



ASIC

Australian Securities & Investments Commission

Deed of cross guarantee or assumption deed – compliance with ASIC Corporations (Wholly-owned Companies) Instrument 2016/785: Checklist

This checklist will help you avoid some common problems with documents lodged with ASIC, but it does not reflect all of the requirements your company must meet. Make sure you read and comply with [ASIC Corporations \(Wholly-owned Companies\) Instrument 2016/785](#) and its related documents.

If you tick the ‘No’ column to any of the questions in the checklist, you are automatically not eligible for this relief and you must prepare a financial report according to Chapter 2M of the *Corporations Act 2001* (Corporations Act).

However, if you believe there are exceptional circumstances that mean you should be eligible for the relief, send an application for individual relief to ASIC based on ASIC Corporations (Wholly-owned Companies) Instrument 2016/785. An application is required for each company seeking relief. The application must be prepared in accordance with section 340 of the Corporations Act and must include the reasons why the directors consider one of the pre-conditions for relief in section 342(1) to be met.

Checklist: Does your deed of cross guarantee or assumption deed comply with ASIC Corporations (Wholly-owned Companies) Instrument 2016/785?

Condition	Yes	No
1. Is the deed exactly in the form of the relevant pro forma (i.e. Pro Forma 24 Deed of cross guarantee (PF 24) or Pro Forma 27 Assumption deed (PF 27)) except for the company names and date?	<input type="checkbox"/>	<input type="checkbox"/>
2. Are the required documents (i.e. the deed and certification by a legal practitioner with a current practising certificate) ready to be lodged together with the relevant fee? Note: You don't need to lodge solvency statements for each company seeking relief but you must prepare them.	<input type="checkbox"/>	<input type="checkbox"/>
3. Will the deed be lodged before the end of the year for which relief is to first apply? Note: See paragraph 6(1)(m) of ASIC Corporations (Wholly-owned Companies) Instrument 2016/785.	<input type="checkbox"/>	<input type="checkbox"/>
4. Are all company ACNs correct in the relevant documents?	<input type="checkbox"/>	<input type="checkbox"/>
5. Are all companies that intend to rely on the instrument eligible for relief? (For example, companies under external administration or companies owned by companies under external administration are not eligible for relief.) Note: See paragraphs 6(1)(a) – (e) of ASIC Corporations (Wholly-owned Companies) Instrument 2016/785.	<input type="checkbox"/>	<input type="checkbox"/>
6. Has the deed been correctly executed?	<input type="checkbox"/>	<input type="checkbox"/>

Condition	Yes	No
7. If the trustee is a group entity, is there an alternative trustee? Note: See clause 7.1 of PF 24.	<input type="checkbox"/>	<input type="checkbox"/>
8. Are all wholly-owned entities within the closed group included in the deed?	<input type="checkbox"/>	<input type="checkbox"/>
9. Is the certification by a legal practitioner complete? Note: See the definition of 'certificate' in ASIC Corporations (Wholly-owned Companies) Instrument 2016/785.	<input type="checkbox"/>	<input type="checkbox"/>
10. Do the solvency statements made by every company seeking relief identify the deed by reference to the parties and the date of execution? Note: See paragraphs 6(1)(g) and (h) of ASIC Corporations (Wholly-owned Companies) Instrument 2016/785.	<input type="checkbox"/>	<input type="checkbox"/>
11. Has each subsidiary company that intends to rely on relief lodged an opt-in notice (Form 389) within four months after the end of the first financial year that relief is required? Note: See paragraph 6(1)(f) of ASIC Corporations (Wholly-owned Companies) Instrument 2016/785.	<input type="checkbox"/>	<input type="checkbox"/>
12. If the company relied on relief available under the instrument in the past and then ceased to do so, did the company lodge an opt-out notice (Form 399)? Note: See subsection 7(1) of ASIC Corporations (Wholly-owned Companies) Instrument 2016/785.	<input type="checkbox"/>	<input type="checkbox"/>