FOREIGN ENTITIES LISTING ON ASX

<table>
<thead>
<tr>
<th>The purpose of this Guidance Note</th>
<th>• To assist entities established outside of Australia (foreign entities) considering a listing on ASX to understand the options available to them</th>
</tr>
</thead>
</table>
| The main points it covers         | • The three categories of ASX listings available to foreign entities – an ASX Foreign Exempt Listing, a standard ASX Listing and an ASX Debt Listing  
• The requirements to be admitted as an ASX Foreign Exempt Listing  
• Particular issues that a foreign entity applying for admission as a standard ASX Listing should consider, over and above those addressed in Guidance Note 1 Applying for Admission – ASX Listings  
• Particular issues that a foreign entity applying for admission as an ASX Debt Listing should consider, over and above those addressed in Guidance Note 29 Applying for Admission – ASX Debt Listings  
• Common issues for foreign entities that apply to all 3 categories of ASX listings |
| Related materials you should read | • Guidance Note 1 Applying for Admission – ASX Listings  
• Guidance Note 5 CHESS Depositary Interests (CDIs)  
• Guidance Note 7 US Entities - Regulation S Offerings on ASX  
• Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 – 3.1B  
• Guidance Note 9 Disclosure of Corporate Governance Practices  
• Guidance Note 17 Waivers and In-Principle Advice  
• Guidance Note 20 ASX Online  
• Guidance Note 29 Applying for Admission – ASX Debt Listings  
• Guidance Note 30 Applying for Quotation of Additional Securities |

**History:** Guidance Note 4 amended 11/12/15. Previous versions of this Guidance Note were issued in 07/00, 09/01, 05/02 (transitional copy), 06/02, 01/03, 09/07, 01/12, 05/13, 09/14, 02/15 and 09/15.

**Important notice:** ASX has published this Guidance Note to assist listed entities to understand and comply with their obligations under the Listing Rules. Nothing in this Guidance Note necessarily binds ASX in the application of the Listing Rules in a particular case. In issuing this Guidance Note, ASX is not providing legal advice and listed entities should obtain their own advice from a qualified professional person in respect of their obligations. ASX may withdraw or replace this Guidance Note at any time without further notice to any person.
1. Introduction

This Guidance Note is published to assist entities established outside of Australia (foreign entities) considering a listing on ASX Limited (ASX) to understand the options available to them.

1.1. The benefits of an ASX listing

An ASX listing brings with it significant benefits. These include access to:

- one of the world's largest investment pools underpinned by Australia's mandatory superannuation system;
- price discovery in a deep and liquid market worth well over a trillion dollars;
1.2. 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;
- on issues specifically relevant to foreign entities seeking an ASX Debt Listing; and
- on common issues relevant to foreign entities seeking any category of ASX listing.

More general guidance on standard ASX listings can be found in Guidance Note 1 **Applying for Admission – ASX Listings**, while more general guidance on ASX Debt Listings can be found in Guidance Note 29 **Applying for Admission – ASX Debt Listings**.

Some other Guidance Notes of general application that foreign entities may find helpful are Guidance Note 5 **CHESS 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**.

Guidance for United States entities on how they can offer their securities on the ASX market under the safe harbour provisions of Regulation S of the US Securities Act 1933 can be found in Guidance Note 7 **US Entities – Regulation S Offerings on ASX**.

2. ASX Foreign Exempt Listings

2.1. 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 (WFE);¹

---

¹ Listing Rule 1.11 condition 1. The WFE was formerly known as the Fédération Internationale des Bourses de Valeurs (FIBV). A list of the member exchanges of the WFE can be found on its website [http://www.world-exchanges.org](http://www.world-exchanges.org).
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;\(^2\)

the entity must inform ASX of any waiver of all or part of any listing rule (or the equivalent) of its overseas home exchange that will be in effect in respect of the entity on its admission to the official list and, if ASX requires, the entity must release details of any such waiver to the market;\(^3\)

if the entity is a company, it must be registered as a foreign company under the Corporations Act 2001 (Cth);\(^4\)

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;\(^5\)

if the entity has a certificated sub-register for quoted securities,\(^6\) it must establish in Australia an Australian securities register or sub-register;\(^7\) and

the entity must give ASX a copy of its last annual report and any subsequent interim report.\(^8\)

If the entity’s primary listing is on the main board of the New Zealand Exchange (NZX), it must meet the following additional requirements:

- it must satisfy either the profit test in Listing Rule 1.2 or the assets test in Listing Rule 1.3 (with the exception of Listing Rules 1.3.2 and 1.3.3(a));\(^9\)
- it must apply for and be granted permission for quotation of all of the securities that are in the class for which it seeks quotation;\(^10\) and
- it must satisfy ASX that each director or proposed director of the entity at the date of listing on ASX is of good fame and character.\(^11\)

If the entity’s primary listing is not on the main board of NZX, it must meet the following additional requirements:

- it must have at least A$200 million operating profit before tax for each of the last three years or have net tangible assets of at least A$2,000 million;\(^12\)

---

\(^2\) Listing Rule 1.11 conditions 2 and 3.
\(^3\) Listing Rule 1.11 condition 3A.
\(^4\) Listing Rule 1.11 condition 9. The Corporations Act 2001 (Cth) is the principal legislation governing companies and securities matters in Australia. It is referred to in the balance of this Guidance Note as the ‘Corporations Act’. Further information about the process involved in registering as a foreign company, see 5.1 Registration as a foreign company under the Corporations Act’ on page 19.
\(^5\) Listing Rule 1.11 condition 10.
\(^6\) There are only limited circumstances in which an entity can have a certificated sub-register for quoted securities – see generally ‘5.5 Clearing and settlement’ on page 22 and specifically note 116.
\(^7\) Listing Rule 1.11 condition 5.
\(^8\) Listing Rule 1.11 condition 4.
\(^9\) Listing Rule 1.11 condition 7A. Further guidance on the profit test and the assets test can be found in Guidance Note 1 Applying for Admission – ASX Listings.
\(^10\) Listing Rule 1.11 condition 6. For the purposes of satisfying this requirement, ASX will primarily have regard to the documents provided by the entity in response to the Information Form and Checklist (ASX Foreign Exempt Listing). However, ASX may also have regard to any other information it has about the directors or proposed directors and, in an appropriate case, may require an entity to provide additional information about its directors or proposed directors.
\(^11\) Listing Rule 1.11 condition 13.
\(^12\) Listing Rule 1.11 condition 7 and Listing Rules 1.12 and 1.13.
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;\textsuperscript{13} and

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).\textsuperscript{14}

2.2. 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 ASX Listings Compliance 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. Typically, this will be the ASX branch office where the applicant wishes to have its home branch if its application for admission is successful.\textsuperscript{15}

ASX Listings Compliance will be able to provide general advice on the listing process and a preliminary view on:

- any waiver\textsuperscript{16} 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 ASX Listings Compliance.

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

2.3. The admission application

To apply for admission to the ASX 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:


The application must be properly completed, dated and executed by the entity seeking admission to the official list.\textsuperscript{17} It must also be accompanied by:

- the Information Form and Checklist (ASX Foreign Exempt Listings) published on the ASX website;\textsuperscript{18} and
- all of the information and documents referred to in it that Form/Checklist. ASX may reject or defer consideration of an application for listing that is not properly completed and executed or that is not accompanied by all of the required information and documents.

The Information Form and Checklist (ASX Foreign Exempt Listings) requires the applicant to provide certain information about itself, including a copy of its constitution and a concise summary\textsuperscript{19} of:

\begin{itemize}
\item \textsuperscript{13} Listing Rule 1.11 condition 8.
\item \textsuperscript{14} Listing Rule 1.11 condition 6.
\item \textsuperscript{15} 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 and Melbourne.
\item \textsuperscript{16} 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.
\item \textsuperscript{17} In the case of a trust, the application should be executed by the responsible entity of the trust.
\item \textsuperscript{18} An editable version of the Information Form and Checklist (ASX Foreign Exempt Listings) can also be downloaded from http://www.asx.com.au/regulation/compliance/compliance-downloads.htm.
\item \textsuperscript{19} The concise summary is not intended to be a legal treatise on the laws of the entity’s home jurisdiction or a detailed comparative analysis of those laws with the laws of Australia. For those matters where the entity’s home jurisdiction has broadly comparable laws to Australia, a statement to that effect will generally suffice.
\end{itemize}
• the rights and obligations of security holders under the law of its home jurisdiction and/or the rules of its home exchange covering:
  • what types of transactions require security holder approval;
  • whether security holders have a right to request or requisition a meeting of security holders;
  • whether security holders have a right to appoint proxies to attend and vote at meetings on their behalf;
  • how changes in the rights attaching to securities are regulated;
  • what rights do security holders have to seek relief for oppressive conduct;
  • what rights do security holders have to bring or intervene in legal proceedings on behalf of the entity; and
  • whether there is any equivalent to the “two strikes” rule in relation to remuneration reports in Part 2G.2 Division 9 of the Corporations Act;
• the obligations of the entity under the law of its home jurisdiction and/or the rules of its home exchange regarding:
  • the disclosure of material information;
  • the disclosure of periodic financial information and the accounting and auditing standards that apply;
  • requirements for information to be sent to security holders; and
  • regulation of dealings with directors and controlling holders of equity securities; and
• how the disclosure of substantial holdings and takeovers are regulated under the law of its home jurisdiction.

2.4. Requests for waivers

Given the limited number of ASX Listing Rules that apply to an ASX Foreign Exempt listing, 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, its admission 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.

2.5. Processing time

ASX Listings Compliance 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 four to six weeks to process, from the time a completed application for listing and all other required documents are lodged with ASX 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.

---

20 See ‘2.10 Continuing requirements’ on page 9.
2.6. Payment of initial listing fee

An entity applying for admission as an ASX Foreign Exempt Listing must pay an 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.

In the case of an entity with a primary listing on the NZX Main Board, the initial listing fee is calculated by reference to the value of all of the securities in the relevant class the entity is seeking to have quoted on ASX.21 In any other case, the initial listing fee is calculated by reference to the value of the specific securities or CHESS Depositary Interests (“CDIs”)22 to be included on the entity’s Australian register23 which it is seeking to have quoted on ASX.24 If an entity is unsure about the number of its securities or CDIs that will or should be included on its Australian register, it should discuss that issue with the ASX Listings Adviser handling its listing application.

Payment of the initial listing fee can be made either by cheque made payable to ASX Operations Pty Ltd or by electronic funds transfer to the following account:

- Bank: National Australia Bank
- Account Name: ASX Operations Pty Ltd
- BSB: 082 057
- A/C: 494728375
- Swift Code (Overseas Customers): NATAAU3302S

If payment is made by electronic funds transfer, the applicant should email its remittance advice to ar@asx.com.au or fax it to (612) 9227-0553, describing the payment as “initial listing fee” and including the name of the entity applying for admission, the ASX home branch where the entity has lodged its application (ie Sydney, Melbourne or Perth) and the amount paid.

Further guidance about the calculation and payment of listing fees is set out in Guidance Note 15 ASX Listing Fees.

2.7. 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 ASX Listings Compliance, 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.25 ASX may also impose such conditions on admission and/or quotation as it considers appropriate.26

In some cases, ASX’s decision to admit an entity as an ASX Foreign Exempt Listing and to quote its securities may be subject to conditions 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 product disclosure statement (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;

---

21 See Listing Rules 1.11 condition 6 and 2.4.
22 See Guidance Note 5 CHESS Depositary Interests (CDIs).
23 The reference here to an entity’s Australian register includes its CHESS sub-register and its issuer sponsored sub-register. See ‘5.5 Clearing and settlement’ on page 22 below for an explanation of CHESS and issuer sponsored sub-registers.
24 See Listing Rule 1.11 condition 6.
25 Listing Rules 1.19 and 2.9.
26 Listing Rules 1.19 and 2.9.
• 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\textsuperscript{27} 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 Depositary Interests as a condition of admission. Further guidance on this topic can be found in Guidance Note 5 \textit{CHESS Depositary Interests (CDIs)}.

Subject to the entity satisfying any conditions 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.

2.8. Documents released to the market

Once ASX has admitted an entity to the official list, and prior to the commencement of quotation, a number of documents will be released to the market through the ASX Market Announcements Platform as pre-quotation disclosure. These documents will typically include:

• the entity's Appendix 1C application form and the accompanying Information Form and Checklist (ASX Foreign Exempt Listings);

• the entity'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 will not include any letter applying for a waiver or in-principle advice.

If the applicant has received a waiver of any Listing Rule in connection with its admission, ASX may 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.

2.9. 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.\textsuperscript{28} 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.\textsuperscript{29}

It would be most 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.

\textsuperscript{27} CHESS stands for `Clearing House Electronic Subregister System'. CHESS 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 title to securities issued by ASX-listed companies.

\textsuperscript{28} 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.

\textsuperscript{29} Listing Rules 1.19 and 2.9.
2.10. 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\(^\text{30}\) – the information must be in English or accompanied by an English translation\(^\text{31}\);
- it must continue to comply with the listing rules of its overseas home exchange and, by no later than the lodgement of its full year accounts with ASX in each year, give ASX a statement that it continues to comply with those rules for release to the market\(^\text{32}\);
- it must promptly inform ASX if it is granted a waiver of all or part of any listing rule of its overseas home exchange and, if ASX requires, the entity must release details of any such waiver to the market\(^\text{33}\);
- it must immediately request a trading halt in respect of its securities or a class of them if trading in those securities or that class is halted on its overseas home exchange\(^\text{34}\);
- it must immediately request a suspension in respect of its securities or a class of them if those securities or that class have been suspended from quotation on its overseas home exchange. Listing Rule 17.1\(^\text{35}\);
- it must comply with some ASX Listing Rules relating to transfers and registers of securities, namely Listing Rules 2.2, 2.16, 8.2, 8.10, 8.15 and 8.21, and Appendix 8A. If its securities are CHESS\(^\text{36}\) approved, it must also comply with Listing Rules 8.1, 8.3, 8.5, 8.6, 8.7, 8.11 and 8.17\(^\text{37}\);
- it must comply with some ASX 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)\(^\text{38}\) and
- it must pay ASX’s prescribed fees under Chapter 16 of the Listing Rules\(^\text{39}\).

2.11. 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\(^\text{40}\).

Again, it would be most 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

---

\(^{30}\) Listing Rule 1.15.2.

\(^{31}\) Listing Rule 15.2A.

\(^{32}\) Listing Rule 1.15.3.

\(^{33}\) Listing Rule 1.15.4.

\(^{34}\) Listing Rule 1.15.5. Listing Rule 17.1 applies to any such request. This requirement does not limit the application of Chapter 17 to an entity.

\(^{35}\) Listing Rule 1.15.6. Listing Rule 17.2 applies to any such request. This requirement does not limit the application of Chapter 17 to an entity.

\(^{36}\) See note 27 above and ‘5.5 Clearing and settlement’ on page 22.

\(^{37}\) Listing Rule 1.15.1.

\(^{38}\) Listing Rule 1.15.1.

\(^{39}\) Listing Rule 1.15.1.

\(^{40}\) Listing Rule 1.15.1. This power may be exercised before or after the entity is listed.
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 investors trading on ASX.

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 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.

2.12. 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 when it comes to entitlement to participate in corporate actions.

3. Standard ASX Listings

3.1. 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.

A foreign entity must also satisfy the following additional requirements:41

- it must be registered as a foreign company under the Corporations Act;42
- it must appoint an agent for service in Australia;43 and
- if the entity has a certificated sub-register for quoted securities,44 it must establish in Australia an Australian securities register or sub-register.45

Further guidance on these 3 requirements can be found in section 5 of this Guidance Note.

The discussion below highlights some additional considerations that are relevant to foreign entities applying for an ASX Listing.

3.2. Prospectus/product disclosure statement

Listing Rule 1.1 condition 3 generally requires an entity seeking admission in the ASX Listing category to issue a prospectus or PDS and to lodge it with the Australian Securities and Investments Commission (ASIC). It is common for an entity applying for listing to be making an offer of securities to raise capital and/or to satisfy ASX’s minimum

41 Listing Rule 1.1 condition 4.
42 See ‘5.1 Registration as a foreign company under the Corporations Act’ on page 19.
43 See ‘5.2 Appointment of local agent to accept service of process’ on page 20.
44 There are only limited circumstances in which an entity can have a certificated sub-register for quoted securities – see generally ‘5.5 Clearing and settlement’ on page 22 and specifically note 116.
45 See ‘5.5 Clearing and settlement’ on page 22.
spread requirements, and it will usually be the prospectus or PDS for that offer that is used to satisfy Listing Rule 1.1 condition 3.

In certain limited cases, ASX may agree to accept an information memorandum in lieu of a prospectus or PDS. Generally speaking, however, the information memorandum must contain the same information that would otherwise be required in a prospectus or PDS (as applicable).

Guidance Note 1 Applying for Admission – ASX Listings has further information about ASX’s requirements for prospectuses, PDSs and information memoranda. As noted in that Guidance Note, ASX expects the prospectus, PDS or information memorandum of a foreign entity to include:

- a statement of its place of incorporation or registration;
- a statement to the effect that:

  “As [name of entity] is not established in Australia, its general corporate activities (apart from any offering of securities in Australia) are not regulated by the Corporations Act 2001 of the Commonwealth of Australia or by the Australian Securities and Investments Commission but instead are regulated by [insert name of governing legislation] and [insert name of corporate regulator administering that legislation].”

- a concise summary of the rights and obligations of security holders under the law of its home jurisdiction covering:
  - what types of transactions require security holder approval;
  - whether security holders have a right to request or requisition a meeting of security holders;
  - whether security holders have a right to appoint proxies to attend and vote at meetings on their behalf;
  - how changes in the rights attaching to securities are regulated;
  - what rights do security holders have to seek relief for oppressive conduct;
  - what rights do security holders have to bring or intervene in legal proceedings on behalf of the entity; and

---

46 See ‘3.3 Minimum spread and connection with Australia’ on page 12.
47 It should be noted that any offer of securities in advance of, or in conjunction with, a listing on ASX – even where the offers are confined to investors outside Australia or are limited to investors in Australia who would not otherwise have to be given a prospectus/PDS under section 708/1012D (for example, sophisticated investors under section 708(8)/761G(7)) – will usually attract section 707(3)/1012C(6) and therefore, as a practical matter, require the production of a prospectus/PDS under section 708A/1012DA. Any entity that is seeking admission as an ASX Listing and that is not intending to lodge a prospectus or PDS with ASIC will need to satisfy ASX that a prospectus or PDS is not required under the Corporations Act, either in connection with the primary issue of those securities or the secondary sale of those securities on ASX.

It should also be noted that an entity warrants in its Appendix 1A ASX Listing application and agreement that an offer for sale of the securities to be quoted within 12 months after their issue will not require disclosure under section 707(3) or section 1012C(6) of the Corporations Act and indemnifies ASX to the fullest extent permitted by law in respect of any claim, action or expense arising from, or connected with, any breach of that warranty.

48 These cases are spelt out in further detail in Guidance Note 1 Applying for Admission – ASX Listings.
49 The concise summary is not intended to be a legal treatise on the laws of the entity’s home jurisdiction or a detailed comparative analysis of those laws with the laws of Australia. For those matters where the entity’s home jurisdiction has broadly comparable laws to Australia, a statement to that effect will generally suffice.
50 A foreign listed entity should also note its continuing obligation under Listing Rule 3.17C, if it becomes aware of a change to the law of its home jurisdiction that materially affects the rights or obligations of security holders, to give ASX details of that change immediately: see ‘3.10 Information about material changes in the rights and obligations of security holders’ on page 18.
• whether there is any equivalent to the “two strikes” rule in relation to remuneration reports in Part 2G.2 Division 9 of the Corporations Act; and

• a concise summary\(^51\) of how the disclosure of substantial holdings and takeovers are regulated under the law of its home jurisdiction.

If this information is not included in the entity’s prospectus, PDS or information memorandum, ASX will require the information to be given to ASX under Listing Rule 1.17 as supplemental pre-quotation disclosure for release to the market.

3.3. Minimum spread and 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 want to list in Australia.

An entity applying for a standard ASX Listing must satisfy ASX’s minimum spread requirements.\(^52\) 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:

- 400 holders each holding a parcel of the main class of securities with a value of at least A$2,000 (excluding restricted securities); or

- 350 holders each holding a parcel of the main class of securities with a value of at least A$2,000 (excluding restricted securities), with at least 25% of the securities in the main class being held by non-related security holders (excluding restricted securities held by the non-related security holders); or

- 300 holders each holding a parcel of the main class of securities with a value of at least A$2,000 (excluding restricted securities), with at least 50% of the securities in the main class being held by non-related security holders (excluding restricted securities held by the non-related security holders).

There is no specific requirement in the Listing Rules for a minimum number of Australian-resident security holders. 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. ASX also has a residual discretion under Listing Rule 1.19, which it may exercise in an appropriate case,\(^53\) to require as a condition of admission that the applicant has a minimum number of Australian resident security holders with a minimum size or value of security holding.

There is also no specific requirement in the Listing Rules for a minimum “free float”. However, ASX does encourage entities in the ASX Listing category to have at the time of their admission to the official list a reasonable free float to promote liquidity in its securities. ASX also has a residual discretion under Listing Rule 1.19, which it may exercise in an appropriate case,\(^54\) to require as a condition of admission that the applicant has a minimum free float.

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

---

51 See note 49 above.
52 Listing Rule 1.1 condition 7.
53 ASX may impose such a condition, for example, if a significant proportion of investors are based in a jurisdiction that makes it less likely that they will trade on ASX.
54 Again, ASX may impose such a condition, for example, if a significant proportion of the investors holding the free float are based in a jurisdiction that makes it less likely that they will trade on ASX.
3.4. 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 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;
- the proportion of the entity’s business that is conducted in Australia;\(^{55}\)
- 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.

\(^{55}\) 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.
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 continues 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 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.

A foreign entity applying for admission as an ASX Listing that has a primary listing on an overseas exchange other than the NZX Main Board and that intends to use CHESS Depository Interests (CDIs) to facilitate the holding and transfer of its ASX-quoted securities should note one waiver, in particular, that it can seek from ASX. ASX will usually, on request, grant a waiver to such an entity from Listing Rules 1.1 condition 6 and 2.4 to relieve the entity from the obligation to apply for quotation of all the securities in its main class and instead allow it to apply for quotation of the portion of its securities that will be represented by CDIs. This will have the result that the entity will pay ASX listing fees only on the portion of its securities represented by CDIs (ie on the Australian component of its register rather than on its full register). This puts such entities in the same position as ASX Foreign Exempt Listings when it comes to the amount of ASX listing fees they pay.

3.5. Continuous disclosure requirements

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.

Compliance with Listing Rule 3.1 is critical to the integrity and efficiency of the ASX market and other markets that trade in ASX quoted securities or derivatives of those securities. Reflecting this, Parliament has given the rule statutory force in section 674 of the Corporations Act. A listed entity which breaches Listing Rule 3.1 may also breach that section and this can attract serious legal consequences for the entity and its officers.

Further guidance about an entity’s continuous disclosure obligations can be found in Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 – 3.1B. Foreign entities admitted to the official list as an ASX Listing must ensure that they are thoroughly familiar with Guidance Note 8 and their continuous disclosure obligations under the ASX Listing Rules.

3.6. 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 or oil and gas exploration entity, a half year report containing the information in Appendix 4D; and

---

56 Listing Rule 18.3.
57 See ‘5.5 Clearing and settlement’ on page 22 below and Guidance Note 5 CHESS Depository Interests (CDIs).
58 The waiver will usually be subject to conditions requiring the entity to lodge an Appendix 3B on a monthly basis, showing the net movement in CDIs. If new securities are issued and will be held in the form of CDIs, a separate Appendix 3B will also need to be lodged seeking quotation of those CDIs.
59 Mining exploration entities and oil and gas exploration entities are exempt from the requirement to provide an Appendix 4D half year report on the basis that they are required to provide quarterly reports under Listing Rules 5.3 and 5.4 and quarterly Appendix 5Bs under Listing Rule 5.5.
60 Listing Rule 4.2A.3.
• the following half yearly accounts and documents:
  • if the entity is subject in its home jurisdiction to an equivalent law to section 320 of the Corporations Act requiring it to prepare half yearly accounts, the accounts and other documents prepared under that law;61 or
  • if the entity is not subject in its home jurisdiction to an equivalent law to section 320 of the Corporations Act requiring it to prepare half yearly accounts, accounts for the half year equivalent to those it would be required to prepare in its home jurisdiction if its governing legislation included a provision equivalent to section 320 of the Corporations Act;62
• in the case of an entity that is not a mining exploration entity or oil and gas exploration entity,63 a preliminary final (full year) report containing the information set out in Appendix 4E;64
• the following full year accounts and documents:65
  • if the entity is a registered foreign company that is required to comply with section 601CK of the Corporations Act,66 a copy of the accounts and other documents it must lodge with ASIC under that section;67 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 accounts and other documents that it would be required to give ASX under the paragraph immediately above if it had to comply with the requirements of that section;68 and
• the annual report it sends to security holders.69

The Appendix 4D half year report and the Appendix 4E preliminary final report must be provided as soon as they are ready to be given to ASX and no later than two months from the end of the relevant accounting period.70

Half yearly accounts must be lodged with ASX at the same time as they are lodged with the relevant overseas regulator and in any event:
• in the case of an entity that is not a mining exploration entity or oil and gas exploration entity, no later than two months after half year end; or
• in the case of a mining exploration entity or oil and gas exploration entity, no later than 75 days after half year end.71

---
61 Listing Rule 4.2A.2. The accounts must be audited or subject to review and the audit or review report must be given to ASX with the accounts.
62 Listing Rule 4.2A.2A. This effectively requires the accounts to be audited or subject to review and the audit or review report to be given to ASX with the accounts.
63 Again, mining exploration entities and oil and gas exploration entities are exempt from the requirement to provide an Appendix 4E preliminary final report on the basis that they are required to provide quarterly reports under Listing Rules 5.3 and 5.4 and quarterly Appendix 5Bs under Listing Rule 5.5.
64 Listing Rule 4.3A.
65 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.
66 The documents required to be lodged with ASIC under section 601CK are a balance sheet, cash flow statement, and profit and loss statement.
67 Listing Rule 4.5.2. The accounts must be audited and the audit report must be given to ASX with the accounts.
68 Listing Rule 4.5.3. This effectively requires the accounts to be audited and the audit report to be given to ASX with the accounts.
69 Listing Rule 4.7.
70 Listing Rule 4.2B and 4.3B.
71 Listing Rule 4.2B.
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.\textsuperscript{72} 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.\textsuperscript{73}

There are additional quarterly reporting requirements in Chapter 5 for mining and oil and gas entities. A mining producing entity or an oil and gas producing entity must provide a detailed report of its production and development activities and a summary of its exploration activities within one month after quarter end.\textsuperscript{74} A mining exploration entity or an oil and gas exploration entity must provide a detailed report of its exploration, development and production activities and certain other information,\textsuperscript{75} as well as an Appendix 5B report,\textsuperscript{76} within one month after quarter end.

An entity admitted under the assets test on the basis of commitments to spend funds\textsuperscript{77} will normally be required to provide quarterly Appendix 4C cash flow reports within one month after quarter end, for at least the first two years after its listing. Other entities may also be required by ASX to provide quarterly Appendix 4C cash flow reports.\textsuperscript{78}

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.\textsuperscript{79}

Financial statements given to ASX must be prepared in accordance with Australian Accounting Standards or other standards agreed to by ASX.\textsuperscript{80} This applies not only to the periodic financial reports referred to above, but also to other financial statements, such as those included in prospectuses, PDSs, information memoranda and the like. For these purposes, ASX will accept International Financial Reporting Standards (IFRS) as adopted by the EU and the accounting standards and generally accepted accounting principles applied in Bermuda, Canada, Cayman Islands, Hong Kong, New Zealand, Singapore, South Africa 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 IFRS.

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 agreed to by ASX.\textsuperscript{81} 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 must apply to ASX for advice as to whether those standards are acceptable to ASX.

\textsuperscript{72} Listing Rule 4.5.2.
\textsuperscript{73} Listing Rule 4.5.3.
\textsuperscript{74} Listing Rules 5.1 and 5.2 respectively.
\textsuperscript{75} Listing Rules 5.3 and 5.4 respectively.
\textsuperscript{76} Listing Rule 5.5.
\textsuperscript{77} Listing Rule 1.3.2(b).
\textsuperscript{78} Listing Rule 4.7B.
\textsuperscript{79} Listing Rule 17.5.
\textsuperscript{80} Listing Rule 19.11A(b).
\textsuperscript{81} Listing Rule 19.11A(c) and (d).
It is important that foreign entities admitted as ASX Listings have internal accounting staff and external auditors with appropriate skills and expertise in the applicable accounting standards necessary to ensure that ASX’s ongoing reporting requirements are met.82

3.7. Financial documents given by a dual listed entity to an overseas exchange

In addition to the accounts and other documents it must give to ASX under chapters 4 and 5 of the Listing Rules, an entity with a dual listing on the ASX and an overseas securities exchange must immediately give to ASX a copy of any document it gives to the overseas exchange that meets the following requirements:

- the document is given to the overseas stock exchange by the entity in its capacity as an entity listed on that exchange; and
- the document is, or will be, made public by the overseas stock exchange; and
- the document includes accounts or other similar financial information; and
- the document is not materially the same as another document that the entity has already given to ASX.83

Such documents, if not in English, must be accompanied by an English translation.84

3.8. Information about substantial holdings

The provisions of the Corporations Act dealing with notification of substantial holdings do not apply to entities established outside Australia. To ensure that the market is properly informed of such matters, the Listing Rules require an entity not established in Australia to give to ASX:

- a copy of a document it receives about a substantial holdings of securities under any overseas law or provisions in the entity’s constitution equivalent to Part 6C.1 of the Corporations Act;85 and
- a copy of a document it receives about a substantial holding of securities under any overseas law or provisions in the entity’s constitution equivalent to Part 6C.2 of the Corporations Act that reveals materially different information to the most current information it has received (if any) about that substantial holding under the overseas law or provisions in the entity’s constitution referred to in the immediately preceding paragraph.86

3.9. Requisitions from security holders

An entity established in Australia is required to give ASX within two business days of receipt:

- information about the material terms of any notice it receives under certain provisions of the Corporations Act from a holder or holders of securities calling, or requesting the calling of, or proposing to move a resolution at, a general meeting; and

---

82 The Information Form and Checklist (ASX Listing) that must accompany its application for listing requires an applicant applying for admission to the official list as an ASX Listing to disclose the name of its auditor. In certain cases, ASX may also require the applicant to provide information about the qualifications and experience of the auditor for release to the market before quotation commences.

83 Listing Rule 3.17B.

84 Listing Rule 15.2A. If the preparation of an English translation is likely to take some time, to meet the requirement to disclose information immediately, the entity should lodge the original foreign language version with a short summary in English of the material contents of the document and then lodge the translation as soon as it reasonably can thereafter.

85 Listing Rule 3.17.3. Part 6C.1 of the Corporations Act requires the disclosure of substantial (5%+) holdings of voting securities in listed entities established in Australia. A person who gives a substantial holding notice to an entity established in Australia under Part 6C.1 of the Corporations Act is required to give a copy of that notice to ASX (section 671B(1)) and therefore it is not necessary for the entity to give a separate copy of that notice to ASX. Hence there is no equivalent to Listing Rule 3.17.3 for entities established in Australia.

86 Listing Rule 3.17.4. Part 6C.2 of the Corporations Act empowers a listed entity established in Australia to serve “tracing notices” to uncover the beneficial owner/controller of voting securities in the entity. Listing Rule 3.17.2 requires an Australian entity to give ASX any equivalent document it receives about a substantial holding of securities under Part 6C.2 of the Corporations Act.
• information that a notice previously notified to ASX under this requirement has been withdrawn by the holder or holders who gave it.87

An entity not established in Australia is required to give equivalent information in relation to any notice it receives under any equivalent overseas law or equivalent provisions in the entity’s constitution.

3.10. Information about material changes in the rights and obligations of security holders

Material changes to the provisions of the Corporations Act conferring rights or imposing obligations on the holders of securities in entities established in Australia are likely to be a matter of such public notoriety that investors trading in those securities on ASX can be presumed to be aware of those changes. The same may not be true, however, of changes in the rights or obligations of security holders in an entity not established in Australia under the law of its home jurisdiction.

To ensure that the market is properly informed of such matters, the Listing Rules require an entity not established in Australia, if it becomes aware of a change to the law of its home jurisdiction that materially affects the rights or obligations of security holders, to give ASX details of that change immediately.88

Examples of the types of matters that would need to be notified to ASX in this regard include any material change to the law of its home jurisdiction in terms of:
• the types of transactions that require security holder approval;
• the right of security holders to request or requisition a meeting of security holders;
• the right of security holders to appoint proxies to attend and vote at meetings on their behalf;
• how changes in the rights attaching to securities are regulated;
• the right of security holders to seek relief for oppressive conduct;
• the right of security holders to bring or intervene in legal proceedings on behalf of the entity;
• the adoption of, or any material change to, any equivalent to the “two strikes” rule in relation to remuneration reports in Part 2G.2 Division 9 of the Corporations Act; or
• how the disclosure of substantial holdings and takeovers are regulated.

4. ASX Debt Listings

4.1. 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:89
• it must be registered as a foreign company under the Corporations Act;90

87 Listing Rule 3.17A. The specific provisions referenced in that rule are sections 249D, 249F, 249N, 252B, 252D or 252L of the Corporations Act.
88 Listing Rule 3.17C.
89 Listing Rule 1.8 condition 4.
90 See ‘5.1 Registration as a foreign company under the Corporations Act’ on page 19.
• it must appoint an agent for service in Australia;\(^{91}\)

• if the entity has a certificated sub-register for quoted securities,\(^{92}\) 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);\(^{93}\)

• 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 also be satisfied that the debt securities to be quoted are “financial products”, as defined in the Corporations Act.

Further guidance on the first 3 requirements above can be found in section 5 of this Guidance Note.

To satisfy the fourth requirement above, ASX will require a legal opinion from a reputable law firm in the applicant’s home jurisdiction which is satisfactory to ASX and which confirms that the applicant is validly existing in that jurisdiction and that the business it carries on complies with its constitution, the laws of that jurisdiction and, if it is listed on an overseas stock exchange, the listing rules (or their equivalent) of that exchange.

In relation to the fifth requirement above, in most cases, it will be clear that the debt securities to be quoted by a foreign entity are “financial products” as defined in the Corporations Act. However, if ASX has any doubt on this score, it may require the applicant to provide a legal opinion from a reputable Australian law firm which is satisfactory to ASX and which confirms that the debt securities to be quoted are “financial products” as defined in the Corporations Act.

4.2. Prospectus requirements for retail debt securities

Guidance Note 29 Applying for Admission – ASX Debt Listings has further information about certain Corporations Act requirements that apply to retail debt securities, including the requirement to have lodged a prospectus in relation to the securities with ASIC. As noted in that Guidance Note, ASX expects the prospectus for a foreign entity to include:

• a statement of its place of incorporation or registration; and

• a statement to the effect that:

"As [name of entity] is not established in Australia, its general corporate activities (apart from any offering of securities in Australia) are not regulated by the Corporations Act 2001 of the Commonwealth of Australia or by the Australian Securities and Investments Commission but instead are regulated by [insert name of governing legislation] and [insert name of corporate regulator administering that legislation]."

5. Common issues relevant to foreign entities seeking any listing on ASX

5.1. Registration as a foreign company under the Corporations Act

A foreign entity admitted to the official list of ASX as an ASX Listing or an ASX Debt Listing is required to be registered as a foreign company under the Corporations Act.\(^{94}\)

\(^{91}\) See ‘5.2 Appointment of local agent to accept service of process’ on page 20.

\(^{92}\) There are only limited circumstances in which an entity can have a certificated sub-register for quoted securities – see generally ‘5.5 Clearing and settlement’ on page 22 and specifically note 116.

\(^{93}\) See ‘5.5 Clearing and settlement’ on page 22.

\(^{94}\) Listing Rule 1.1 condition 4(c) (ASX Listings) and Listing Rule 1.8 condition 4(c) (ASX Debt Listings).
A foreign company that is admitted to the official list of ASX as an ASX Foreign Exempt Listing is also required to be registered as a foreign company under the Corporations Act.95

The responsible entity of a foreign trust or other type of entity admitted to the official list of ASX as an ASX Foreign Exempt 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.

The process to register as a foreign company, and the obligations that apply to registered foreign companies, are set out in Part 5B.2 Division 2 of the Corporations Act. Further information about the registration and post-registration obligations of foreign companies can also be found on the ASIC website.96

It should be noted that ASX will only entertain an application for a waiver from the requirement for the applicant to be registered as a foreign company under the Corporations Act, if it provides a legal opinion from a reputable Australian law firm which is satisfactory to ASX and which confirms that the applicant will not be “carrying on business” in Australia for the purposes of section 601CD of the Corporations Act. 97

5.2. 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.98

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.99 ASIC has prescribed a form of Memorandum of Appointment of Local Agent for these purposes.100 The appointment of a local agent for Corporations Act purposes will satisfy the Listing Rule requirement to appoint an agent for service of process 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.

5.3. 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 at least one person101 to be responsible102 for communication with ASX in relation to Listing Rule matters.103 The person appointed must be able to communicate in English.

---

95 Listing Rule 1.11 condition 9.
97 Section 601CD(1) prohibits a foreign company from carrying on business in Australia unless it is registered as a foreign company in Australia or it has applied to be so registered and the application has not been dealt with. For these purposes, a foreign company that offers debentures in Australia or is a guarantor body for debentures offered in Australia is deemed to be carrying on business in Australia (section 601CD(2)).
98 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).
99 Section 601CF(2) of the Corporations Act.
100 ASIC Form 418, available online at: http://download.asic.gov.au/media/2948596/418_v2.pdf.
101 An entity may appoint more than one person to be responsible for communications with ASX, to cater for one of its contacts being absent or on leave.
102 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.
103 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...
From time to time, ASX may need to discuss with a listed entity pressing matters (particularly, but not only, disclosure matters) under the Listing Rules. To facilitate this, it is important that the person (or each of the persons) appointed to be responsible for communications with ASX in relation to Listing Rule matters:

- has the organisational knowledge to have meaningful discussions on Listing Rule matters;
- can request a trading halt and issue an announcement to the market, if that is what is required, and that person (or at least one of those persons) is readily contactable by ASX by telephone during normal market hours and for at least one hour either side thereof (ie, from 9am to 5pm Sydney time) on each day that ASX is trading.

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. It also requires them 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 Sydney time on each trading day.

The need to resolve a disclosure issue under the Listing Rules can be extremely time critical. Where such an issue arises, if ASX is not able to contact an entity's nominated representative on Listing Rule matters, or the representative does not have the organisational knowledge or authority to address the issue promptly, ASX may be left with little option but to suspend the quotation of the entity's securities until the issue can be properly resolved.

5.4. 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. 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.asx.com.au/regulation/compliance/compliance-downloads.htm. 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 date of the agreement and the details of, and an appropriate execution clause for, the applicant.

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.
5.5. Clearing and settlement

Trades in ASX-quoted securities are cleared and settled through an electronic system called CHESS (Clearing House Electronic Subregister System). CHESS facilitates the paperless transfer of ownership to ASX-quoted securities through an electronic subregister system.

Under the CHESS system, a listed entity’s principal register of securities is effectively made up of two electronic uncertificated subregisters – a “CHESS subregister” maintained by ASX Settlement and an “issuer sponsored subregister” maintained by the issuer. Persons holding securities in the entity have the option to register their securities on either subregister.

Unless it is established in an overseas jurisdiction whose laws preclude this, an entity seeking admission to the ASX official list must be approved as an issuer under the operating rules of the CHESS facility and also have the securities it is seeking to have quoted on ASX approved for participation in that facility. Once these approvals have been obtained, ASX Settlement will then establish the entity’s CHESS subregister. The entity must establish its own issuer sponsored subregister. In practice, this will usually require it to engage a share registry to administer the issuer sponsored subregister on its behalf.

An entity’s Appendix 1A, 1B or 1C application form not only operates as an application to be admitted to the official list of ASX but also as an application by the entity to be approved as an issuer, and to have its securities approved, under the operating rules of the CHESS facility.

If the entity is established in an overseas jurisdiction whose laws have the effect that CHESS cannot be used for holding legal title to its securities, to allow ASX to clear and settle transactions in its securities, the entity must have CHESS Depositary Interests, or CDIs, issued over its ASX quoted securities and establish a CHESS subregister and an issuer sponsored subregister in those CDIs. CDIs are a type of depository receipt that allow investors to obtain all the economic benefits of owning securities without actually holding legal title to them. They were developed by ASX to facilitate the clearing and settlement of transactions in securities through CHESS where the transfer of legal title to the securities themselves is not able to be effected through CHESS.

An entity established in an overseas jurisdiction can only have a certificated register for ASX quoted securities if the laws where it is established prohibit its securities being held on an uncertificated issuer sponsored subregister.
5.6. 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 approval before applying to be listed and give ASX evidence of the approval when making its application.

5.7. 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.