TFR-04 Transfer: Land of Deregistered Company

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1 Companies Deregistered Prior to 1 January 1991 (Representative Provisions)

Where, after a company has been deregistered or dissolved, it is proved to the satisfaction of the Australian Securities & Investments Commission that such company, if it still existed, would be bound to give effect to some dealing and some purely administrative act is required to complete that dealing, then the Commission, as representing the company or its liquidator, is empowered by s.460 of the Companies (Western Australia) Code to complete the dealing.

Use of the provisions of the Code is made valid by s.85(1) of the Corporations (Western Australia) Act 1989 which provided that matters arising before the Corporations Law 1989 would continue under the earlier legislation. The situation remains the same whether the events occurred before or after the introduction of Companies (Western Australia) Code which took effect on 1 July 1981.

The Transferor panel of such a transfer should (with amendments to suit the particular transaction) read either:

Australian Securities & Investments Commission acting pursuant to s.66 of the Corporations (Western Australia) Act 1989 and s.460 of the Companies (Western Australia) Code for and on behalf of D. Registered Co Pty Ltd, a company that was deregistered on 12th May, 1980

or

Australian Securities & Investments Commission acting pursuant to s.66 of the Corporations (Western Australia) Act 1989 and s.460 of the Companies (Western Australia) Code for and on behalf of Ikan Addup, the liquidator of D. Solved Co Pty Ltd, a company that was dissolved on 12th May, 1980.

The Consideration panel of such a transfer should read see page 2 and on the second page of the
Transfer of Land with Additional Pages form, under the heading Consideration should appear:

- on the (date) (Company Name) did by contract for sale sell to (Transferee) the above land, for the sum of (consideration)

- (Company Name) was dissolved/deregistered on the (date)

- (Transferee) has paid the full purchase price to (Company Name)

and

- the Australian Securities & Investments Commission is satisfied that the purchase price has been paid in full, and that (Company Name), if still existing, would be bound at law or in equity to execute a transfer of the above land to the Transferee.

2 Companies Deregistered Prior to 1 January 1991 (Disposal Provisions)

Where after a company has been dissolved prior to 1st January, 1991 and there remains some asset of the company not dealt with by the liquidator such asset is vested in the Australian Securities & Investments Commission.

The Commission is empowered to sell the land by virtue of Sections 461 and 462 of the Companies (Western Australia) Code. Use of the provisions of the Code is made valid by s.85(1) of the Corporations (Western Australia) Act 1989 which provided that matters arising before the Corporations Law 1989 would continue under the previous legislation.

The situation remains the same whether the company was dissolved or deregistered before or after the introduction of the Companies (Western Australia) Code which came into operation on 1 July 1981. The Commission is not required to apply to have the land vested in it before dealing with it.

The Transferor panel of such a transfer should read:

Australian Securities & Investments Commission acting pursuant to s.66 of the Corporations (Western Australia) Act 1989 and s.461 of the Companies (Western Australia) Code, in relation to the property of D. Registered Co Pty Ltd, a company that was deregistered on 12 May, 1980.

The Consideration panel of such a transfer should read see page 2 and on the second page of Transfer of land with additional pages form under the heading Consideration should appear:

- the above land is registered in the name of (Company Name) which company was dissolved on the (date)

- the Transferee has paid the sum of (number in words) dollars to the (insert whichever is appropriate from (Commissioner for Corporate Affairs, National Companies and Securities Commission or Australian Securities & Investments Commission)

and

- in exercise of the power to sell the said land under s.462 of the Companies (Western Australia) Code.
3 Execution by the Australian Securities & Investments Commission

The Australian Securities & Investments Commission, may by virtue of s.102 of the Australian Securities Commission Act 1989 delegate its powers, with the intent of providing authority to act for the Commission and provide a decentralised service.

Acting under that authority, the Commission has made a delegation to the position of Executive Director, Corporate Regulations to act in these (and other) circumstances, and to execute documents on behalf of the Commission. The form of attestation used is:

Australian Securities & Investments Commission )
By its Delegate ) (Signature of Delegate)
(name of delegate), the )
Executive Director Corporate )
Regulation in the presence of )
Witness
(Full Name, Address and Occupation)

4 Evidence to Support the Transfer Referred to in Chapter 1 and 2

Where the duplicate certificate of title for the land in the transfer is lodged with the dealing no further evidence is required by the Registrar, as the authority for the sale is quoted in the transferor panel and restated in the consideration, and the possession of the duplicate title is held to be significant.

Where the duplicate certificate of title has been lost, the transfer can still be registered using s.74 of the TLA. A statutory declaration should be filed with the transfer, and in addition to statements negating the deposit of the duplicate title for security for a lien, it should confirm the circumstances of the deregistration of the company and the disposition of the land by reciting the facts of the matter.

The declarant must declare that proper authority exists for the declaration to be made and that the declarant has the necessary means of knowledge.

In cases where the paper title is partially cancelled, a similar statutory declaration is required, but it need only recite the authority of the declarant to make the declaration, the means of knowledge to make the statements, and a recitation of the circumstances of the deregistration of the company and disposition of the land.

5 Companies Deregistered on or After 1 January 1991
(Representative Provisions)

Where, after a company has been deregistered or dissolved, on or after 1 January, 1991, it is proved to the satisfaction of the Australian Securities & Investments Commission (ASIC) that such company, if it still existed, would be bound to give effect to some dealing and some purely
administrative act is required to complete that dealing, then ASIC, as representing the company or its liquidator, is empowered by s.601AF of the Corporations Law 2001 to complete the dealing.

The Transferor panel of such a transfer should (with amendments to suit the particular transaction) read either:

Australian Securities and Investments Commission acting pursuant to s.601AF of the Corporations Law 2001 for and on behalf of D. Registered Co Pty Ltd, a company that was deregistered on 12th May, 1991;

or

Australian Securities and Investments Commission acting pursuant to s.601AF of the Corporations Law 2001 for and on behalf of Ilkan Addup, the liquidator of I.N. Solvent Co Pty Ltd, a company that was dissolved on 12th May, 1991.

The Consideration panel of such a transfer should read see page 2 and on the second page of the **Transfer of land with additional pages form** under the heading Consideration should appear:

- on the (date) (Company Name) did by contract for sale sell to (Transferee) the above land, for the sum of (consideration)

- (Company Name) was dissolved/deregistered on the (date)

- (Transferee) has paid the full purchase price to (Company Name)

   and

- the Australian Securities and Investments Commission is satisfied that the purchase price has been paid in full, and that (Company Name), if still existing, would be bound at law or in equity to execute a transfer of the above land to the Transferee.

6 Companies Deregistered on or After 1 January 1991 (Disposal Provisions)

Where after a company has been dissolved on or after 1 January, 1991 and there remains some asset (which includes land) of the company not dealt with by the liquidator such asset is vested in the Australian Securities and Investments Commission (ASIC). ASIC is empowered to sell the land by virtue of s.601AE of the Corporations Law 2001. The Commission is not required to apply to have the land vested in it before dealing with it.

The Transferor panel of such a transfer should read:

Australian Securities and Investments Commission acting pursuant to s.601AE of the Corporation Law 2001 in relation to the property of D. Registered Co Pty Ltd, a company that was deregistered on 12 May 1991.

The Consideration panel of such a transfer should read see page 2 and on the second page of the **Transfer of land with additional pages form** under the heading Consideration should appear:

- the above land is registered in the name of (Company Name) which company was dissolved on the (date)

- the Transferee has paid the sum of (number in words) dollars to the Australian Securities and
Investments Commission

and

- and in exercise of the power to sell the said land under s.601AE of the Corporations Law 2001.

7 Attestation and Supporting Evidence

The procedures set out in paragraphs 2 and 3 of this guide also apply to documents prepared in the circumstances set out in this paragraph.

8 Distribution in Specie

A Liquidator, when appointed to wind up a corporation, must convert the assets of the corporation to pay its debts. If, when all debts are paid, there are still assets left, the Liquidator may still wind up the corporation and transfer the remaining assets to the shareholders, in the same ratio as their shareholding. Should the remaining assets include or consist of land which has been vested in the liquidator by a Court Order the liquidator may apply under s.234 of the TLA to be registered as the proprietor of the land, then transfer it to the shareholders. The transfer form would show:

- the liquidator as transferor

- as a consideration The entitlement of the transferees to the above land by virtue of a distribution of the assets of (name of liquidated company) in specie

    and

- the transferees as tenants in common in the same ratios of shares as their shareholding in the company.

The form of attestation by the liquidator is shown in SIG-12 Signing by a Registered Friendly Society and the requirements for the application by the liquidator to become registered as the proprietor of the land are similar to those shown in BAN-01

A transfer effecting a distribution in specie must be supported by a statutory declaration by the liquidator declaring

- the facts of the appointment

- that the appointment is still current

- all the debts of the corporation have been paid, leaving the land the subject of the transfer as a remaining asset

    and

- the transferees being all the shareholders of the company are entitled to the land in the shares set out in the transfer.

If the land has not been vested in the Liquidator by a Court Order, the above practice would still apply, except that the transfer would be made in the name of the company, followed by the words in Liquidation.
9 Beneficiaries

Where the registered proprietor is holding the land in trust for another person (although of course, this would not appear on the Register) and the event has occurred upon which that person is entitled to be registered as proprietor or where the registered proprietor has deposited a declaration of trust with the Registrar and is now desirous of giving effect to the declared trusts, the following procedures apply.

In any transfer by the trustee, appearing therein to be the registered proprietor, the consideration in the first instance should read:

"the transferee being entitled in equity to become the registered proprietor of the above described land"

or

"the transferor having held the above described land in trust for the transferee and in order to give effect to such trust"

and in the second instance:

"pursuant to the terms of Declaration of Trust F126414 and in order to give effect to it."

Where the declaration of trust is not deposited at Landgate the consideration panel in the transfer should read:

"pursuant to the terms of a Declaration of Trust dated 10th September, 1993 and in order to give effect to it."

10 Also see

- TFR-01 Transfers - Common Scenarios
- TFR-03 Transfers by or to an Executor/Administrator
- TFR-06 Life Estates