

## FOREIGN ENTITIES LISTING ON ASX

### Introduction

This Guidance Note is published to assist foreign entities considering a listing on ASX Limited (ASX).

### The benefits of an ASX listing

An ASX listing brings with it significant benefits. These include the capacity to attract investors and raise capital from a large savings pool underwritten by Australia's compulsory superannuation laws, to access liquidity and price discovery in a market worth well over a trillion dollars and to utilise the substantial market, clearing and settlement infrastructure of ASX (including the CHESSE securities registration system).

It also includes the reputation benefits that flow from being listed on one of the world's top 10 exchanges.

### Listing categories

There are two ways a foreign entity may list equity securities on ASX:

- as an **ASX Foreign Exempt Listing**: this category is for entities listed on another securities exchange which wish to have a secondary listing on ASX and which meet certain eligibility criteria. Entities in this category are expected to comply primarily with the Listing Rules of their home exchange and are exempt from complying with most of ASX's Listing Rules.
- as a standard **ASX Listing**: this category is for entities which wish to have ASX as their primary listing venue or which do not meet the eligibility criteria to be admitted as an ASX Foreign Exempt Listing. Entities in this category are subject to ASX's Listing Rules, even if they are listed on another securities exchange.

A foreign entity may also list debt securities on ASX as an **ASX Debt Listing**.

This Guidance Note provides guidance:

- to foreign entities seeking an ASX Foreign Exempt Listing on how to prepare their applications for admission;
- on issues specifically relevant to foreign entities seeking a standard ASX Listing – more general guidance on these types of listings can be found in Guidance Note 1 *Applying for Admission – ASX Listings*;
- on issues specifically relevant to foreign entities seeking an ASX Debt Listing – more general guidance on these types of listings can be found in Guidance Note 29 *Applying for Admission – ASX Debt Listings*; and
- on common issues relevant to foreign entities seeking any category of ASX listing.

Some other Guidance Notes of general application that foreign entities may find helpful are Guidance Note 5 *CHESSE Depositary Interests (CDIs)*, Guidance Note 14 *ASX Market Announcements Platform* and Guidance Note 20 *ASX Online*.

Guidance for foreign entities that are already listed on ASX on how to prepare applications for quotation of additional securities can be found in Guidance Note 30 *Quotation of Additional Securities*.

United States entities will be interested to know that they can offer their securities on the ASX market under the safe harbour provisions of Regulation S under the US Securities Act 1933 and a no-action letter dated 7 January

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2000 issued to ASX by the United States Securities and Exchanges Commission. This is discussed further in Guidance Note 7 *US Entities – Regulation S Offerings on ASX*.

## ASX Foreign Exempt Listings

### Admission requirements

To be admitted as an ASX Foreign Exempt Listing, a foreign entity must meet the requirements in Listing Rule 1.11. The key requirements are:

- the entity must be a foreign entity and have as its overseas home exchange a member of the World Federation of Exchanges (formerly known as the Fédération Internationalé des Bourses de Valeurs);<sup>1</sup>
- the entity must be subject to, and ASX must be satisfied that it complies with, the Listing Rules (or their equivalent) of its overseas home exchange;<sup>2</sup>
- the entity must have at least A\$200 million operating profit before tax for each of the last 3 years or have net tangible assets of at least A\$2,000 million;<sup>3</sup>
- there must be at least 1,000 holders each having a parcel of securities in the class for which the entity seeks quotation with a value of at least A\$500;<sup>4</sup>
- if the entity is a company, it must be registered as a foreign company under the Corporations Act;<sup>5</sup>
- if the entity is a trust, it must appoint an agent for service of process in Australia and no-one must be under an obligation to buy back units in the trust or to allow a security holder to withdraw from the trust;<sup>6</sup>
- the entity must apply for and be granted quotation of securities in a class for which it seeks quotation (it may apply for quotation of all or a subset of securities in the class);<sup>7</sup> and
- the entity must give ASX a copy of its last annual report and any subsequent interim report.<sup>8</sup>

The application form for admission<sup>9</sup> also requires the entity to provide detailed information about itself (including a copy of its constitution) and a description of the regulatory regime or regimes to which it is subject on its overseas home exchange and in its jurisdiction of incorporation or establishment.

### Initial discussions in advance of application

Before submitting an application for admission as an ASX Foreign Exempt Listing, ASX recommends that the applicant first discuss the matter with the ASX Listings Unit at the earliest opportunity. Those discussions are generally best held with the ASX branch office where the entity intends to lodge its application for admission.

<sup>1</sup> Listing Rule 1.11 condition 1. A list of the member exchanges of WFE can be found on its website at: <http://www.world-exchanges.org/member-exchanges/member-exchanges>.

<sup>2</sup> Listing Rule 1.11 conditions 2 and 3.

<sup>3</sup> Listing Rule 1.11 condition 7 and Listing Rules 1.12 and 1.13.

<sup>4</sup> Listing Rule 1.11 condition 8.

<sup>5</sup> Listing Rule 1.11 condition 9. The Corporations Act is the principal legislation governing companies and securities matters in Australia. For a foreign company to register as such under that Act, it must appoint an agent for service of process in Australia (see "Appointment of local agent to accept service of process" below).

<sup>6</sup> Listing Rule 1.11 condition 10.

<sup>7</sup> Listing Rule 1.11 condition 6.

<sup>8</sup> Listing Rule 1.11 condition 4.

<sup>9</sup> See "The admission application" below.

Typically, this will be the ASX branch office where the applicant wishes to have its home branch if its application for admission is successful.<sup>10</sup>

The Listings Unit will be able to general advice on the listing process and a preliminary view on:

- any waiver<sup>11</sup> from, or in-principle advice in respect of, the Listing Rules that the applicant may be proposing to request in conjunction with its application and the likelihood of that waiver or advice being given; and
- the expected timeframe for listing, given the nature and complexity of the application and the current workloads within the Listings Unit.

The Listings Unit can also provide information about available ASX trading codes and arrange the reservation of a suitable code for the applicant.

## The admission application

To apply for admission to the official list, an entity must complete an application in the prescribed form and give it to ASX. The prescribed form for an entity applying for admission as an ASX Foreign Exempt Listing under Listing Rule 1.11 is Appendix 1C – *ASX Foreign Exempt Listing application and agreement*. An editable version of the Appendix 1C application can be downloaded from <http://www.asxgroup.com.au/asx-compliance/downloads.htm>.

The application in Appendix 1C is in 3 parts:

- *Part 1 - Application for admission to the official list*: the entity applies for admission to the official list and for quotation of a nominated class or classes of securities;
- *Part 2 - Information to be completed*: the entity provides information about itself, the securities to be quoted, its capital structure, its financial position and other information to confirm compliance with ASX's admission criteria; and
- *Part 3 - Agreement*: the entity agrees to certain fundamental matters, for example, that it will comply with the small number of ASX Listing Rules that will apply to it.

The application must be properly completed, dated and executed by the entity seeking admission to the official list.<sup>12</sup> It must also be accompanied by all of the documents referred to in it that are able to be lodged at the time of the application.<sup>13</sup> ASX may reject or defer consideration of an application for listing that is incomplete or not properly executed.

Given the limited number of ASX Listing Rules that apply to an ASX Foreign Exempt listing,<sup>14</sup> it has not generally been the case that an applicant in that category has required a waiver or in-principle advice from ASX in relation to any Listing Rules. If it does, however, the application should be accompanied by a letter from the entity or its advisers detailing the waivers or advice sought and providing the information set out in Guidance Note 17 *Waivers and In-Principle Advice*.

The ASX Listings Unit aims to process applications for listing as quickly as it reasonably can, given its workload at the time. Typically, an application for an ASX Foreign Exempt Listing will take ASX 4 to 6 weeks to process,

<sup>10</sup> The ASX home branch for an entity looks after day-to-day matters relating to the entity's listing and makes decisions about the Listing Rules that affect it. There are currently home branches in Sydney, Perth, Melbourne, Brisbane and Adelaide.

<sup>11</sup> Further guidance on how to apply for waivers and the principles that ASX applies in deciding whether or not to grant them can be found in Guidance Note 17 *Waivers and In-Principle Advice*.

<sup>12</sup> In the case of a trust, the application should be executed by the responsible entity of the trust.

<sup>13</sup> If any of the documents required under the Appendix 1C are not be able to be lodged at the time the Appendix 1C is lodged with ASX, any decision to admit the entity as an ASX Foreign Exempt Listing will be subject to ASX being provided the documents in a form satisfactory to ASX.

<sup>14</sup> See "Continuing requirements" below.

from the time it is lodged until a decision is made on whether or not to admit the applicant to the official list and quote its securities.

It should be noted that the time it takes ASX to process an application for listing is very much a function of the quality and completeness of the application. The better and more complete an application, the more quickly and efficiently ASX is likely to be able to process it. ASX therefore encourages applicants for listing to engage professional advisers who are experienced in ASX listings and to seek their advice and assistance in preparing their application.

## Payment of initial listing fee

An entity applying for admission as an ASX Foreign Exempt Listing must pay the applicable initial listing fee in accordance with Chapter 16 of the Listing Rules and the schedule of fees set out in Guidance Note 15A *ASX Schedule of Listing Fees*. This payment must be made at the time its lodges its application for listing. Further guidance about the calculation and payment of listing fees is set out in Guidance Note 15 *ASX Listing Fees*.

## The listing decision

Decisions on whether or not to admit an entity as an ASX Foreign Exempt Listing, to quote its securities, and to grant any waiver requested or required in connection with its admission or the quotation of its securities, are made on behalf of ASX by its National Listing Committee (NLC). The NLC's decision on these matters will be reduced to writing and communicated to the applicant by the Listings Unit, usually via an emailed letter.

ASX has an absolute discretion in deciding whether or not to admit an entity to the official list and to quote its securities, and is not required to give any reasons for its decision in that regard.<sup>15</sup> ASX may also impose such conditions on admission and/or quotation as it considers appropriate.<sup>16</sup>

In some cases, ASX's decision to admit an entity as an ASX Foreign Exempt Listing and to quote its securities may be expressed to be subject to conditions precedent that must be satisfied before the decision becomes effective. For example, if the entity is proposing to raise funds domestically by offering securities under a prospectus or PDS in conjunction with its application for admission, these conditions will typically include:

- the close of the offer under the applicant's prospectus or PDS and the completion of the allotment and issue of any required minimum subscription;
- confirmation in a form acceptable to ASX (usually a bank statement) that the applicant has received cleared funds for the full amount of the issue price under the prospectus or PDS;
- mailing of CHESS or issuer sponsored holding statements to the successful applicants; and
- provision to ASX of any remaining documents referred to in the Appendix 1C that have not yet been lodged with ASX.

If the entity is not raising any funds domestically but it has existing Australian shareholders, ASX may require that these holders are given the opportunity to convert their shares into CHESS Depository Interests as a condition of admission. Further guidance on this topic can be found in Guidance Note 5 *CHESS Depository Interests (CDIs)*.

Subject to the entity satisfying any conditions precedent that have been imposed by ASX on its admission and the quotation of its securities, trading in the entity's securities will commence on a date notified by ASX to the applicant.

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<sup>15</sup> Listing Rules 1.19 and 2.9.

<sup>16</sup> Listing Rules 1.19 and 2.9.

## Documents released to the market

All applications for admission as an ASX Foreign Exempt Listing received by ASX are released to the market through the ASX Market Announcements Platform as pre-quotation disclosure. The documents released generally include:

- the Appendix 1C application form;
- the applicant's constitution; and
- any annual report or other financial statements given to ASX with the application.

The documents released to the ASX Market Announcements Platform do not include any letter applying for a waiver or in-principle advice. ASX will, however, usually require the entity to disclose on the ASX Market Announcements Platform the fact that it has received a waiver of a Listing Rule and the terms of that waiver.

## Requirements for additional information

ASX has the power to require an applicant for listing to disclose additional information over and above that required under Appendix 1C.<sup>17</sup> ASX also has the power to impose a condition on admission or quotation that the applicant disclose certain information to the market before quotation commences.<sup>18</sup>

It would be uncommon for ASX to exercise either of these powers in relation to an ASX Foreign Exempt Listing. ASX would generally only do so if it formed the view that investors in Australia required additional information, over and above that which had been disclosed under the Listing Rules of the entity's overseas home exchange, in order for trading in the entity's securities on the Australian market to take place on a reasonably informed basis.

## Right of appeal

An applicant who is denied admission as an ASX Foreign Exempt Listing or a waiver, or who has conditions imposed upon their admission or a waiver that they find unacceptable, is entitled to appeal that decision.<sup>19</sup> Written notice of the appeal must be lodged with the ASX Appeals Tribunal within 10 Business Days after the decision is sent to the applicant.<sup>20</sup>

Further information about the appeal process can be found in Guidance Note 21 *Appeals*.

## Continuing requirements

Once listed on ASX, an ASX Foreign Exempt Listing is exempt from complying with most of ASX's Listing Rules. However, it must comply with the following requirements:

- it must immediately provide to ASX all information it provides to its overseas home exchange that is, or is to be, made public – the information must be in English or accompanied by an English translation;<sup>21</sup>
- it must continue to comply with the Listing Rules of its overseas home exchange;<sup>22</sup>
- it must comply with some Listing Rules relating to transfers and registers of securities, namely Listing Rules 2.2, 2.16, 8.2, 8.10, 8.15 and 8.18, and Appendix 8A. If its securities are CHESS<sup>23</sup> approved, it must also comply with Listing Rules 2.14, 8.1, 8.3, 8.5, 8.6, 8.7, 8.11, 8.17 and 8.21;<sup>24</sup>

<sup>17</sup> Listing Rule 1.17. ASX may require this information to be submitted to the scrutiny of an expert selected by ASX. The applicant must pay for the expert.

<sup>18</sup> Listing Rules 1.19 and 2.9.

<sup>19</sup> Listing Rule 18.10.

<sup>20</sup> Rule 3.1.4 of the ASX Enforcement and Appeals Rulebook and the accompanying Procedure.

<sup>21</sup> Listing Rule 15.2A. **[New rule to be inserted]**

<sup>22</sup> Listing Rule 1.15.3.

- it must comply with some Listing Rules relating to certain procedural and administrative matters:
  - the way announcements are lodged (Listing Rules 15.2 to 15.6, 15.8 and 15.9);
  - trading halts, suspension and removal (chapter 17);
  - the application of the Listing Rules (chapter 18); and
  - interpretation and definitions (chapter 19);<sup>25</sup> and
- it must pay ASX's prescribed fees under chapter 16 of the Listing Rules.<sup>26</sup>

## ASX's discretion to apply other rules

ASX has the power to prescribe additional Listing Rules with which an ASX Foreign Exempt Listing must comply.<sup>27</sup>

Again, it would be uncommon for ASX to exercise this power in relation to an ASX Foreign Exempt Listing. ASX would generally only do so if it formed the view that there are significant gaps in the Listing Rules of the entity's overseas home exchange compared to the ASX Listing Rules, or if those Listing Rules are not being enforced in a way that is consistent with the legitimate expectations of Australian investors.

One such example is where ASX becomes concerned that insufficient information has been disclosed by the entity under the Listing Rules of its overseas home exchange for trading in its securities to take place on a reasonably informed basis. In those circumstances, ASX may consider imposing a requirement that the entity comply with ASX's continuous disclosure requirements in Listing Rules 3.1 - 3.1B.

Another example of circumstances is where ASX becomes concerned about the quality of information contained in the entity's financial statements. In those circumstances, ASX may consider imposing a requirement that the entity comply with some or all of ASX's accounting requirements in Listing Rule 19.11A.

## Timetables for corporate actions

ASX Foreign Exempt Listings are not subject to ASX's Listing Rules relating to timetables for corporate actions (dividend payments, rights issues, reconstructions etc.). However ASX encourages ASX Foreign Exempt Listings to consult with it about the timing of their corporate actions to ensure that the needs of the Australian market are taken into consideration and, to the extent possible, that the Australian market and the foreign market trade on the same basis.

## Standard ASX Listings

### Admission requirements

A foreign entity seeking a standard ASX Listing is subject to the same admission requirements that apply to an Australian entity, irrespective of whether it is listed on another stock exchange. Detailed information about those requirements can be found in Guidance Note 1 *Applying for Admission – ASX Listings*. The discussion below highlights some additional considerations that are relevant to foreign entities applying for an ASX Listing.

<sup>23</sup> See note 65 below.

<sup>24</sup> Listing Rule 1.15.1.

<sup>25</sup> Listing Rule 1.15.1.

<sup>26</sup> Listing Rule 1.15.1.

<sup>27</sup> Listing Rule 1.15.1. This power may be exercised before or after the entity is listed.

## Connection with Australia

It is not considered an obstacle to an ASX Listing that an entity does not conduct any major business activities or have management or staff based in Australia. Accessing the substantial pool of capital in Australia in and of itself is a sufficient business reason for an entity to wish to list in Australia.

An entity applying for a standard ASX Listing must, however, satisfy ASX's minimum spread requirements.<sup>28</sup> This is to ensure that there is sufficient investor interest in the entity to justify its listing and to aid liquidity. To meet these requirements, the applicant must have at least:

- 500 holders each with a parcel of the main class of securities with a value of at least A\$2,000 (excluding restricted securities); or
- 400 holders with a parcel of the main class of securities with a value of at least A\$2,000 (excluding restricted securities), and persons who are not related parties must hold at least 25% of the securities in the main class.

There is no requirement in the Listing Rules for a minimum number of Australian-resident security holders.<sup>29</sup> However, ASX does encourage entities in the ASX Listing category to have at the time of their admission to the official list a reasonable number of security holders resident in Australia with security holdings of at least A\$2,000 in value, to promote local interest and liquidity in its securities.

Further guidance on ASX's minimum spread requirements can be found in Guidance Note 1 *Applying for Admission – ASX Listings*.

## Continuing compliance with Listing Rules and ASX's waiver power

A foreign entity which is granted an ASX Listing must comply with all applicable ASX Listing Rule requirements, in the same way as any Australian entity, unless it is granted a specific waiver from any such requirement by ASX. This applies even where the entity is listed on another exchange.

ASX may, in very limited situations, recognise compliance by a foreign entity which has its primary listing on an overseas exchange with a particular obligation imposed by its home exchange as constituting, in principle, sufficient reason to justify the granting of a waiver from a comparable, but inconsistent, obligation under the ASX Listing Rules. Such waivers have historically been granted sparingly and the onus is on the applicant to show good cause why it should be granted such a waiver. ASX has no obligation to recognise the regulation of an ASX Listing by any other exchange and will only do so where it is satisfied that the exchange in question imposes comparable standards to ASX that meet the general principles on which the ASX Listing Rules are based, as outlined in the introduction to the Listing Rules.

All applications for such waivers are considered on their merits on a case by case basis. In considering such an application, ASX will be guided by considerations such as:

- the stature and reputation of the home exchange on which the foreign entity is listed;
- the period of time the entity has been listed on that exchange;
- the entity's track record in complying with the Listing Rules of that exchange;
- the proportion of trading in the entity's securities that occurs, or is likely to occur, on that exchange compared to ASX;

<sup>28</sup> Listing Rule 1.1 condition 7.

<sup>29</sup> Although, in an appropriate case, ASX may exercise its discretion under Listing Rule 1.19 to require a minimum number of Australian resident security holders with a minimum size or value of security holding as a condition of admission.

- the proportion of the entity's business that is conducted in Australia;<sup>30</sup>
- whether the corresponding requirement of the overseas exchange is consistent with the underlying policy of the ASX Listing Rule from which a waiver is sought and with the principles that underpin ASX's Listing Rules (as set out in the introduction to the Listing Rules); and
- whether the inconvenience to the listed company in satisfying two sets of comparable, but inconsistent, requirements outweighs any detriment to users of ASX markets from the non-application of ASX's requirements.

A foreign entity applying for an ASX Listing that wishes to receive such a waiver must apply in writing for the waiver, identifying the particular ASX Listing Rule or Rules from which a waiver is sought. In its application for the waiver, the foreign entity should:

- describe in detail the corresponding rules of its home exchange with which it must comply;
- confirm that it is in full compliance with those rules;
- explain why it is considered burdensome that it should have to comply with the relevant ASX Listing Rules in addition to the rules of its home exchange; and
- justify why compliance with the rules of its home exchange in lieu of the relevant ASX Listing Rules will meet the general principles on which the ASX Listing Rules are based, as outlined in the introduction to the Listing Rules.

Further guidance on how to apply for waivers and the principles that ASX applies in deciding whether or not to grant them can be found in Guidance Note 17 *Waivers and In-Principle Advice*.

If ASX is minded to grant such a waiver, it will be subject to a condition that the listed entity continue to comply with the comparable rules of its home exchange. The waiver will also usually be granted for a nominated period only (typically one year) so that there is an opportunity to review the need for the waiver on a regular basis. ASX may withdraw the waiver at any time<sup>31</sup> and, amongst other circumstances, will consider doing so if there is a change in the regulatory regime that applies to the foreign entity.

If ASX grants such a waiver, the applicant will be required to make an announcement on the ASX Market Announcements Platform that the waiver has been granted.

## Continuous disclosure requirements

The timely disclosure of material information affecting the price or value of a listed entity's securities is critical to the integrity and efficiency of the ASX market.

Listing Rule 3.1 requires an entity admitted as an ASX Listing to tell ASX of any information that a reasonable person would expect to have a material effect on the price or value of the entity's securities, immediately upon becoming aware of such information. Further guidance about this obligation can be found in Guidance Note 8 *Continuous Disclosure: Listing Rule 3.1*. Foreign entities admitted to the official list as an ASX Listing must ensure that they are thoroughly familiar with their obligations under Listing Rule 3.1.

Amongst other things, Listing Rule 3.1 would generally require an entity which has an ASX Listing and a listing on an overseas exchange, to give ASX any material information which it gives to that overseas exchange. This is

<sup>30</sup> An entity which has its central management and control or a significant proportion of its business operations in Australia is unlikely to be granted a waiver from any ASX Listing Rules, other than standard waivers granted to Australian entities generally. This is intended to prevent essentially Australian businesses incorporating or registering themselves offshore to circumvent ASX's listing requirements and also to maintain a level playing field between entities that are listed on ASX and carrying on essentially Australian businesses, regardless of their place of incorporation or registration.

<sup>31</sup> Listing Rule 18.3.



likely to include any financial statements or other material announcements that an entity lodges with an overseas exchange. The information given to ASX must be in English or be accompanied by an English translation.<sup>32</sup>

An ASX Listing generally must not release information that is for release to ASX to any person, including any overseas exchange, until the information has been given to ASX and the entity has received an acknowledgement that ASX has released the information to the market.<sup>33</sup> However, if information becomes available outside the hours of operation of ASX's Market Announcements office and an entity is required to release it to an overseas stock exchange at that time, the entity may do so provided it gives the information to the Market Announcements office at the same time, together with advice that it has released it to the overseas exchange.<sup>34</sup>

## Financial reporting requirements

Foreign entities admitted as an ASX Listing must give periodic financial reports to ASX. These requirements are set out in chapters 4 and 5 of the Listing Rules and are essentially the same for Australian and foreign entities. In brief, a foreign entity must provide the following.

- in the case of an entity that is not a mining exploration entity, a half year report containing the information in Appendix 4D;<sup>35</sup>
- the half yearly accounts, information or documents prepared under the law of its home jurisdiction which are equivalent to those that a disclosing entity must lodge with ASIC under section 320 of the Corporations Act, and any other information or documents that would be required under section 320;<sup>36</sup>
- in the case of an entity that is not a mining exploration entity, a preliminary final (full year) report containing the information set out in Appendix 4E;<sup>37</sup>
- the following full year accounts, information and documents:<sup>38</sup>
  - if the entity is a registered foreign company that is required to comply with section 601CK of the Corporations Act,<sup>39</sup> a copy of the documents it must lodge with ASIC under that section;<sup>40</sup> or
  - if the entity is not a registered foreign company that is required to comply with section 601CK of the Corporations Act, a copy of the documents that it would lodge with ASIC if it had to comply with that section;<sup>41</sup> and
- the annual report it sends to security holders.<sup>42</sup>

The Appendix 4D half year report and the Appendix 4E preliminary final report must be provided as soon as the information they contain is available and no later than two months from the end of the relevant accounting period.<sup>43</sup>

<sup>32</sup> Listing Rule 15.2A *New rule to be inserted*

<sup>33</sup> Listing Rule 15.7.

<sup>34</sup> Listing Rule 15.7.1.

<sup>35</sup> Listing Rule 4.2A.3.

<sup>36</sup> Listing Rules 4.2A.1 and 4.2A.2.

<sup>37</sup> Listing Rule 4.3A.

<sup>38</sup> Entities that change their financial reporting year also need to file an Appendix 4F if the transitional period of the change is longer than 12 months. Entities should contact ASX for specific guidance if they are considering a change to their reporting periods.

<sup>39</sup> The documents required to be lodged with ASIC under section 601CK are a balance sheet, cash flow statement, and profit and loss statement.

<sup>40</sup> Listing Rule 4.5.2.

<sup>41</sup> Listing Rule 4.5.3.

<sup>42</sup> Listing Rule 4.7.

<sup>43</sup> Listing Rule 4.2B and 4.3B.

Half yearly accounts must be lodged with ASX at the same time as they are lodged with the relevant overseas regulator and:

- in the case of an entity that is not a mining exploration entity, no later than 2 months after half year end; or
- in the case of a mining exploration entity, no later than 75 days after half year end.<sup>44</sup>

Full year accounts lodged with ASIC under section 601CK of the Corporations Act must be given to ASX at the same time as they are lodged with ASIC and no later than three months after year end.<sup>45</sup> If an entity does not have to file with ASIC under section 601CK of the Corporations Act, then it must give the equivalent documents to ASX no later than three months after year end.<sup>46</sup>

There are additional reporting requirements in Chapter 5 for mining entities. A mining producing entity must provide a report under Listing Rule 5.1 that complies with the JORC Code requirements set out in Appendix 5A, on a quarterly basis, within 1 month after quarter end. A mining exploration entity<sup>47</sup> must provide a report under Listing Rule 5.2 that complies with the JORC Code requirements set out in Appendix 5A<sup>48</sup> and an Appendix 5B,<sup>49</sup> each on a quarterly basis, within 1 month after quarter end.

Entities admitted under the assets test on the basis of commitments to spend funds will normally be required to provide Appendix 4C cash flow reports on a quarterly basis, within 1 month after quarter end, for at least the first two years after listing. Other entities may also be required by ASX to provide quarterly Appendix 4C cash flow reports.<sup>50</sup>

The information required by the various ASX reports (Appendices 4C, 4D, 4E, 5A and 5B) does not need to be audited or reviewed unless ASX explicitly requires an audit or review of a specific report. However, the statutory accounts which are part of the half year report must be audited or reviewed and the annual accounts underlying the preliminary final report must be audited. The audit of the annual accounts can be completed after the Appendix 4E Preliminary final report is lodged with ASX.

If these reporting requirements are not met by an ASX Listing, the quotation of its securities will be suspended until the required reports have been given to ASX.<sup>51</sup>

Financial statements given to ASX must be prepared in accordance with Australian Accounting Standards or other standards acceptable to ASX.<sup>52</sup> This applies not only to the periodic financial reports referred to above, but also to other financial statements, such as those included in prospectuses, Product Disclosure Statements, information memoranda and the like. For these purposes, ASX will accept International Financial Reporting Standards ("IFRS"), IFRS as adopted by the EU and the accounting standards and generally accepted accounting principles applied in Hong Kong, Singapore and USA as acceptable standards for these purposes. Entities which wish to use any other accounting standards in preparing financial statements must apply to ASX for advice as to whether those standards are acceptable to ASX.

If an entity wishes to use accounting standards in the preparation of its financial statements which ASX considers are not acceptable, ASX will generally require it to attach a statement reconciling the financial information in those statements to the equivalent financial information prepared using either Australian Accounting Standards or International Financial Reporting Standards.

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<sup>44</sup> Listing Rule 4.2B.

<sup>45</sup> Listing Rule 4.5.2.

<sup>46</sup> Listing Rule 4.5.3.

<sup>47</sup> This requirement also applies to an entity which has, or whose child entity has, acquired an interest in a mining tenement that is material to the entity.

<sup>48</sup> Listing Rules 5.1 and 5.6.

<sup>49</sup> Listing Rule 5.3.

<sup>50</sup> Listing Rule 4.7B.

<sup>51</sup> Listing Rule 17.5.

<sup>52</sup> Listing Rule 19.11A(b).

Similarly, the audit/review standards applied to any audited/reviewed accounts that are required to be lodged with ASX must be Australian Auditing Standards or other standards acceptable to ASX.<sup>53</sup> ASX will accept International Standards on Auditing or US Auditing Standards as acceptable standards for these purposes. Entities which wish to use any other audit/review standards in preparing financial statements must apply to ASX for advice as to whether those standards are acceptable to ASX.

It is important that foreign entities admitted as ASX Listings have staff with the accounting skills, including expertise in the applicable accounting standards, necessary to ensure that ASX's ongoing reporting requirements are met.

## Information about substantial holdings and takeovers

The provisions of the Corporations Act dealing with notification of substantial holdings and takeovers do not apply to entities established outside Australia. Therefore, ASX has introduced measures to ensure that the market is properly informed of such matters. ASX requires a foreign entity with an ASX Listing to include in each annual report a prominent statement about each of the following matters:

- its place of incorporation or registration;
- the fact that it is not subject to the provisions of Chapters 6, 6A, 6B and 6C of the Corporations Act dealing with the acquisition of securities (ie, substantial holdings and takeovers); and
- any limitations on the acquisition of securities imposed by the jurisdiction in which it is incorporated or registered.

Foreign entities with an ASX Listing should consider including similar statements in any prospectus, Product Disclosure Statement or information memorandum they issue in Australia.

ASX usually requires a foreign entity with an ASX Listing to undertake to give information to ASX, for release to the market, about the ownership of its securities. The usual undertakings are:

- to tell the market immediately the entity becomes aware of any person becoming a substantial holder, within the meaning of section 671B of the Corporations Act, and to disclose any details of the substantial holding of which the entity is aware; and
- to tell the market of subsequent changes in the substantial holdings of which the entity becomes aware.

## ASX Debt Listings

### Admission requirements

A foreign entity seeking an ASX Debt Listing is subject to the same admission requirements that apply to an Australian entity, irrespective of whether it is already listed on another securities exchange. Detailed information about those requirements can be found in Guidance Note 29 *Applying for Admission – ASX Debt Listings*.

A foreign entity must also satisfy the following additional requirements:<sup>54</sup>

- if the entity has a certificated sub-register for quoted securities, it must establish in Australia an Australian securities register or sub-register (if ASX agrees, other appropriate facilities for the registration of transfers may be provided instead of an Australian securities register or sub-register);
- it must appoint an agent for service in Australia;
- it must be registered as a foreign company under the Corporations Act;

<sup>53</sup> Listing Rule 19.11A(c).

<sup>54</sup> Listing Rule 1.8 condition 4.

- ASX must be satisfied that the entity complies with its constitution and the laws that govern it and the Listing Rules (or their equivalent) of its overseas home exchange (if any); and
- ASX must be satisfied that the debt securities to be quoted are “financial products”, as defined in the Corporations Act.

ASX will generally require a legal opinion from a recognised overseas law firm confirming that the entity has been validly incorporated or registered under the applicable law and that it complies with its constitution and the Listing Rules (or their equivalent) of its overseas home exchange (if any). ASX may also require a legal opinion from a recognised Australian law firm confirming that the debt securities to be quoted are “financial products”, as defined in the Corporations Act.

Should an entity be uncertain of the information required by ASX, it should discuss that at the earliest opportunity with the ASX Listings Unit to ensure that the correct information is provided.

## Requirements applicable to all foreign entities listed on ASX

### Appointment of local agent to accept service of process

Every foreign entity listed on ASX, whether as an ASX Listing, an ASX Foreign Exempt Listing or an ASX Debt Listing, must appoint an agent for service of process in Australia.<sup>55</sup>

### Registration as a foreign company under the Corporations Act

A foreign company that is admitted to the official list of ASX as an ASX Foreign Exempt Listing is required to be registered as a foreign company carrying on business in Australia under Part 5B.2 Division 2 of the Corporations Act.<sup>56</sup>

The responsible entity of a foreign trust or other type of entity admitted to the official list of ASX, whether as an ASX Listing, an ASX Foreign Exempt Listing or an ASX Debt Listing, will need to consider whether it is required to be registered as a foreign company carrying on business in Australia for the purposes of the Corporations Act. Enquiries about these matters should be directed to ASIC or to your local professional advisers.

Further information about the registration and post-registration obligations of foreign companies can be found on the ASIC website.<sup>57</sup>

To register as a foreign company under the Corporations Act, an entity must appoint a local agent in Australia who is authorised to accept service of process and notices on behalf of the entity.<sup>58</sup> ASIC has prescribed a form of Memorandum of Appointment of Local Agent for these purposes.<sup>59</sup> The appointment of a local agent for Corporations Act purposes will satisfy the corresponding Listing Rule requirement and ASX will accept as evidence of the appointment a copy of the ASIC form, along with written confirmation that the form has been filed with ASIC.

<sup>55</sup> Listing Rule 1.1 condition 4(b), (ASX Listings), Listing Rule 1.11 conditions 9 and 10(a) (ASX Foreign Exempt Listings) and Listing Rule 1.8 condition 4(b) (ASX Debt Listings).

In the case of a foreign company that is admitted to the official list as an ASX Foreign Exempt Listing, technically the Listing Rule requirement is that it be registered as a foreign company in Australia under the Corporations Act rather than it appoint a local agent for service of process in Australia. To register as a foreign company under the Corporations Act, however, it must appoint a local agent for service of process in Australia (see section 601CF(2) of the Corporations Act).

The name and address of the entity's agent for service of process must be notified to ASX in item 18A of an Appendix 1A (ASX Listings), item 4 of an Appendix 4C (ASX Foreign Exempt Listings) and item 16B of an Appendix 1B (ASX Debt Listings).

<sup>56</sup> Listing Rule 1.11 condition 9. The Corporations Act is the principal legislation governing companies and securities matters in Australia.

<sup>57</sup> See <http://www.asic.gov.au/asic/asic.nsf/byheadline/Foreign+Companies>.

<sup>58</sup> Section 601CF(2) of the Corporations Act.

<sup>59</sup> ASIC Form 418, available online at: [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/418.pdf/\\$file/418.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/418.pdf/$file/418.pdf).

## Appointment of person responsible for communications with ASX

Every foreign entity listed on ASX, whether as an ASX Listing, an ASX Foreign Exempt Listing or an ASX Debt Listing, must nominate a person to be responsible<sup>60</sup> for communication with ASX in relation to Listing Rule matters.<sup>61</sup> The person appointed must be able to communicate in English.

From time to time, ASX may need to discuss with a listed entity pressing matters (particularly, but not only, concerning disclosure issues) under the Listing Rules. It is important that the person appointed to be responsible for communications with ASX is readily contactable by ASX by telephone<sup>62</sup> and available to discuss such matters during normal market hours and for at least one hour either side thereof – that is, from 9am to 5pm AEST – on all days that ASX is trading. This includes trading days that happen to fall on a public holiday where the person lives.

The person appointed therefore needs to make suitable arrangements to cover any absences due to illness or while he or she is on leave.

It is also important that the person has the organisational knowledge to have meaningful discussions on disclosure matters and has the authority to request a trading halt and to issue an announcement to the market, if that is what is required. This requires that the person has a high degree of familiarity with the listed entity's operations and, if they are not a member of senior management, that they have immediate access to senior management.

Typically, a company secretary would be an appropriate person to be responsible for communications with ASX.

An entity may wish to consider appointing more than one person to be responsible for communications with ASX, to cater for one of its contacts being absent or on leave.

## Electronic lodgement of announcements

Every foreign entity listed on ASX, whether as an ASX Listing, an ASX Foreign Exempt Listing or an ASX Debt Listing, must establish facilities for electronically lodging announcements with the ASX Market Announcements office.<sup>63</sup>

In practice, this requirement is met by the entity executing an *Application and agreement for use of electronic lodgement facility and entity details facility* (ASX Online Agreement) in the form set out in the attachment to Guidance Note 20. An editable version of the ASX Online Agreement can be downloaded from <http://www.asxgroup.com.au/asx-compliance/downloads>. These are standard form agreements and ASX will not agree to any changes. Hence, any edits to the ASX Online Agreement should be confined to inserting the details of, and an appropriate execution clause for, the applicant and the date.

A signed copy of the ASX Online Agreement, duly executed by the applicant, should accompany its listing application.

Further guidance on the use of ASX's electronic lodgement facilities can be found in Guidance Note 20 *ASX Online*.

<sup>60</sup> The fact that the person so appointed is said to be "responsible" for communication with ASX in relation to Listing Rule matters does not in any way diminish the responsibility of the listed entity to communicate to ASX any information required under the Listing Rules.

<sup>61</sup> Listing Rule 1.1 condition 12, (ASX Listings), Listing Rule 1.11 condition 11 (ASX Foreign Exempt Listings) and Listing Rule 1.8 condition 8 (ASX Debt Listings). See also Listing Rule 12.6, which imposes an ongoing requirement on all listed entities to appoint a person to be responsible for communication with ASX in relation to Listing Rule matters and to notify ASX of the initial appointment and of any change in the appointment.

The name and address of the person or persons responsible for communication with ASX in relation to Listing Rule matters must be notified to ASX in item 4A of an Appendix 1A (ASX Listings), item 4A of an Appendix 4C (ASX Foreign Exempt Listings) and item 3A of an Appendix 1B (ASX Debt Listings). *[New items to be inserted]*

<sup>62</sup> In practice, this requires the person to provide ASX with a mobile phone number to contact them and that they keep their mobile phone switched on at all times from 9am to 5pm AEST.

<sup>63</sup> Listing Rule 1.1 condition 14, (ASX Listings), Listing Rule 1.11 condition 12 (ASX Foreign Exempt Listings) and Listing Rule 1.8 9 (ASX Debt Listings). See also Listing Rule 8.2.

## Clearing and settlement

Every foreign entity listed on ASX, whether as an ASX Listing, an ASX Foreign Exempt Listing or an ASX Debt Listing, must establish and maintain a securities register or subregister, a register of depositary receipts or other appropriate facilities for the registration of transfers in Australia.<sup>64</sup>

ASX operates a fully computerised system for the electronic transfer of uncertificated securities called CHES (Clearing House Electronic Subregister System).<sup>65</sup> Every entity must comply with CHES requirements in relation to its quoted securities unless it is established in a jurisdiction whose laws have the effect that CHES cannot be used for holding legal title to its securities.

In the case of an entity established in a jurisdiction whose laws have the effect that CHES cannot be used for holding legal title to its securities, depositary instruments can be used that allow transactions in the securities of these entities to be cleared and settled through CHES. These instruments are generally called CDIs (short for CHES Depositary Interests). For further information about CDIs, see Guidance Note 5 *CHES Depositary Interests (CDIs)*.

A foreign entity listed on ASX must have CDIs issued over its securities if a security holder asks for CDIs to be issued.<sup>66</sup>

## Foreign regulatory approvals

Some foreign jurisdictions restrict the listing of their domestic entities on foreign exchanges. An entity incorporated or registered in one of these jurisdictions seeking to list on ASX should get any necessary approvals before applying to be listed and give ASX evidence of the approval when making its application.

## Governing law

Listing Rules 19.2A and 19.2B provide for the listing agreement between ASX and a listed entity to be governed by the law of New South Wales and for ASX and listed entities to submit to the jurisdiction of the courts of New South Wales. New South Wales is the State of Australia in which ASX has its principal office.

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<sup>64</sup> Listing Rule 1.1 condition 4(a), (ASX Listings), Listing Rule 1.11 condition 5 (ASX Foreign Exempt Listings) and Listing Rule 1.8 condition 4(a) (ASX Debt Listings). If the entity's securities are held in certificated form, the entity must establish and maintain an Australian subregister (Listing Rule 8.15).

<sup>65</sup> CHES is a proprietary system operated by ASX Settlement that facilitates the clearing and settlement of trades in securities quoted on ASX and includes an electronic sub-register for the registration of holdings in securities issued by ASX listed companies.

<sup>66</sup> Listing Rule 2.16.