

Checklist for Application for Transfer of Property to New Trustee under s601AF

IMPORTANT INFORMATION FOR APPLICANTS

PLEASE READ CAREFULLY BEFORE STARTING YOUR APPLICATION

Timeframes

ASIC usually makes a decision within **60 days of receipt of all requested materials**. You need to take this timeframe into account and if necessary, re-schedule any transactions (e.g. settlement dates) to include this 60 day period. Delays occur when incomplete applications are submitted.

Please allow at least 30 days before enquiring about the progress of your application.

General Information

ASIC (including ASIC acting on behalf of the Commonwealth) generally exercises its powers under the Act to deal with vested property as a last resort. If another remedy (e.g. ASIC reinstatement or State/Territory legislative provisions) is unavailable, then you may apply for ASIC to deal with the property. The cost of alternative remedies by itself is not a sufficient basis for ASIC to exercise its powers to deal with property.

Applications are considered by ASIC on a case-by-case basis and there is no guarantee the application will be successful. If ASIC requires information or material in addition to those stated in this Checklist, ASIC will advise you and allow you an opportunity to provide that material.

ASIC will not consider an application until all requirements have been satisfied. You should therefore read this Checklist very carefully and ensure you have completed it properly before submitting your application. This will minimise inconvenience and delay in receiving a decision on your application. ASIC can assist if you have any questions about the requirements. However, you need to engage a solicitor if you require legal advice.

Application Fee

A statutory fee of \$934 is payable to ASIC by EFT payment. This fee is required by law and payable regardless of whether the application is approved or not. Applications will not be considered until this fee is paid. EFT payment details will be provided to you once a complete application is submitted to ASIC and a case officer confirms it is in order to proceed.

Please note this is a non-refundable fee, therefore applicants should give thorough consideration (obtaining independent legal advice as appropriate) whether all requirements the checklist have been satisfied before paying the application fee.

Urgent applications

In certain situations, ASIC may consider applications urgently (i.e. within a specific and short timeframe). However, ASIC will only do so in exceptional circumstances because this would give the urgent application priority over other applications lodged in a more timely manner.

Applicants must therefore clearly demonstrate that the urgency results from factors beyond their reasonable control that they could not have reasonably foreseen. Settlement of a contract is not a sufficient basis for urgent consideration.

APPLICANT DETAILS

Full name (if a company, include ACN):

Ph: Email:

Postal address:

1. I have read and understood the above section called "IMPORTANT INFORMATION FOR APPLICANTS"

No then do not proceed any further until you have read the important information above

Yes then proceed to Requirement 2

2. DEREGISTERED COMPANY DETAILS

NOTE: You can obtain relevant company details by purchasing an historical company extract via asic.gov.au. If that does not reveal the necessary information (e.g. due to the age of deregistration), then you need to enquire with the relevant State/Territory Archives Department.

a. Name of deregistered company:

b. ACN of deregistered company: c. Date of deregistration:

d. Was deregistration within the previous 10 years?

No then proceed to Requirement 3

Yes then do not proceed any further until you have enquired with ASIC's Registry Services team (online: asic.gov.au/question or ph: 1300 300 630) as to whether you are eligible to apply for ASIC reinstatement

e. Are you eligible to apply for ASIC reinstatement?

No then proceed to Requirement 3

Yes then do not proceed with this application. Instead, complete your application for ASIC reinstatement (with ASIC's Registry Services team). Upon reinstatement the company itself can deal with the property.

3. PROPERTY DETAILS

Is the property real property (i.e. land)?

No then proceed to Requirement 5

Yes then proceed to Requirement 4

4. LAND TITLES REMEDY

NOTE: ASIC is aware of the following legislative provisions which enable property to be vested in the new trustee:

- QLD – section 110A of the Land Title Act 1994 (Qld)) together with section 12 of the Trusts Act 1973 (Qld)
- VIC – section 58 of the Transfer of Land Act 1958 (Vic)
- WA – section 182 of the Transfer of Land Act 1893 (WA)

ASIC will not normally consider an application to transfer trust property except where the property is outside these States, as it exercises powers to deal with property as a last resort, where no other remedy is available. In any event, the above legislative provisions provide a cheaper and more convenient remedy for new trustees (than making an application to ASIC).

Is the property in Queensland, Victoria or Western Australia?

No then proceed to Requirement 5

Yes then do not proceed further. ASIC will not consider an application to transfer the property on the basis there is a legislative provision for the Land Titles Registrar (or Commissioner in WA) to vest the property in the new trustee.

5. SUPPORTING DOCUMENTS

Have you attached a copy, not the original, of all the following?

a. Where deregistration was in the previous 10 years, written confirmation from ASIC's Registry Services team that ASIC reinstatement is not available

No then do not proceed any further until document obtained

N/A because deregistration over 10 years ago, then proceed to Requirement 5b

Yes then proceed to Requirement 5b

b. Recent proof of ownership of the property in the company's name e.g. title search and rates notice (for land), issuer holding statement (for publicly listed shares), extract of the share register (for shares in a pty ltd or unlisted public company), IP Australia registration (for trade marks), etc. *NOTE: The document must be no older than 3 months*

No then do not proceed any further until document obtained

Yes then proceed to Requirement 5c

- c. If the document showing ownership (at Requirement 5b) does not clearly specify that the company owned the property as trustee, then any additional document that does (e.g. financial statements or tax return of the trust)
- No then do not proceed any further until document obtained
- Yes then proceed to Requirement 5d
- d. Any security or restriction registered over the property e.g. mortgage, caveat, etc. *NOTE: This appears on title searches for real property*
- No then if land, do not proceed any further until document obtained from the relevant Titles Office
- N/A then explain why in your statutory declaration (at Requirement 6) e.g. no security/restriction registered on title, or Titles Office unable to provide a copy due to age, etc., and proceed to Requirement 5e
- Yes then proceed to Requirement 5e
- e. 3 x Personal Property Security Register (PPSR) grantor searches (i.e. one by deregistered company name, one by its ACN and one by the trust's ABN) showing whether any security interests are registered over the company or trust *NOTE: For any information about PPSR searches, visit ppsr.gov.au or ph: 1300 007 777*
- No then do not proceed any further until searches obtained
- Yes then proceed to Requirement 5f
- f. Written consent of any party who holds a registered security over the property (as referred to in Requirement 5d above) or over the company (as referred to in Requirement 5e above)
- No then attach to your statutory declaration, all correspondence sent to those parties (seeking their consent) and outline in that statutory declaration all your attempts to contact those parties (at Requirement 6) and proceed to Requirement 5g
- N/A because no parties with a registered security, then proceed to Requirement 5g
- Yes then proceed to Requirement 5g
- g. The following executed/signed trust documents:
- 1) trust deed
 - 2) all deeds of variation
 - 3) deed of removal of the deregistered company as trustee/appointment of new trustee.
- No then do not proceed any further until all documents are obtained
- Yes then proceed to Requirement 6

6. COMMONWEALTH STATUTORY DECLARATION

- a. Is your statutory declaration a Commonwealth declaration?
- No then do not proceed any further until you have downloaded a template for a Commonwealth statutory declaration from the Australian Attorney-General's Department at ag.gov.au
- Yes then proceed to Requirement 6b
- b. Does your statutory declaration specifically:
- 1) identify the deregistered company and its ACN
 - 2) identify the name and ABN of the trust
 - 3) confirm whether or not the trust is a self-managed superannuation fund
 - 4) identify all the primary beneficiaries that are at least 18 years old
 - 5) set out when the trust was created and when (if relevant) the trust has been varied by deeds of variation
 - 6) identify the particular clause in the trust deed which gives power to appoint new trustees and confirm that clause has been complied with
 - 7) identify the particular clause in the trust deed or relevant legislation which creates a duty on the outgoing trustee to transfer the trust property to the new trustee
 - 8) identify the property to be transferred, confirming it is the only outstanding property in the deregistered company's name and acknowledge you will reinstate the company if other property in the company's name is later identified
 - 9) explain the circumstances leading to the company's deregistration and why the property was not transferred to the new trustee or a new trustee appointed, before the company was deregistered

- 10) confirm ASIC reinstatement is not available (if deregistration in the previous 10 years)
- 11) confirm there are no remedies available at the Titles Office directly and the Titles Office requires a Transfer executed by ASIC, attaching a copy of relevant advice from the Titles Office (where applicable)
- 12) state who is in possession of the original certificate of title (if the property is land)
- 13) provide the reason if any documents listed in Requirement 5a - 5g above are not attached
- 14) confirm either there are no outstanding creditors of the company or trust, or that the secured parties consent to the transfer and attach their written consents (see Requirements 5d - 5f)
- 15) confirm that the Trust Fund is a compliant fund at the date of submitting this application to ASIC's Property Law Group, being compliant with all *Superannuation Industry Supervision (SIS) Act 1993* and Australian Taxation Office (ATO) requirements in relation to Trust Fund income and governance.
- 16) show clearly that the urgency results from factors beyond your reasonable control that you could not have reasonably foreseen (if claiming your application is urgent).

NOTE: Please adopt the above numbering format as closely as possible

No then do not proceed any further until you have amended your statutory declaration to address all the above matters where applicable (otherwise another statutory declaration may be required)

Yes then proceed to Requirement 7

7. INDEMNITY

NOTE: The indemnity protects ASIC against claims brought against ASIC due to it transferring the property. If the new trustee or a beneficiary is a company, the indemnity must be signed by each of the directors in their personal capacity and by the company either under its seal or according to s127 of the Act.

Have the new trustee and all primary beneficiaries at least 18 years old, fully completed and attached the indemnity?

No then do not proceed any further until you have downloaded and completed the indemnity "Transfer to new trustee" from asic.gov.au

Yes then proceed to Requirement 8

8. APPLICATION FEE

NOTE: This fee is required by law and payable regardless of whether the application is approved or not. Applications will not be considered until this fee is paid. This fee may increase on 1 July each year. Applications received from 1 July each year are subject to the new fee.

Have you received account details and EFT payment instruction to pay the application fee of \$934?

No please submit your application. A case officer will provide further instructions on payment once a complete application is submitted to ASIC

Yes pay application fee by EFT transfer as instructed. Please provide a copy of the EFT receipt to ASIC as evidence of payment (this is a copy of receipt/screenshot of bank transfer)

9. TRANSFER FORM

NOTE: If the application is successful then ASIC will execute and return the original Transfer. The applicant is responsible for lodgement of the Transfer and payment of any registration/lodgement fees, any stamp duty or other associated costs.

a. Have you correctly inserted in the original Transfer form, the following representative and sealing clauses:

<p><u>Representative clause:</u> (i.e. description/name of transferor)</p>	<p>"The Australian Securities and Investments Commission acting on behalf of the Commonwealth under s8(6) of the <i>Australian Securities and Investments Commission Act 2001</i> and under s601AF of the <i>Corporations Act 2001</i> on behalf of [insert name and ACN of deregistered company], a company deregistered on [insert date of deregistration]."</p>
<p><u>Sealing clause:</u> (i.e. where transferor signs)</p>	<p>"The Common Seal of the Australian Securities and Investments Commission, acting for and on behalf of the Commonwealth under s8(6) of the <i>Australian Securities and Investments Commission Act 2001</i>, and under s601AF of the <i>Corporations Act 2001</i>, is affixed on behalf of [insert name and ACN of deregistered company]</p> <p>.....</p> <p>An Authorised Officer of the Australian Securities and Investments Commission</p> <p>Witness:</p> <p>Solicitor, ASIC Level 20, 240 Queen Street BRISBANE QLD 4001"</p>

No then do not proceed further until both those clauses are inserted properly on the Transfer

Yes then proceed to Requirement 9b

b. Have you enclosed an express-post envelope?

No I would like the executed Transfer to be returned by regular/standard post

Yes I would like the executed Transfer returned via a faster postal method

You are now ready to submit your application

HOW TO SUBMIT YOUR APPLICATION

ASIC prefers to receive documents in digital format (i.e. PDF) except for the original Transfer form which requires ASIC to affix its seal and the application fee.

Please post the original Transfer form, application fee and if applicable, an express-post envelope to:

ASIC Property Law
Group GPO Box 9827
MELBOURNE VIC 3001

Attach all other materials to this Checklist and email to property.law@asic.gov.au. If we require the original of a document previously received electronically, we will advise you.

Please direct any initial questions to property.law@asic.gov.au or ph: 1300 300 630.

ADDITIONAL INFORMATION FOR APPLICANTS

A) If the property being transferred is land and the certificate of title is lost

If the certificate of title is lost or missing, you should contact the relevant State/Territory Titles Office for assistance.

In some jurisdictions the Titles Office may require you to make an application for the issue of a substitute/replacement title. If necessary, you can request ASIC prepare a statutory declaration confirming that ASIC does not hold the certificate of title and has no knowledge of its whereabouts. If the Titles Office also requires ASIC's execution of an Application for Substitute/Replacement Title form then you should submit that together with the Transfer form (as per Requirement 9). The representative and sealing clauses as stated in Requirement 9 should also be correctly inserted in the appropriate places on the Application for Substitute/Replacement Title form.

B) Obligations go with the transfer

Any obligations attached to the property such as outstanding body corporate/owners corporation fees, rates, taxes or other charges, will be transferred with the property. ASIC will not accept any responsibility for such obligations regardless of when they were incurred. The onus is on you to make thorough and comprehensive searches regarding such matters.