instrument 2016/785</i> .
ELS User Agreement - LI 2016/785	This document titled "ASIC Electronic Lodgement Service: User Agreement for <i>ASIC Corporations (Wholly-owned Companies) Instrument 2016/785</i> ", as it exists from time to time.
Email Lodgement Form	The form set out at Annexure B to this document and which must be attached to email submissions using the ELS in accordance with paragraph 6.3.
Legislation	Corporations Legislation (as the case may be).

Regulated Entity

A person or an entity that is, or is applying to be, subject to the legislation we administer (whether they are acting in their own capacity or on behalf of another person or entity that is subject to the legislation we administer).

Schedule A – Documents that may be submitted using the ELS

Form code	Document
CF06	CF06 Deeds of cross guarantee and related documents (cover form)
351	Deed of cross-guarantee - (Pro Forma 24) or deed of variation of a deed of cross-guarantee
No form code	Certificate in respect of deed of cross guarantee or assumption deed
352	Assumption deed - (Pro Forma 27)
353	Notice of disposal – (Pro Forma 25)
No form code	Certificate for Notice of disposal
355	Revocation deed – (Pro Forma 26)
389	Opt-in/change of holding entity notice by wholly-owned company relieved from financial reporting obligations
399	Opt-out notice by wholly-owned company relieved from financial reporting obligations
No form code	Email lodgement form and declaration

Schedule B – Email Lodgement Form

EMAIL LODGEMENT FORM

For submissions to ASIC under the ASIC Email Lodgement Service: User Agreement for Corporations Team Documents

Date:	
Document(s) being submitted to ASIC: (See list of forms in Schedule A of the User Agreement. You can submit multiple documents in the one email and include each of them in the one Electronic Lodgement Form, or use separate Electronic Lodgement Forms for each document if you wish)	<i>Cover form: CF06</i> <i>Attached documents (if any):</i> <i>(eg: Deed of Cross guarantee)</i> <i>Form 389</i> <i>Form 399</i>
Whose signature appears on the cover form and any attached document? (Please give the full name of each person(s) whose electronic signature is affixed to the form(s) and document(s))	
Who affixed the electronic signature on the document(s)? (Please give the full name of the person(s) who affixed the electronic signature(s) to the document. If the document is a scanned copy of a signed paper document, please state “Not applicable”)	
Name and contact details of person submitting this form and any attached document(s) (Please name the individual who is emailing these document(s) documents to ASIC, and the full name, email address, postal address and contact telephone number for that individual)	
Which Regulated Entity is this form being submitted for? (Please enter the full name and ACN or ARBN of the relevant Regulated Entity)	

Declarations

(Please make the following declarations by completing your name and address details and ticking the relevant boxes below. If you are not able to make the declarations, we will not accept your submission)

Declaration		
I, _____ [insert full name of the individual submitting the document], of _____ [insert address of the individual submitting the document], declare that:		
1.	I am authorised to submit the document(s) named above to ASIC by the relevant Regulated Entity (unless you are acting on your own behalf).	<input type="checkbox"/>

2.	(a) I am authorised to electronically sign the CF06 myself. OR (b) I have applied the electronic signature of _____ [insert name of relevant individual] to the CF06 on their express prior written authority.	<input type="checkbox"/> OR <input type="checkbox"/>
3.	I have read the ELS User Agreement - LI 2016/785 and understand that each use of the ELS - LI 2016/785 by me constitutes my acceptance of its terms and conditions.	<input type="checkbox"/>
4.	I have read and understood ASIC's Privacy Policy and ASIC's Privacy Collection Notice.	<input type="checkbox"/>
5.	To the best of my knowledge, the information contained in the document, including any attachments, is complete, true and correct, and I have taken reasonable steps and made reasonable enquiries to confirm this.	<input type="checkbox"/>

Signed by:

Full Name: _____

Signature: _____

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Version control (internal only)

This document is a version-controlled document. The following version-control table records all changes.

Version	Approved by	Details of changes / comments	Issue date	Paragraphs affected
0.1	Claire La Bouchardiere	First version	24 June 2020	