MINISTERIAL DETERMINATION

TRUSTEE COMPANY TRANSFER OF ESTATE ASSETS

AND LIABILITIES

CH 5D CORPORATIONS ACT 2001

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Hon Bill Shorten MP, Minister for Employment and Workplace Relations and Minister for Financial Services and Superannuation makes this determination dated 6 August 2012 under paragraph 601WBD(1)(b) of the *Corporations Act 2001* (the ***Act***).

Paragraph 601WBD(1)(b) of the Act provides that the Minister's consent to the transfer of estate assets and liabilities is not required if the Minister has, in writing, determined that his or her consent is not required in relation to a class of transfers. If the Ministerial determination is expressed to apply to a class of transfers, it is a legislative instrument under subsection 601WBD(3) of the Act.

# 1. Background

Chapter 5D of the Act implements the transfer of certain regulatory responsibilities from the States and Territories to the Commonwealth in relation to trustee companies that provide “traditional trustee company services”, including performing estate management functions, preparing wills, applying for probate of a will and establishing and operating common funds.

The Chapter created a national licensing system for trustee companies. These trustee companies are required to hold an Australian financial services licence covering the provision of traditional trustee company services. The trustee companies to which Chapter 5D of the Act applies are those companies listed in Schedule 8AA to the Corporations Regulations 2001.

Under the former State and Territory regulatory regimes for trustee companies, many corporate groups operated subsidiaries in the States and Territories. The function of the subsidiaries was to hold the relevant trustee company authorisation in that jurisdiction. Following the introduction of the national regulatory framework for trustee companies, many corporate groups want to consolidate their traditional service business and transfer that business to a single Australian financial service licensee.

Part 5D.6 of the Act governs ASIC-approved transfers of estate assets and liabilities from one licensed trustee company to another. Under subsection 601WBA(1) of the Act, ASIC may, in writing, make a determination (a ***transfer determination***)that there is to be a transfer of estate assets and liabilities from a specified trustee company to another specified trustee company. ASIC may make the transfer determination only if the Minister has consented to the transfer or if the Minister's consent to the transfer is not required (see section 601WBD).

# 2. Purpose of the Ministerial determination

The purpose of this Ministerial determination is to remove the requirement for the Minister’s consent to the transfer of estate assets and liabilities for a particular class of transfers under paragraph 601WBD(1)(b) of the Act.

# 3. Operation of the Ministerial determination

This Ministerial determination under paragraph 601WBD(1)(b) of the Act operates so that consent from the Minister under subparagraph 601WBA(2)(a)(i) is not required for:

* all voluntary transfers of estate assets and liabilities between companies within the same corporate group (an ***intra-group transfer***) ; and
* voluntary transfers between unrelated companies (an ***arm's length transfer***).

An intra-group transfer is a transfer between companies that are related bodies corporate by virtue of s50 of the Act. A transfer that is between unrelated companies is a transfer between companies that are not related bodies corporate by virtue of s50 of the Act.

**4. Statement of Compatibility with Human Rights**

This statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the Legislative Instrument is to is to remove the requirement for the Minister’s consent to the transfer of estate assets and liabilities for a particular class of transfers under paragraph 601WBD(1)(b) of the Act.

Human rights implications

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* because it does not engage any of the applicable rights or freedoms.

# 5. Consultation

ASIC has consulted with the Treasury in relation to this determination. No further consultation was undertaken as the determination is of a minor or machinery nature.