

Guide to Statutory Declaration for claims by former members/shareholders on deregistered company funds

This document is a guide to assist former shareholders/members of deregistered companies in claiming unclaimed money held by ASIC for the benefit of the deregistered company.

This is only a general guide as to ASIC's requirements and what should form part of the Statutory Declaration. This guide and the example Statutory Declaration does not represent legal advice and should not be interpreted as such. Each claim will be considered on its facts and decided on its individual merits, based on all the information available to ASIC at the time.

We encourage you to seek your own professional advice to find out how the law affects your individual circumstances.

Privacy: ASIC is authorised to collect information provided in the Statutory Declaration under Part 9.7 of the *Corporations Act 2001* (the Act). The information collected will be used in the assessment of an application for unclaimed money and for personal identification purposes. For more details, please see Privacy Statement on www.asic.gov.au.

Do not complete this Statutory Declaration if: The company was in liquidation prior to deregistration unless it was a Member's Voluntary liquidation. If it was another type of liquidation e.g. Court Ordered or Creditor's Voluntary, you will need to arrange for the company to be reinstated and a liquidator appointed to distribute the funds. Information on how to reinstate a company is available at [ASIC/Reinstatement of company](#)

If the former shareholder/member is deceased There was a will - the Executor of the estate of the deceased shareholder can complete this Statutory Declaration. They will also need to provide:

- certified copy of death certificate and will of deceased; and/or
- certified copy of Probate.

There was no will – **do not complete this Statutory Declaration.** State succession laws will apply and the beneficiaries of the estate may be entitled to the funds. Before proceeding, the beneficiaries will need to provide some information to ASIC so we can assess who may be entitled to make a claim. Please email unclaimed.money@asic.gov.au with the following information:

- name of deregistered company and ACN that ASIC holds the funds for;
- name of deceased shareholder/member;
- date and place of death – Succession laws are state legislation. We will need to know the place of death - state or country - to apply the appropriate laws;
- the deceased's usual place of residence
- details of children and spouse / defacto of the deceased; and
- details of the value of the estate.

In some instances, the beneficiaries may need to apply to court to have an administrator appointed to deal with the deceased estate property.

If the former shareholder/member is a company: Registered company - 2 current office holders (director(s) or secretaries) of the registered company complete the Statutory Declaration.

Deregistered company - **do not complete this Statutory Declaration.** Before proceeding, you will need to provide some information to ASIC so we can assess who may be entitled to make a claim. Please email unclaimed.money@asic.gov.au with the following information:

- name of deregistered company and ACN that ASIC holds the funds for;
- name of the deregistered company and ACN that was the shareholder/member (deregistered member company); and
- name of former shareholders/members of the deregistered member company.

In some instances, it may be more appropriate to reinstate both deregistered companies before a claim can be made.

Help:	If you require any assistance contact ASIC on 1300 301 198 or unclaimed.money@asic.gov.au
Lodgement:	The original Statutory Declaration, Deed of Indemnity, two proof of identification, and any other supporting documents will only be accepted by post, sent to: ASIC – Unclaimed Money Unit GPO Box 9827 Brisbane Qld 4001
Paragraph 3:	Secured creditors may have priority to any payment to you as a former shareholder/member. If there is a current security interest registered on the Personal Property Security Register (PPSR) against the company as grantor, ASIC is unlikely to approve a claim from the former shareholder/member for the unclaimed money. If the security interest remains registered, but no longer applies, you may wish to consider seeking that the secured party under the security interest remove the registration from the PPSR. You will need to provide proof in the form of a letter from the grantor that they no longer have an interest in these matters or that they have been satisfied.
Paragraph 4:	All former shareholders/members must indicate the percentage (%) of the money they are entitled to, e.g. 50% to each former member if there are 2 members with 1 share each. All statutory declarations provided must accumulatively total 100%. If a former member is not entitled to any of the funds held by ASIC, they will still need to complete the claim requirements by inserting 0% in this paragraph.
Paragraph 5:	Attach certified copies of two forms of personal identification as proof of identity. <u>Primary Personal identification</u> – certified copy of the following: <ul style="list-style-type: none"> • Current passport or drivers licence • or if not available • Centrelink/pension card/ • Department of Veterans Affairs (DVA) card • 18+ card with your signature clearly evidenced. <u>Secondary Personal identification</u> – certified copy of the following: <ul style="list-style-type: none"> • another Primary Personal identification as listed above • Medicare card • credit/debit card • birth certificate and marriage certificates etc.
Paragraph 6:	Attach completed Deed of Indemnity.
Paragraph 7:	Attach a certified copy of the death certificate and will of the deceased former shareholder; and/or a certified copy of Probate for the former shareholder. This only applies where the former shareholder/member is deceased and the person completing the Statutory Declaration is the Executor of the estate. If this does not apply, strike it out by drawing a line through the paragraph.



COMMONWEALTH OF AUSTRALIA
STATUTORY DECLARATION
Statutory Declarations Act 1959

I,

Name:

_____ *If claiming as an officeholder of a registered company:*
"*<Name>, <director/secretary> of <Name of registered company> <ACN>*"
If claiming as executor of a deceased estate:
"*<Name>, Executor of the Estate of <Name of the deceased shareholder/member>*"

Address:

_____ of _____

Occupation:

Phone:

Email:

_____ *Details of person making the declaration*

make the following declaration under the *Statutory Declarations Act 1959*:

1. _____ (We/I, or name of former shareholder/member) was registered as the holder of shares in _____ (name of deregistered company) _____ (ACN of deregistered company).
2. _____ (I, or estate/company who is entitled) am/is beneficially entitled to the whole of the interest in these shares and there are no trusts or secured interests in relation to these shares.
3. There are no outstanding debts, secured creditors (including on the Personal Property Security Register), disputed or otherwise, remaining outstanding against the company.
4. _____ (I, or estate/company who is entitled) am/is entitled to _____ % of \$ _____ (amount/s as listed on MoneySmart), OTN (Original Transaction Number) _____.
5. **Attached** are certified copies of two forms of personal identification as proof of my identity.
6. **Attached** is the completed Deed of Indemnity.
7. **Attached** is a certified copy of the death certificate and will of the deceased former shareholder; and/or a certified copy of Probate for the former shareholder. (*Strike out if not applicable*)

SEE SIGNATURE PAGE

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

I agree to my identifying information being checked with the Issuer or Official Record Holder.

Signature of person making declaration

Declared at _____ on _____ of _____
Place Day Month and Year

Before me,

Signature of person before whom the declaration is made (see list of persons who can witness)

Name _____

Qualification _____

Address _____

Of person before whom the declaration is made (in printed letters)

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years — see section 11 of the *Statutory Declarations Act 1959*.

Note 2 Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959* — see section 5A of the *Statutory Declarations Act 1959*.

DEED OF INDEMNITY

TO: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION ["ASIC"]

WHEREAS the ASIC acting in pursuance of subsection 1341 of the *Corporations Act 2001* will pay certain monies to

Insert name of the applicant

being money paid to ASIC by virtue of the deregistration of the company

Insert name and ACN of deregistered company in whose name the funds are held by ASIC

NOW IN CONSIDERATION for such payment by the ASIC I/we undertake that I/we shall at all times hereafter indemnify and keep indemnified the ASIC from and against all claims, losses, suits, damages, demands, costs and expenses incurred by the ASIC by reason of the said payment in particular (but without limiting the generality of the foregoing) I/we shall indemnify the ASIC against claims of the creditors of

Insert name and ACN of deregistered company in whose name the funds are held by ASIC

due to the payment.

**SIGNED, SEALED and
DELIVERED by**

Insert name of the applicant

Signature of the applicant

On:

Insert date – day/month/year

In the presence of:

Witness

Insert name of the witness

Signature of the witness

Who can witness a Statutory Declaration?

A statutory declaration under the *Statutory Declarations Act 1959* may be made before—

(1) a person who is currently licensed or registered under a law to practise in one of the following occupations:

Chiropractor	Dentist	Legal practitioner
Medical practitioner	Nurse	Optometrist
Patent attorney	Pharmacist	Physiotherapist
Psychologist	Trade marks attorney	Veterinary surgeon

(2) a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or

(3) a person who is in the following list:

Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the *Consular Fees Act 1955*)
Bailiff

Bank officer with 5 or more continuous years of service
Building society officer with 5 or more years of continuous service
Chief executive officer of a Commonwealth court
Clerk of a court

Commissioner for Affidavits
Commissioner for Declarations
Credit union officer with 5 or more years of continuous service

Employee of the Australian Trade Commission who is:
(a) in a country or place outside Australia; and
(b) authorised under paragraph 3 (d) of the *Consular Fees Act 1955*; and
(c) exercising his or her function in that place

Employee of the Commonwealth who is:
(a) in a country or place outside Australia; and
(b) authorised under paragraph 3 (c) of the *Consular Fees Act 1955*; and
(c) exercising his or her function in that place

Fellow of the National Tax Accountants' Association
Finance company officer with 5 or more years of continuous service
Holder of a statutory office not specified in another item in this list
Judge of a court
Justice of the Peace

Magistrate
Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the *Marriage Act 1961*
Master of a court

Member of Chartered Secretaries Australia
Member of Engineers Australia, other than at the grade of student
Member of the Association of Taxation and Management Accountants
Member of the Australasian Institute of Mining and Metallurgy

Member of the Australian Defence Force who is:
(a) an officer; or
(b) a non-commissioned officer within the meaning of the *Defence Force Discipline Act 1982* with 5 or more years of continuous service; or
(c) a warrant officer within the meaning of that Act

Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants

Member of:
(a) the Parliament of the Commonwealth; or
(b) the Parliament of a State; or
(c) a Territory legislature; or
(d) a local government authority of a State or Territory

Minister of religion registered under Subdivision A of Division 1 of Part IV of the *Marriage Act 1961*

Notary public

Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public

Permanent employee of:
(a) the Commonwealth or a Commonwealth authority; or
(b) a State or Territory or a State or Territory authority; or
(c) a local government authority;
with 5 or more years of continuous service who is not specified in another item in this list

Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made

Police officer
Registrar, or Deputy Registrar, of a court

Senior Executive Service employee of:
(a) the Commonwealth or a Commonwealth authority; or
(b) a State or Territory or a State or Territory authority

Sheriff
Sheriff's officer

Teacher employed on a full-time basis at a school or tertiary education institution