Checklist for Application for Transfer of Property under s601AF – 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. 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 the company deregistered following a members' voluntary winding up by a liquidator? *Note: This is not the same as a voluntary deregistration by a company's director.*

No ☐ then do not proceed with this application- refer to Transfer of Property to Former Member under s601AE(2)

Yes ☐ then proceed to requirement 3

3. SUPPORTING DOCUMENTS

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

a. 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 3b

b. Evidence of how the company's surplus assets were distributed at deregistration e.g. Presentation of accounts and statement, letter from former liquidator, etc. *NOTE: The Presentation of accounts and statement is listed in the historical company extract under "Documents relating to External Administration and/or appointment of Controller". You can purchase the "Presentation of accounts and statement" via asic.gov.au. The former liquidator's details are also in the historical company extract.*

No ☐ then do not proceed any further until document obtained

Yes ☐ then proceed to Requirement 3c

c. Written confirmation by the company's former liquidator:

1) about their knowledge of the property

2) the company if it still existed would be bound to transfer the property to the nominated transferee under 501 of the Corporations Act and

3) they have no objection to ASIC transferring the property on the company's behalf to the transferee.

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

Yes ☐ then proceed to Requirement 3d

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 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 3e

Yes ☐ then proceed to Requirement 3e

e. 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 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 3f

f. Written consent of any party who holds a registered security over the property (as referred to in Requirement 3d above) or over the company (as referred to in Requirement 3e 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 4

N/A ☐ because no parties with a registered interest over the property/company, then proceed to Requirement 4

Yes ☐ then proceed to Requirement 4

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

Yes ☐ then proceed to Requirement 4b

b. Does your statutory declaration specifically:

1) identify the deregistered company and its ACN
2) confirm the company owned the property beneficially and not on trust for another party
3) explain (to the best of your knowledge) the circumstances leading to deregistration and why the property was not transferred to the transferee prior to deregistration e.g. overlooked by liquidator
4) confirm the nominated transferee is entitled to the property under s501 of the Corporations Act 2001
5) state who is in possession of the original certificate of title (if the property is land)
6) provide the reason if any documents listed in Requirement 3a – 3f above are not attached
7) 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 3d - 3f)
8) 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 601AF" from 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 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)

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:

Representative clause: (i.e. description/name of transferor)	"The Australian Securities and Investments Commission acting under s601AF of the *Corporations Act 2001* on behalf of [***insert name and ACN of deregistered company***], a company deregistered on [***insert date of deregistration***]."

Sealing clause: (i.e. where transferor signs)	"The Common Seal of the Australian Securities and Investments Commission is affixed on behalf of [***insert name and ACN of deregistered company***] under s601AF of the *Corporations Act 2001*. …… A Delegate 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

All requirements outlined in the Checklist should be forwarded in digital format (i.e. PDF) as a single PDF attachment to property.law@asic.gov.au. If we require any further information or original documentation previously received electronically, we will advise you.

Please direct any initial questions to property.law@asic.gov.au ensuring the following information is included:

- name and ACN of the deregistered company
- evidence of vesting (e.g. title search, shareholding or bank statement)

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.