

Attachment 1 to CP 234: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Unsolicited Offers— Foreign Bids) Instrument 2015/XX

I, <delegate>, delegate of the Australian Securities and Investments Commission,
make the following legislative instrument.

Dated 2015

[Name]

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Part 1—Preliminary

1 Name of legislative instrument

This instrument is *ASIC Corporations (Unsolicited Offers—Foreign Bids) Instrument 2015/XX*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Note: The register may be accessed at www.comlaw.gov.au.

3 Authority

This instrument is made under section 1020F of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

eligible foreign country means any of the following:

- (a) Canada;
- (b) France;
- (c) Germany;
- (d) Hong Kong;
- (e) Italy;
- (f) Japan;
- (g) Malaysia;
- (h) The Netherlands;
- (i) New Zealand;
- (j) Singapore;
- (k) South Africa;
- (l) Switzerland;

- (m) United Kingdom;
- (n) United States of America.

foreign takeover bid means an arrangement which:

- (a) is regulated by or under a law or other rules however described that:
 - (i) apply to the acquisition of control or potential control of a body or a substantial interest in a foreign company; and
 - (ii) are in force or apply in or in a part of an eligible foreign country; and
- (b) involves an offer being made to purchase all or some of the securities held by:
 - (i) all holders of securities in the foreign company in the same class; or
 - (ii) all such holders other than the person making the offer, that person and their associates or any other person to whom, under the relevant regulatory requirements of the eligible foreign country, the offer does not have to be made.

foreign scheme of arrangement means a compromise or arrangement that is:

- (a) between a foreign company and its members or any class of them; and
- (b) regulated by or under a law or other rules however described that are in force or apply in or in a part of an eligible foreign country.

relevant regulatory requirements means:

- (a) for a foreign takeover bid—the laws or rules referred to in paragraph (a) of the definition of ***foreign takeover bid***;
- (b) for a foreign scheme of arrangement—the laws or rules referred to in paragraph (b) of the definition of ***foreign scheme of arrangement***.

unsolicited offer means:

- (a) an offer covered by section 1019D of the Act; and
- (b) an invitation covered by section 1019F of the Act.

Part 2—Exemption

5 Unsolicited offers under a foreign bid or foreign scheme of arrangement

A person does not have to comply with Division 5A of Part 7.9 of the Act in relation to an unsolicited offer to purchase securities of a foreign company where the offer is made under a foreign takeover bid or foreign scheme of arrangement which the person reasonably believes is made in accordance with the relevant regulatory requirements.