

## Checklist for Application for Transfer of Property under s601AE(2) – former member

### 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 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 information.

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.

#### Urgent applications

In very limited situations ASIC may consider the assessment of an application on an urgent basis (i.e. within a specific and shorter timeframe). However, ASIC will only do so in exceptional circumstances because this would give the urgent application priority over other applications lodged in a 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](http://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. Reason for deregistration:

voluntary deregistration (e.g. s601AA) OR

struck-off for non-payment of fees/failure to lodge annual returns (e.g. s601AB)

e. Have you requested an estimate for ASIC reinstatement?

No  then do not proceed any further until you have enquired with ASIC's Registry Services team (online: [asic.gov.au/question](http://asic.gov.au/question) or ph: 1300 300 630) as to whether you are eligible to apply for ASIC reinstatement

Yes  then proceed to Requirement 2f

f. Are you eligible to apply for ASIC reinstatement?

No  then proceed to Requirement 3

Yes  then proceed to Requirement 2g

g. Is the cost of reinstatement significantly more than the value of the property?

No  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.

Yes  then proceed to Requirement 3

**3. SUPPORTING DOCUMENTS**

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

a. The estimate for ASIC reinstatement (if you are asserting the value of the property is significantly less than the cost of reinstatement) or written confirmation from ASIC's Registry Services team that ASIC reinstatement is not available

No  then do not proceed any further until document obtained

Yes  then proceed to Requirement 3b

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 3c

c. 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 4) e.g. no security/restriction registered on title, or Titles Office unable to provide a copy due to age, etc., and proceed to Requirement 3d

Yes  then proceed to Requirement 3d

d. 2 x Personal Property Security Register (PPSR) grantor searches (i.e. one by deregistered company name and one by its ACN) showing whether any security interests are registered over the company *NOTE: For any information about PPSR searches, visit [ppsr.gov.au](http://ppsr.gov.au) or ph: 1300 007 777*

No  then do not proceed any further until searches obtained

Yes  then proceed to Requirement 3e

e. Written consent of any party who holds a registered security over the property (as referred to in Requirement 3c above) or over the company (as referred to in Requirement 3d above)

No  then outline in your statutory declaration (at Requirement 4) all your attempts to contact those parties and

attach all correspondence sent to them (seeking their consent) and proceed to Requirement 3f

N/A  because no parties with a registered interest over the property/company, then proceed to Requirement 3f

Yes  then proceed to Requirement 3f

- f. Written consent of all other members to ASIC transferring the property as requested by the applicant, if the transfer is not to all former members (in proportion to their shareholding at deregistration) *NOTE: the consent must be witnessed by an independent third party (i.e. not a former member/transferee)*

N/A  because property is being transferred to all former members, then proceed to Requirement 3g

Yes  then proceed to Requirement 3g

- g. Written confirmation by the company's former director:

- 1) the company did not hold the property on trust
- 2) they have no intention to reinstate the company
- 3) they have no objection to ASIC transferring the property to the nominated transferee for nil consideration.

*NOTE: Former director details can be obtained by purchasing an historical company extract via [asic.gov.au](http://asic.gov.au)*

No  then outline in your statutory declaration (at Requirement 4) all your attempts to obtain their written confirmation and attach all correspondence sent, then proceed to Requirement 3h

Yes  then proceed to Requirement 3h

- h. Valuation of the property by an independent and appropriately qualified valuer *NOTE: if the property is publicly listed shares, an extract from the Australian Stock Exchange showing the current share price is sufficient*

No  then do not proceed any further until valuation obtained

Yes  then proceed to Requirement 4

*NOTE: The valuation must be no older than 3 months when your application is submitted to ASIC*

#### 4. 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](http://ag.gov.au)

Yes  then proceed to Requirement 4b

- b. Does your statutory declaration specifically:

- 1) identify the deregistered company and its ACN
- 2) confirm ASIC reinstatement is not available
- 3) explain the special circumstances which justify ASIC exercising its discretion to transfer the property for nil consideration, rather than you applying to purchase the property for full market value
- 4) confirm the company owned the property beneficially and not on trust for another party
- 5) explain (to the best of your knowledge) the circumstances leading to deregistration and why the property was not transferred to the nominated transferee prior to deregistration
- 6) state who is in possession of the original certificate of title (if the property is land)
- 7) provide the reason if any documents listed in Requirement 3a – 3h above are not attached
- 8) confirm either there are no outstanding creditors of the company, or that the secured parties consent to the transfer and attach their written consents (see Requirements 3c – 3e)
- 9) confirm the former directors consent and attach written consents (see Requirement 3g)
- 10) confirm all other former members consent and attach their written consents (see Requirements 3f), if the transfer is not to all former members
- 11) 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 5

#### 5. INDEMNITY

*NOTE: The indemnity protects ASIC against claims brought against ASIC due to it transferring the property. If the applicant (or transferee) 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 you fully completed and attached the indemnity signed by the applicant and the transferee (if the transferee is not the applicant)?

No  then do not proceed any further until you have downloaded and completed the indemnity "Transfer – Section 601AE" from [asic.gov.au](http://asic.gov.au)

Yes  then proceed to Requirement 6

## 6. 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 attached a cheque or money order payable to ASIC for \$934, being payment of the application fee?

No  then do not proceed any further until you have attached payment of the application fee

Yes  then proceed to Requirement 7

## 7. 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:

<u>Representative clause:</u> (i.e. description/name of transferor)	"The Australian Securities and Investments Commission acting under s601AE(2) of the <i>Corporations Act 2001</i> in relation to the property of [ <i>insert name and ACN of deregistered company</i> ], a company deregistered on [ <i>insert date of deregistration</i> ]."
<u>Sealing clause:</u> (i.e. where transferor signs)	"The Common Seal of the Australian Securities and Investments Commission is affixed under s601AE(2) of the <i>Corporations Act 2001</i> .  ..... An Authorised Officer of the Australian Securities and Investments Commission  Witness: ..... Solicitor, ASIC Level 20 Commonwealth Bank Building 240 Queen Street, BRISBANE QLD 4001"

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

Yes  then proceed to Requirement 7b

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](mailto: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](mailto: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 7). The representative and sealing clauses as stated in Requirement 7 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.