



ASIC

Australian Securities & Investments Commission

**ASIC Corporations (COVID-19 Email
Lodgment Service —ASIC Corporations
(Wholly-owned Companies) Instrument
2016/785) Instrument 2020/890**

I, Rachel Howitt, delegate of the Australian Securities and Investments Commission, make the following instrument.

Dated 24 September 2020

A handwritten signature in blue ink, appearing to read 'R Howitt'.

Rachel Howitt

Part 1—Preliminary

1 Name of instrument

This is *ASIC Corporations (COVID-19 Email Lodgment Service—ASIC Corporations (Wholly-owned Companies) Instrument 2016/785) Instrument 2020/890*.

2 Commencement

This instrument commences on the date it is signed.

3 Cessation

This instrument will cease to apply on the day that *Corporations (Coronavirus Economic Response) Determination (No. 3) 2020* ceases to be in force.

4 Authority

The Australian Securities and Investments Commission (**ASIC**) makes this approval instrument for the purposes of:

- (a) paragraph 352(1)(b) of the *Corporations Act 2001* (the **Corporations Act**); and
- (b) subsection 11(4) of the *Australian Securities and Investments Commission Act 2001* (the **ASIC Act**) in respect of ASIC's power to do whatever is necessary for or in connection with, or reasonably incidental to, the performance of its functions.

Part 2—Approval

5 Approval of electronic lodgments of documents under *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785* via ASIC’s Email Lodgement Service

Approvals of electronic lodgments

- (1) To facilitate electronic lodgments of documents under *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785* via ASIC’s Email Lodgement Service (the **ELS**) and for the purposes of paragraph 352(1)(b) of the Corporations Act, ASIC approves the electronic lodgment with ASIC of the documents set out in the Schedule through the ELS in accordance with the terms and conditions of the ASIC Email Lodgement Service: User Agreement for *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785 (ELS User Agreement - LI 2016/785)*.

Electronic signatures

- (2) Where, in relation to a document specified in the Schedule:
 - (a) a company is executing a document or lodging or submitting a document with ASIC; and
 - (b) the Corporations Act (or any regulations or other instruments made under or for the purposes of that Act) provides for or requires the document to be signed by a person in a particular capacity for the purposes of the company executing the document or lodging or submitting the document with ASIC;

the person in that capacity may sign the document electronically in accordance with the electronic method specified in subsection (3).

Note: For example, a company may execute a document under section 127 of the Act if the document is signed electronically by 2 directors of the company or by a director or company secretary. Section 351 of the Corporations Act also requires a paper document lodged with ASIC by an Australian company to be signed by a director or secretary of the company. A director or secretary signing a document must electronically sign the document in accordance with paragraph (3)(b) of this approval.

- (3) For the purposes of paragraph 352(1)(b) of the Corporations Act, the *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785* and for all other purposes, the electronic method for signing a document specified in the Schedule to be lodged or submitted to ASIC via the ELS is:
 - (a) for a document that is a deed of cross guarantee, assumption deed or revocation deed (each within the meaning of *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785*)—the persons referred to in paragraph 127(1)(a), (b) or (c) of the Corporations Act (as applicable) applying or inserting their own electronic signature:

- (i) to an electronic document that is a deed of cross guarantee, assumption deed or revocation deed (as applicable); and
 - (ii) in a manner that complies with section 127 of the Corporations Act as modified by *Corporations (Coronavirus Economic Response) Determination (No. 3) 2020*; or
- (b) for a document that is a Form 389—389 *Opt-in/change of holding entity notice by wholly-owned company relieved from financial reporting obligations*, Form 399—399 *Opt-out notice by wholly-owned company relieved from financial reporting obligations* or a notice of disposal (within the meaning of *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785*) and that is required to be signed by a person in a particular capacity—the person in that capacity applying or inserting their own electronic signature to an electronic document that is a Form 389, Form 399 or a notice of disposal (as applicable); or
- (c) for a document that is a certificate (within the meaning of *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785*), Form CF06—CF06 *Deeds of cross-guarantee and related documents - ASIC Corporations (Wholly-owned companies) Instrument 2016/785* or an Email Lodgement Form (within the meaning of the ELS User Agreement – LI 2016/785)—the person applying or inserting their own electronic signature to an electronic document that is a certificate (within the meaning of *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785*), Form CF06 or the Email Lodgement Form (as applicable).

6 Interpretation

In this instrument:

electronic document means a document produced in writing within the meaning of sections 11 and 9 of the *Electronic Transactions Act 1999* and includes:

- (a) a document created using a word processor application on computer or other device; and
- (b) a document created using a electronic document signing platform or uploaded into an electronic signing platform that provides a method of signing that complies with section 127 of the Corporations Act as modified by *Corporations (Coronavirus Economic Response) Determination (No. 3) 2020* whilst the determination is in force;

but does not, for the purposes of this instrument, include a document that is not an original electronic document (for example, a copy of a document that is created by converting an original document to a PDF format or by scanning a hard copy of the document) where *ASIC Corporations (Wholly-owned*

Companies) Instrument 2016/785 requires an original document to be lodged with ASIC.

Note: Deeds of cross-guarantee, assumption deeds, revocation deeds and certificates (each within the meaning of *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785*) that are lodged with must be original documents.

electronic signature means a signature within the meaning of section 10 of the *Electronic Transactions Act 1999* and includes:

- (a) a digital image of an original signature of a person created by the person or by a person authorized by the person; and
- (b) an original digital signature created by and applied directly to an electronic document by the signatory by electronic means for example, by using a finger, stylus or other implement to create a signature on an electronic document on a device such as a computer or notebook; and
- (c) an electronic signature that is created within or applied using an electronic document signing platform.

Schedule

Documents under ASIC Corporations (Wholly-owned Companies) Instrument 2016/785 that may be lodged or submitted to ASIC via ASIC’s Email Lodgement Service for ASIC Corporations (Wholly-owned Companies) Instrument 2016/785.

Form code	Document
CF06	CF06 Deeds of cross guarantee and related documents (cover form)
351	Deed of cross-guarantee - (Pro Forma 24) or deed of variation of a deed of cross-guarantee
No form code	Certificate in respect of deed of cross guarantee or assumption deed
352	Assumption deed - (Pro Forma 27)
353	Notice of disposal – (Pro Forma 25)
No form code	Certificate for Notice of disposal
355	Revocation deed – (Pro Forma 26)
389	Opt-in/change of holding entity notice by wholly-owned company relieved from financial reporting obligations
399	Opt-out notice by wholly-owned company relieved from financial reporting obligations
No form code	Email lodgment form and declaration