

A Guide for estate practitioners when dealing with listed and unlisted company investments

October 2012

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Contents

1.	Introduction	2
2.	The legislation	2
3.	The Australian Securities Exchange (ASX) and CHESS	2
4.	Investor relationships.....	3
	4.1 CHESS sponsored.....	3
	4.2 Issuer sponsored holdings	3
	4.3 Online brokers.....	3
5.	Monetary thresholds and when Probate is needed.....	3
	5.1 Individual companies.....	3
	5.2 Share registries	4
	5.3 Brokers	4
6.	CHESS	4
	6.1 Investments	4
	6.2 The information a broker can provide an estate practitioner where the deceased was CHESS sponsored	5
	6.3 Trading on CHESS	5
7.	Share trading.....	5
8.	Delisted companies	6
9.	Listed units	6
	9.1 Where to get the market values for listed units	6
10.	Unlisted units.....	6
	10.1 Where to get the market values for unlisted units	6
	10.2 How to dispose of unlisted units	6
11.	Acknowledgments	6

1. Introduction

One of the most nebulous components in estate administration is how to effectively distribute listed and unlisted company investments. This guide will consider the legislation, procedures and practices of ASX and the share registries and will be a starting point for estate practitioners when dealing with and distributing listed and unlisted company investments.

2. The legislation

The first points of reference for practitioners are the:

- ASX Operating Rules Procedures – http://www.asxgroup.com.au/media/PDFs/asx_or_procedures.pdf
- ASX Settlement Operating Rules, Guidance Notes and waivers – <http://www.asxgroup.com.au/asx-settlement-operating-rules-guidance-notes-and-waivers.htm>
- ASIC Market Integrity Rules – <http://www.asic.gov.au/asic/ASIC.NSF/byHeadline/Market%20integrity%20rules>

These rules regulate the conduct of the parties in the industry.

Practitioners should be aware that the policy and procedures differ from registry to registry. Practitioners are advised to ask for a supervisor or the key person in the deceased estate team when making enquiries at share registries, noting that the estate is complex.

3. The Australian Securities Exchange (ASX) and CHES

The Australian Securities Exchange website sets out the function of how listed securities are exchanged in the Australian market:

“When you buy or sell financial products such as shares in a listed company, you must exchange the title or legal ownership of those financial products for money. This exchange is called settlement.

For financial products traded on the Australian Securities Exchange, settlement is effected by a world class computer system called CHES, which stands for the Clearing House Electronic Subregister System.

CHES is operated by the ASX Settlement Corporation (ASX Settlement), a wholly owned subsidiary of the ASX. ASX authorises participants such as brokers, custodians, institutional investors, settlement agents and so on to access CHES and settle trades made by themselves or on behalf of their clients.

Usually, three business days after a buyer and seller agree to a trade, CHES effects the settlement of that trade. It does this by transferring the title or legal ownership of the shares while simultaneously facilitating the transfer of money for those shares between participants via their respective banks. This type of settlement is called Delivery versus Payment (DvP). It is irrevocable.

What is CHESS?

In addition to performing settlement, CHESS electronically registers the title (ownership) of shares on its subregister. This registration is secure and is an efficient means for holders to register title of their shares if they intend to trade them.

In summary, CHESS performs two major functions for the ASX:

- *it facilitates the settlement and clearing of trades in shares; and*
- *it provides an electronic subregister for shares in ASX listed companies.*

CHESS performs these and other functions for a diverse range of financial products, including shares. For further information on CHESS, please ask your broker for a copy of the CHESS brochure (PDF 115KB).

Registering shareholdings

Since 1998, when paper share certificates were eventually phased out, ownership of shares has been recorded electronically. An electronic registration consists of a shareholder's name and shareholding recorded in a computer system."¹

Practitioners should note there is more than one stock exchange in Australia. They include (but are not limited to):

- Bendigo Stock Exchange
- Newcastle Stock Exchange.

4. Investor relationships

4.1 CHESS sponsored

A (deceased) investor that is on CHESS and is sponsored by a broker, the relationship is largely or exclusively with the broker. If executor/administrator directs that the shares be sold via a different broker, you would have to arrange a transfer of the holding to the new broker.

4.2 Issuer sponsored holdings

A (deceased) investor who has issuer sponsored holdings will have a relationship with each individual company. Issuer sponsored holdings can be bought and sold more easily through multiple brokers.

4.3 Online brokers

In addition to human brokers, practitioners should be aware there are also online brokers. For example, Commsec is run by the Commonwealth Bank of Australia. This website details a comparison of 33 different online brokers: <http://www.canstar.com.au/online-trading/>.

5. Monetary thresholds and when Probate is needed

5.1 Individual companies

There is no set uniform threshold for company investments above which the executor/administrator needs to obtain Probate before dealing with the investments. The threshold is set by the individual companies, so it is important to contact the share registry manager to determine their requirements if you are administering a small estate and determining whether Probate is necessary.

¹ http://www.asx.com.au/products/how_settlement_works.htm

5.2 Share registries

In relation to share registries, there are set thresholds which will cover the companies under their control. If the investments are over the threshold, the share registry will require Probate. The recommended thresholds are²:

Share registry	Recommended threshold
Securities Registrars Association of Australia ³	\$15,000.00
Linkmarket Services	\$15,000.00 – for individual or combined holdings
Computershare	\$25,000.00
Registry Services Australia ⁴	\$25,000.00 – for individual or combined holdings
	\$50,000.00 – for combined holdings where there is no will

For a list of all the share registries, please click here: <http://www.investogain.com.au/companies/share-registries> Please note that some companies have their own share registry.

5.3 Brokers

The threshold varies from broker to broker, but the commonly adopted practice is:

- In most cases the threshold applies to the individual holding. For example five stocks worth \$4,000.00 (aggregating \$20,000.00) held on CHESS with a broker would not necessarily require Probate prior to processing by the broker as each holding is under the threshold;
- However where the total value of the combined holdings is over \$50,000.00, Probate/Letters of Administration will be required.

6. CHESS

6.1 Investments

Below is a summary of the types of investments that are covered by CHESS sponsorship:

Investment type	CHESS sponsorship
Listed shares	Yes if listed on ASX
Unlisted shares	No unlisted on ASX
Listed units	Yes listed on ASX
Unlisted units	No unlisted on ASX
Debenture stock	Only if listed on ASX
Government, semi-government, municipal etc	Only if listed on ASX

² As of July 2012

³ The Securities Registrars Association of Australia is a forum where members are comprised from registrars, stockbrokers and other security industry participants and discuss issues relating to the industry.

⁴ Registry Services Australia was established to provide services to Australia, New Zealand and United Kingdom solicitors, investment managers, stockbrokers, institutions probate service providers, companies and holders of Australian securities.

6.2 The information a broker can provide an estate practitioner where the deceased was CHESS sponsored

Information type	Where to get it
The number of shares or units in each company	<ul style="list-style-type: none">The broker can provide this information if held on CHESS.
The state of incorporation of the company or trust	<ul style="list-style-type: none">The broker can obtain this.It can also be accessed on ASX website.
The registry on which the shares are held	<ul style="list-style-type: none">There are no separate registries recorded any longer.
Past history (including imputation and other tax features) of dividends etc	<ul style="list-style-type: none">The broker can provide this to the client if the client is on the Portfolio Service.Dividend information can be downloaded from the share registry websites which will show dividend imputation details for shareholders.ASX website also provides dividend information on a per company basis.
Reliable CGT cost base information	<ul style="list-style-type: none">A statement of transactions can be supplied to the solicitor, which will show details of any market purchases.If the client is on a broker's portfolio service, it would be assumed that the client provided the cost base to the broker (so would be with the client as well).Requesting CGT information will not necessarily provide you with the purchase price and date. It depends on how recent the purchase was. The further back the share purchase date, the less likely that the details will be accurate.

It is important to note that if you have the SRN/HIN and post code you can log onto the share registry site and access all the relevant shareholding data. For example the trading history, dividend payments, tax details etc.

6.3 Trading on CHESS

Example: the paperwork needed to split a holding of 4000 NAB shares equally among four beneficiaries where the deceased was CHESS sponsored are: four standard transfers and the beneficiaries' ID.

The broker can prepare this paperwork if either the estate or the beneficiaries have holdings on CHESS. Brokers may charge an hourly rate or at a cost per transfer basis. The charges will vary from broker to broker.

“transfer off” – means a transfer from broker sponsor to issuer.

7. Share trading

Example: the paperwork needed to split an issuer sponsored holding of 4000 NAB shares equally among four beneficiaries: four standard transfers and the beneficiaries' ID.

The paperwork must be sent to the share registry for processing if all the parties are issuer sponsored. The registries will then advise the cost of processing.

8. Delisted companies

To ascertain whether a foreign company has been delisted, changed names or whether tax is payable, go to – delisted.com

9. Listed units

9.1 *Where to get the market values for listed units*

The market values for listed units are published on the ASX website and in the Australian Financial Review.

10. Unlisted units

10.1 *Where to get the market values for unlisted units*

The market values for unlisted units are published in the Australian Financial Review under the Trusts and Managed Funds lists.

Alternatively you can obtain the market value for unlisted units by contacting the company or registry (ie their accountant's office.)

10.2 *How to dispose of unlisted units*

The disposal of unlisted units is dependent upon liquidity which would have to be established at the registry and the individual company's constitution. For this information, the practitioner is advised to contact the individual company or registry (ie their accountant's office.)

11. Acknowledgments

A number of individuals contributed to the development of this Guide. Queensland Law Society would like to acknowledge the following:

- Lynda Myers, Burrell Stockbroking
- Sue Lowry, Burrell Stockbroking
- Christine Smyth, Queensland Law Society Succession Law Committee
- Queensland Law Society Succession Law Committee
- Louise Pennisi, Queensland Law Society Policy Solicitor.