

Checklist for Application to Purchase Vested Property from ASIC under s601AE(2)

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. CONDITIONS OF SALE

ASIC does not generally approve applications to sell property:

- 1) held by the deregistered company on trust.
- 2) owned by a deregistered company and subject to a dispute or where despite registration in the company's name, ownership is in any doubt (e.g. personal property that is in another party's possession).
- 3) where a party (e.g. former officeholder or member) is reinstating the company.

Applications to purchase property from ASIC are subject to the following conditions:

- The property remains subject to any existing liabilities imposed on the property under a law.
- The property will be sold for market value although ASIC may consider reductions to the purchase price if appropriate.
- ASIC makes no representations or warranties whatsoever about the property.
- The onus is on the applicant to make thorough and comprehensive searches regarding ownership of the property and any encumbrances attached to the property.
- The property is sold as is and any items on the property will become the responsibility of the applicant.
- ASIC does not provide access to the property for inspections and only kerb-side viewing may be available.
- The onus is on the applicant to obtain vacant possession.
- An application to purchase vested property from ASIC will be suspended in the event ASIC receives an application to reinstate the registered proprietor, being the deregistered company. Should the company be reinstated, the property will re-vest in the company and therefore the application to purchase the property must be discontinued. If this occurs, ASIC will refund the application fee. If the company is not reinstated, the application to purchase the property can proceed. Applicants should set up a company alert to monitor the status of the company.
- All fees including searches, registration, legal fees, stamp duty, etc. are the responsibility of the applicant.

I have read and understood this section: No ☐ then do not proceed any further until you have read and understood this section
Yes ☐ then proceed to Requirement 3

3. 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:

4. VALUATION

NOTE: You must obtain an independent valuation of the property, regardless of the type of property you are applying to purchase. All valuation fees are the responsibility of the applicant. In the case of land, ASIC does not generally accept site valuations from the State/Territory Valuation Office or local council.

- a. Is your valuation from someone independent and appropriately licensed/qualified to value the property?

No ☐ then do not proceed any further until valuation obtained

Yes ☐ then proceed to Requirement 5

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

- b. Have you instructed the valuer to send the valuation directly to ASIC's Property Law Group at property.law@asic.gov.au?

No ☐ then do not proceed any further until you have given these instructions to the valuer

Yes ☐ then proceed to Requirement 5

5. CONTACT FORMER OFFICEHOLDERS AND MEMBERS

NOTE: Details of former officeholders and members can be obtained by purchasing an historical company extract via asic.gov.au. If any former officeholder or member objects to the sale and would rather reinstate the company, the application is unlikely to succeed.

Have you written to the company's former officeholders (i.e. liquidators or directors if no liquidators) and members - at

the date of deregistration - advising them:

- 1) of your proposed application to purchase the property from ASIC
- 2) the price you are offering ASIC and
- 3) to send their reply (as to whether they consent or object to the application) directly to ASIC's Property Law Group at property.law@asic.gov.au or GPO Box 9827, Brisbane Qld 4001

No ☐ then do not proceed any further until you have advised all of them of the above 3 points

Yes ☐ then attach to your statutory declaration (at Requirement 7) a copy of all your correspondence and proceed to Requirement 6

6. 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 6b

- b. 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 7) e.g. no security/restriction registered on title, or Titles Office unable to provide a copy due to age, etc., and proceed to Requirement 6c

Yes ☐ then proceed to Requirement 6c

- c. 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 or ph: 1300 007 777*

No ☐ then do not proceed any further until searches obtained

Yes ☐ then proceed to Requirement 6d

- d. Written consent of any party who holds a registered security over the property (as referred to in Requirement 6b above) or over the company (as referred to in Requirement 6c above)

No ☐ then attach to your statutory declaration (at Requirement 7), all correspondence sent to those parties (seeking their consent) and outline in that statutory declaration all your attempts to contact those parties and proceed to Requirement 6e

N/A ☐ because no parties with a registered interest over either the property or company, then proceed to Requirement 6e

Yes ☐ then proceed to Requirement 6e

- e. All correspondence to local council, water authority, body corporate if applicable, etc. in relation to outstanding rates, charges, fees, levies, etc. (NB. refer to 'Obligations go with the transfer' on page 5 of this Checklist)

No ☐ then do not proceed any further until documents obtained

N/A ☐ because property is not land, then proceed to Requirement 7

Yes ☐ then attach to your statutory declaration (at Requirement 7) and proceed to Requirement 7

7. 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 7b

b. Does your statutory declaration specifically:

- 1) identify the deregistered company and its ACN
- 2) identify the property
- 3) state why the applicant wishes to purchase the property (e.g. in the case of land, to live in the property, to farm the property; in the case of trademark, to use the trademark)
- 4) confirm to the best of your knowledge, the company owned the property beneficially and not on trust for another party
- 5) state whether any other party has an interest in the property
- 6) state the purchase price offered, confirming whether GST is payable and if it is, confirming that the total consideration offered will be the stated purchase price plus the amount of GST *NOTE: applicants need to seek their own advice as to whether the purchase would be subject to GST*
- 7) if the offer is lower than the independent valuation (at Requirement 4), then explain why the offer is nevertheless reasonable
- 8) if any supporting documents listed in Requirement 6a – 6e above are not attached, then explain why
- 9) if the property is land, then confirm you will pay all outstanding liabilities imposed on the property (see Requirement 6e)
- 10) confirm the secured parties consent to the sale and attach their written consents (see Requirements 6b – 6d)
- 11) confirm you have read and agree to the Conditions of Sale (at Requirement 2)
- 12) confirm you have written to the former officeholders and members of the company at the date of deregistration and attach a copy of your correspondence (see Requirement 5)
- 13) 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 8

8. INDEMNITY

NOTE: The indemnity protects ASIC against claims brought against ASIC due to it selling the property. If the applicant (or purchaser/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 purchaser/transferee (if the purchaser is not the applicant)?

No ☐ then do not proceed any further until you have downloaded and completed the indemnity "Purchase of Vested Property from ASIC" from asic.gov.au

Yes ☐ then proceed to Requirement 9

9. 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. Payment of the application fee is not payment of the purchase price.

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 10

10. TRANSFER FORM

NOTE: If the application is successful then ASIC will execute and return the original Transfer upon receipt of the purchase price. 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 s601AE(2) of the Corporations Act 2001 in relation to the property of [insert name and ACN of deregistered company] , a company deregistered on [insert date of deregistration] ."
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Sealing clause:
(i.e. where transferor signs)

"The Common Seal of the Australian Securities and Investments Commission is affixed under s601AE(2) of the *Corporations Act 2001*.

.....
An Authorised Officer of the Australian Securities and Investments Commission

Witness:
Solicitor, ASIC
Level 20, 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 10b

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
BRISBANE QLD 4001

Do NOT send a cheque for the purchase price at this time. If your application is successful we will advise you and provide you with payment details.

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 10). The representative and sealing clauses as stated in Requirement 10 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.