



MEMO

To: Board of Directors
From: Company Secretary
Subject: **DE-REGISTERED COMPANY ASSETS**

A company can be de-registered either voluntarily, by ASIC (eg, if fees unpaid, or there is no response to correspondence) or by the court.

In the case of voluntary de-registration one of the criteria is that the company has assets/ property worth less than \$1,000. However, directors/shareholders may at the time either 'forget about' or think some asset/property is 'worthless', and it may later turn out to be of value (eg, shares in another company).

In the case of an 'involuntary' ASIC or court de-registration there may well be [valuable] assets/property which the company owns, notwithstanding that the company is de-registered, which are/is not [or, not able to be] otherwise dealt with at the time of de-registration.

Whatever the case, on de-registration of a company all outstanding property of the company vests with ASIC under Sec 601AD(1A) & (2) of the Corporations Act. "Property" includes land and all other assets vested in ASIC, tangible or otherwise. Therefore, after the de-registration date the company (or anyone else) may not dispose of or deal with its property. Any disposition or transfer by the deregistered company (or anyone else) will be invalid.

However, under Sec 601AD(3) – (4) ASIC acquires the same property rights and powers as the company itself held, including the obligations as trustee of a trust if applicable and, under Sec 601AF, ASIC may perform an act on behalf of the de-registered company if ASIC is satisfied that the company would be bound or able to perform the act if the company was still registered.

Under Sec 601AE(1) ASIC must deal with property as trustee, or transfer to another trustee properly appointed as per any Trust Deed.

Where the assets are seen as trust property, ASIC will not generally exercise its powers under s601AF, but will endeavour to transfer the trust to another party. A person (eg, someone connected with the company before its de-registration) may make application for ASIC to transfer trust property to a new trustee. ASIC provides assistance in making a successful claim with information and examples of the types of supporting documents required by ASIC to satisfy them in approving the claim/transfer.



ASIC also encourages reinstatement of the company where property was held on trust. Reinstatement returns the company to registered status as if it were never de-registered. And all the previous company officers are restored to their roles from the date the company was de-registered.

Sec 601AE(2) provides that (if the de-registered company did not hold the property on trust) ASIC may dispose or deal with the property as it sees fit. It also provides that ASIC may apply any money it receives to defray expenses incurred in exercising its powers in relation to the de-registered company and make payments authorised by Sec 601AE(3).

ASIC must deal with any unclaimed balance of funds/assets as per Sec 1339 ff. That is, any assets/property can be disposed of as ASIC decides (eg, by auction) and 'turned into' cash, and any cash not claimed after 6 years must be transferred to Consolidated Revenue.

If anyone makes a claim of entitlement to any assets/property of a de-registered company, and ASIC is satisfied of their entitlement, then ASIC must either return the property – if still controlled/held by ASIC – or pay the person the amount of their claim (although if after transfer to Consolidated Revenue, then subject to the rules of Parliament) – Sec 1341(2). If the property is still held by ASIC, it may also entertain an approach for reinstatement of the company in this circumstance too.

DISCLAIMER

The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.