



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 72

# Foreign securities: Disclosure relief

September 2015

### **About this guide**

This guide is for foreign entities and their advisers involved in the offer of foreign securities to Australian investors.

This guide outlines the relief we have granted from Chs 6D and 7 of the *Corporations Act 2001* (Corporations Act) for offers of foreign securities and interests.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This guide was issued in September 2015 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 72, issued 3 July 2007, reissued 18 June 2009
- Superseded Policy Statement 72A, issued 15 January 1997, updated 4 August 1997
- Superseded Policy Statement 72, issued 6 December 1993, updated 23 January 1995 and 12 February 1996

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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## A Overview

### Key points

In general, foreign entities that offer securities in Australia need to comply with Chs 6D or 7 of the *Corporations Act 2001* (Corporations Act): see RG 72.1.

We have granted relief from these provisions in certain circumstances—in particular, where the cost of compliance would be disproportionate to the regulatory benefit: see RG 72.3–RG 72.4.

### Relief from the disclosure provisions

- RG 72.1 The Corporations Act requires a prospectus or Product Disclosure Statement (PDS) for an offer of securities received in Australia (unless an exemption applies). This requirement applies regardless of the place of incorporation of the offeror.
- RG 72.2 We consider that relief from the requirement to prepare an Australian prospectus or PDS may be appropriate where:
- (a) a foreign offeror has complied with a disclosure regime offering similar levels of investor protection to the Australian disclosure requirements; or
  - (b) very few offers are made to Australian investors.
- RG 72.3 We have granted conditional relief for:
- (a) rights issues by foreign companies where the securities are in the same class as those already held by Australian investors (see Section B);
  - (b) foreign scrip bids and schemes of arrangement (see Section C); and
  - (c) foreign entities making 20 or fewer offers in Australia in any 12-month period (see Section D).
- RG 72.4 Much of the relief referred to in this guide applies where the relevant foreign securities are quoted on an ‘approved foreign market’. Section G sets out a list of approved foreign markets for the purposes of the relief, as well as criteria for approving a market as an approved foreign market.

### Rationale for relief

- RG 72.5 Disclosure relief for offers of foreign securities enables Australian investors to participate in offers that might not otherwise be extended to them because of the time and expense involved in complying with the regulatory requirements of multiple jurisdictions.

RG 72.6 We have granted relief for rights issues by foreign companies and scrip offers under foreign bids and schemes of arrangement because, after a person acquires an interest in a foreign entity, they accept that foreign law largely governs their relationship with the entity. Given the potential disadvantage to Australian investors if they are excluded from such transactions, we think it is appropriate to grant relief provided that suitable investor protection measures are in place.

## **Other relief and guidance on foreign offers**

RG 72.7 We have also granted relief from the advertising restrictions for advertisements and other notices that are aimed at foreign markets and only incidentally published in Australia: see Section E.

RG 72.8 Section F sets out other regulatory guidance and relief we have granted that may be relevant for offers of foreign securities. This includes relief for foreign collective investment schemes and employee incentive schemes.

## B Rights issues of foreign securities

### Key points

We have granted conditional relief from the prospectus provisions for a foreign company to issue securities in the same class as those already held by Australian investors: see RG 72.9–RG 72.11.

We have also granted relief so that investors may on-sell these securities without restriction: see RG 72.12.

We may grant case-by-case relief for foreign companies to issue securities in a different class: see RG 72.13.

### Relief for the same class of securities

RG 72.9 ASIC Corporations (Foreign Rights Issues) Instrument 2015/356 grants relief from Pts 6D.2 and 6D.3 of the Corporations Act to foreign companies conducting renounceable or non-renounceable rights issues of securities of the same class as those held by their Australian shareholders. The instrument also exempts shortfall offers. These are offers of the securities that were not taken up under the rights issue and which are offered to holders within two months.

RG 72.10 Relief under this instrument is subject to the following conditions:

- (a) the company must reasonably believe that the offer is made in accordance with regulatory requirements in the primary foreign jurisdiction;

Note: 'Primary foreign jurisdiction' means the place of the approved foreign market on which the securities in the offer class are quoted or, if the securities in the offer class are quoted on more than one approved foreign market, the place of the approved foreign market where it is reasonably expected the largest number of offers will be received.

- (b) the rights issue must be a pro rata offer, although fractional entitlements may either be rounded up or down;
- (c) the terms and conditions of the offers made to Australian offerees must be no less favourable than those made to other offerees in the same class;
- (d) the securities must have been quoted on an approved foreign market at all times in the three months before the offer, and must not have been suspended from trading on that market for more than five trading days;

Note: See RG 72.54 for a list of approved foreign markets.

- (e) the number of securities offered to Australian residents must be no more than 10% of the number of securities offered to all offerees; and
- (f) Australian offerees must be given disclosure for the offer at or before the time the offer is made. The disclosure must be in English (if available) or it must be a version of the document that is given or made available to offerees in the primary foreign jurisdiction.

- RG 72.11 Whether securities are held by Australian residents for the purposes of the 10% limit will be determined by reference to:
- (a) the address of the beneficial owner (as included in publicly available reports that have been given to a relevant regulator or market operator of the approved foreign market) or as otherwise known to the foreign company; or
  - (b) the address of the registered holder as recorded in the foreign company's register of members (if the address of the beneficial owner is not included in publicly available reports or otherwise known to the foreign company).

Note: See the definition of 'Australian resident' in ASIC Corporations (Foreign Rights Issues) Instrument 2015/356.

### **On-sale relief**

- RG 72.12 Section 707 of the Corporations Act restricts the on-sale of securities issued without disclosure within 12 months of their issue. ASIC Corporations (Foreign Rights Issues) Instrument 2015/356 grants relief from this restriction so that securities issued under the rights issue can be freely on-sold.

## **Case-by-case relief for a different class of securities**

- RG 72.13 We may grant case-by-case relief for a foreign company to issue securities in a different class to those already held by Australian investors on similar conditions to those in ASIC Corporations (Foreign Rights Issues) Instrument 2015/356. Applications should address the criteria set out in Regulatory Guide 51 *Applications for relief* (RG 51).

## **Rationale for granting relief for rights issues**

- RG 72.14 The requirement for an Australian prospectus may discourage a foreign company with a small percentage of Australian shareholders from extending a rights issue to those shareholders. This may result in a dilution of those shareholders' interests.
- RG 72.15 When a person acquires shares in a foreign company, they should accept that foreign law will largely govern the relationship with the company. Provided that suitable safeguards are in place, we consider that it is appropriate to grant relief from the Australian prospectus provisions to reflect this.

## C Foreign scrip bids and schemes of arrangement

### Key points

We have granted conditional prospectus and PDS relief for scrip offered as consideration under a foreign takeover bid where Australian residents hold no more than 10% of the bid class securities: see RG 72.16–RG 72.21.

We have also granted relief from:

- the PDS requirement for the offer and issue of financial products under a Pt 5.1 scheme (see RG 72.22); and
- the prospectus and PDS requirement where securities are offered under a scheme of arrangement regulated in Hong Kong, Malaysia, New Zealand, Singapore, South Africa or the United Kingdom (see RG 72.23–RG 72.24).

We have also granted licensing relief for general advice contained in documents required under a foreign regulated control transaction: see RG 72.28–RG 72.30.

### Disclosure relief for foreign scrip bids

RG 72.16 A foreign scrip bid is a bid regulated in a foreign jurisdiction where scrip forms all or part of the consideration being offered for securities in the bid class. Without relief, an offer of scrip to Australian holders under a foreign scrip bid may require a prospectus or a PDS.

RG 72.17 ASIC Corporations (Foreign Scrip Bids) Instrument 2015/357 grants relief from the prospectus and PDS provisions in Pts 6D.2 and 6D.3 and s1012A, 1012B and 1012C of the Corporations Act for offers of securities or interests in a managed investment scheme under a foreign scrip bid where:

- (a) Australian residents hold no more than 10% of the bid class securities or interests (determined at a time, fixed by the bidder, in the 30-day period before offers are first made under the takeover);
- (b) the bid class securities or interests are quoted on an approved foreign market and the takeover is regulated by the law or other rules that apply in that jurisdiction;

Note: The scrip offered as consideration for the acquisition of bid class securities or interests does not have to be in a class that is quoted on an approved foreign market. For a list of approved foreign markets, see RG 72.54.



- (c) if foreign regulatory requirements require disclosure, Australian offerees are given an English version of the disclosure (if available) or a version of the document given to offerees in the eligible foreign country;

Note: 'Eligible foreign country' means the jurisdiction where the relevant approved foreign market is located.

- (d) the offer made to Australian offerees is on terms that are at least as favourable as offers that are made to foreign offerees; and
- (e) the person relying on the relief reasonably believes the bid complies with the relevant foreign regulatory requirements.

Note: Where an Australian financial services (AFS) licensee who is not an associate of the bidder wishes to rely on relief from s1012A, the licensee must reasonably believe that the foreign scrip bid is made in accordance with the relevant foreign regulatory requirements.

RG 72.18 Whether securities are held by Australian residents for the purposes of the 10% limit will be determined by reference to:

- (a) the address of the beneficial owner (as included in publicly available reports that have been given to a relevant regulator or market operator of the approved foreign market) or as otherwise known to the bidder; or
- (b) the address of the registered holder as recorded in the register of members (if the address of the beneficial owner is not included in publicly available reports or otherwise known to the bidder).

Note: See the definition of 'Australian resident' in ASIC Corporations (Foreign Scrip Bids) Instrument 2015/357.

### **On-sale relief**

RG 72.19 Sections 707 and 1012C of the Corporations Act restrict the on-sale of securities and interests issued without disclosure within 12 months of their issue. ASIC Corporations (Foreign Scrip Bids) Instrument 2015/357 grants relief to investors from this restriction so that securities issued under a foreign scrip bid can be freely on-sold.

### **Rationale for granting disclosure relief**

RG 72.20 The requirement to prepare an Australian prospectus or PDS may deter a bidder from offering securities to Australian members of a target as an alternative to cash consideration. This means that Australian members may be deprived of the ability to receive their consideration in the form of securities.

RG 72.21 For reasons of international comity, Australian regulatory requirements should not impose excessive costs or obstacles on foreign business transactions unless there is a clear need for Australian investor protection.

The requirement to prepare a prospectus or PDS imposes substantial costs on what is primarily a foreign business transaction. These costs are not justified when the transaction is subject to comparable regulation in another jurisdiction, and only a small proportion of the target securities are held by Australian investors. The Australian investors have accepted the jurisdiction of foreign law by investing on a foreign market.

## Disclosure relief for schemes of arrangement

### PDS relief for Pt 5.1 schemes of arrangement

- RG 72.22 ASIC Corporations (Compromises or Arrangements) Instrument 2015/358 grants relief from provisions in Pt 7.9 of the Corporations Act that would require a PDS where financial products are offered or issued under a compromise or scheme of arrangement under Pt 5.1 (Pt 5.1 scheme). This relief is analogous to the prospectus exemption in s708(17) for Pt 5.1 schemes and is granted on the basis that investors do not need a PDS in addition to the disclosure provided under Pt 5.1.

### Disclosure relief for foreign schemes of arrangement

- RG 72.23 ASIC Corporations (Compromises or Arrangements) Instrument 2015/358 grants relief from the requirement to prepare a prospectus or PDS for offers of securities or financial products made under a foreign scheme of arrangement that is regulated in a similar manner to Pt 5.1. For more information about this relief, see Regulatory Guide 188 *Disclosure in reconstructions* (RG 188).
- RG 72.24 The jurisdictions covered by the relief are Hong Kong, Malaysia, New Zealand, Singapore, South Africa and the United Kingdom. RG 188 also discusses circumstances where we may grant case-by-case relief for a scheme of arrangement in other foreign jurisdictions.

### On-sale relief

- RG 72.25 We have also granted relief from the on-sale restrictions in s707 and 1012C so that securities or interests issued in reliance on ASIC Corporations (Compromises or Arrangements) Instrument 2015/358 can be freely on-sold.

## Incidental relief for advisers and investors

- RG 72.26 Advisers who make a personal recommendation for an investor to acquire scrip issued in reliance on ASIC Corporations (Foreign Scrip Bids) Instrument 2015/357 or ASIC Corporations (Compromises or Arrangements) Instrument 2015/358 can rely on relief in those instruments from the requirement to give a PDS in s1012A.
- RG 72.27 Investors who are issued securities without disclosure in reliance on the instruments in RG 72.26 can rely on the relief in those instruments from the on-sale restrictions in s707(3) and 1012C(6) of the Corporations Act.

## Licensing relief

- RG 72.28 Class Order [CO 03/606] *Financial product advice—exempt documents* grants relief from the requirement to obtain an AFS licence for general advice contained in a document that is required under a foreign regulated control transaction. This relief applies generally to control transactions that are regulated in the jurisdiction of an approved foreign market and is not limited to control transactions that satisfy the requirements for disclosure relief referred to in RG 72.17.
- RG 72.29 [CO 03/606] also grants licensing relief for general advice that is contained in an explanatory statement for a scheme of arrangement that is regulated in Hong Kong, Malaysia, New Zealand, Singapore, South Africa or the United Kingdom. For more information about this relief, see RG 188.

### Rationale for granting licensing relief

- RG 72.30 If a person provides a document to Australian residents in connection with a foreign regulated control transaction, this may be providing general advice. Without relief, the person providing the document may need to obtain an AFS licence for the provision of any general advice contained in the document.

## D Foreign entities making small-scale personal offers

### Key points

We have granted relief from the prospectus and PDS provisions for offers of securities that are in a class that is quoted on an approved foreign market where:

- the offer is a personal offer;
- the number of persons in Australia to whom securities are issued is not more than 20 in any 12-month period; and
- Australian offerees are given any disclosure required in the primary foreign jurisdiction (with an English translation if the disclosure is in a foreign language) (see RG 72.31–RG 72.35).

We will also consider granting case-by-case relief to allow a foreign entity whose securities are about to be quoted to make 20 or fewer offers in Australia in any 12-month period subject to additional conditions: see RG 72.36.

### Relief for small-scale personal offers

RG 72.31 ASIC Corporations (Foreign Small-Scale Offers) Instrument 2015/362 grants prospectus and PDS relief to foreign entities that make personal offers of securities in Australia if the foreign entity reasonably believes the offer is made in accordance with foreign regulatory requirements.

RG 72.32 An offer is a personal offer if it is not transferable and is made to a person who is likely to be interested in the offer, because of:

- (a) previous contact with the entity;
- (b) some professional or other connection with the entity; or
- (c) the person's statements or actions (which indicate that they are interested in offers of that kind).

RG 72.33 This relief applies where:

- (a) the number of persons in Australia to whom securities have been issued in reliance on the relief is no more than 20 in any 12-month period;

Note: Our relief for foreign small-scale personal offers operates in addition to the exemption in s708(2) and 1012E of the Corporations Act. Offers made in reliance on the legislative exemption do not count towards the 20-investor limit in our relief and vice versa.

- (b) the securities are in a class that is quoted on an approved foreign market and trading in the class is not suspended;

- (c) at or before the time the offer is made, Australian offerees are given any document relating to the offer that would have been required to be given to them under the laws of the primary foreign jurisdiction if they received the offer in that jurisdiction;
- (d) if the disclosure given to Australian offerees is not in English, a certified English translation is provided; and
- (e) the disclosure given to Australian offerees includes or is accompanied by a statement explaining that:
  - (i) the documents were prepared for the purposes of compliance with foreign regulatory requirements;
  - (ii) the documents may not contain all the information required for Australian disclosure documents; and
  - (iii) the entity is not subject to the continuous disclosure requirements of the Corporations Act.

RG 72.34 Our relief for small-scale personal offers requires any offer document to be translated into English if the original disclosure is in a foreign language. This is because a person who receives an offer under our relief may not have a pre-existing investment with the entity, and it cannot be presumed that they are confident in making an investment decision when the disclosure is in a foreign language.

RG 72.35 We do not intend this relief to be a precedent for giving general relief from the prospectus or PDS provisions of the Corporations Act when a foreign entity wants to raise funds in Australia.

## Case-by-case relief for securities about to be quoted

RG 72.36 We will also consider granting case-by-case relief to allow a foreign entity whose securities are about to be quoted to make 20 or fewer offers in Australia in any 12-month period. We would grant this relief on the same terms as we do for entities whose securities are already quoted, with the following two additional conditions:

- (a) the entity must prepare a disclosure document that fully complies with the relevant local law in the primary foreign jurisdiction; and
- (b) if the securities are not quoted within 14 days of the date stated in the foreign offer document, any allotment or issue to Australian offerees is void. The foreign entity must repay any money received by it under the disclosure document as soon as practicable.

## E Advertising and publicity of offers

### Key points

We have granted relief from s734 and 1018A of the Corporations Act for advertisements relating to foreign securities that are only incidentally published in Australia: see RG 72.37–RG 72.40.

We have also granted relief from s734 and 1018A for:

- a notice or report relating to an offer of foreign securities that are given to the market operator of an approved foreign market; or
- a notice or report of a general meeting of an entity listed on an approved foreign market: see RG 72.41–RG 72.42.

RG 72.37 Sections 734(2) and 1018A of the Corporations Act set out restrictions on the advertising and publicity of offers of securities in Australia. ASIC Corporations (Foreign Securities—Incidental Advertising) Instrument 2015/360 and ASIC Corporations (Foreign Securities—Publishing Notices) Instrument 2015/359 give relief from these restrictions for advertisements and other notices relating to foreign securities that are only incidentally circulated or published in Australia.

Note: The advertisement must still comply with the law in the foreign jurisdiction and the other provisions of the Corporations Act (e.g. the s1041H prohibition on misleading and deceptive conduct).

RG 72.38 The relief granted by these instruments is narrow and does not extend to offers of securities, which must still comply with the Corporations Act. For example, a foreign entity may not be able to offer or issue securities to a person in Australia who responds to an advertisement covered by ASIC Corporations (Foreign Securities—Incidental Advertising) Instrument 2015/360 without first giving that person a disclosure document lodged with ASIC (unless the offer is covered by a disclosure exemption).

### Relief for authors and publishers

RG 72.39 ASIC Corporations (Foreign Securities—Incidental Advertising) Instrument 2015/360 grants relief from s734(2) and 1018A to authors and publishers who publish an advertisement or statement relating to foreign securities that is incidentally published in Australia.

RG 72.40 The relief covers advertisements and statements published in:

- (a) newspapers and magazines;
- (b) radio and television broadcasts; and
- (c) electronic services (including the internet) that are operated on a commercial basis and are similar to newspapers, magazines or radio or television broadcasts.

## Relief for entities listed on an approved foreign market

- RG 72.41 Section 734(7) of the Corporations Act grants a general exemption from the advertising restrictions in s734(2) for certain notices given by a listed body, including notices given to the market operator.
- RG 72.42 ASIC Corporations (Foreign Securities—Publishing Notices) Instrument 2015/359 grants similar relief for notices given by bodies listed on an approved foreign market. An advertisement or publication will not contravene s734(2) if it:
- (a) relates to an offer of securities of a body that is listed on an approved foreign market and consists of a notice or report by the foreign entity, or one of its officers, about its affairs to the market operator; or
  - (b) consists solely of a notice or report of a general meeting of a body that is listed on an approved foreign market.

## F Other relief and guidance

### Key points

We will consider procedural relief for offers of foreign securities on a case-by-case basis: see RG 72.43–RG 72.44.

Some of our other regulatory guides provide guidance on disclosure relief for foreign entities offering securities in Australia: see RG 72.46–RG 72.53.

### Case-by-case procedural relief

- RG 72.43 We will consider applications for procedural relief from the prospectus and PDS provisions. We will not grant relief from the general disclosure requirement in s710 or the requirement for disclosure of particular fees and benefits in s711(3) of the Corporations Act.
- RG 72.44 We may grant procedural relief from the prospectus and PDS provisions if we are satisfied that:
- (a) the foreign entity issuing the disclosure has complied with a requirement in the jurisdiction of an approved foreign market that is comparable to the provision in the Corporations Act from which it is seeking relief;
  - (b) practical difficulties will arise if the relief is not granted;
  - (c) investor protection will not be reduced if the relief is granted; and
  - (d) the securities in the offer or invitation are in a class of securities quoted, or reasonably expected soon to be quoted, on an approved foreign market.
- RG 72.45 ASIC's general policy on granting individual relief is set out in RG 51.

### Other relevant regulatory guides

- RG 72.46 The following regulatory guides may also be relevant to disclosure by foreign entities offering securities in Australia.

#### Foreign collective investment schemes

- RG 72.47 Regulatory Guide 178 *Foreign collective investment schemes* (RG 178) describes the relief we grant for foreign collective investment schemes. This includes relief for rights issues made by foreign collective investment schemes.



### **Foreign employee incentive schemes**

- RG 72.48 Foreign companies that offer Australian employees securities as part of an employee incentive scheme may rely on the relief described in Regulatory Guide 49 *Employee incentive schemes* (RG 49).

### **Electronic prospectuses**

- RG 72.49 Foreign companies seeking to use an electronic prospectus in Australia should consult Regulatory Guide 107 *Fundraising: Facilitating electronic offers of securities* (RG 107).

### **Enhanced disclosure**

- RG 72.50 Some foreign entities may be disclosing entities under s111AC of the Corporations Act and therefore subject to certain periodic reporting and continuous disclosure requirements. These requirements, and our policy on giving relief from the requirements, are discussed in Regulatory Guide 95 *Disclosing entity provisions relief* (RG 95).

### **Foreign schemes of arrangement**

- RG 72.51 As mentioned in Section C, RG 188 describes the prospectus and PDS relief we have granted for schemes of arrangement in certain foreign jurisdictions.

### **Mutual recognition of trans-Tasman securities offerings**

- RG 72.52 The trans-Tasman mutual recognition scheme allows Australian and New Zealand entities to offer financial products or interests in collective or managed investment schemes in both countries using one disclosure document prepared under regulation in their home country.
- RG 72.53 Entities that wish to operate under the scheme are able to comply with minimal entry and ongoing requirements agreed to between the two countries and prescribed in each country's law: see Regulatory Guide 190 *Offering financial products in New Zealand and Australia under mutual recognition* (RG 190).

## G Approved foreign markets

### Key points

Much of the relief referred to in this guide applies where the relevant foreign securities are quoted on an 'approved foreign market'.

RG 72.54 lists approved foreign markets for the purposes of the relief and RG 72.58 identifies our criteria for approving a market as an approved foreign market.

### Current approved foreign markets

RG 72.54 Approved foreign markets are the main board of any of the following financial markets:

- (a) Borsa Italiana;
- (b) Bursa Malaysia;
- (c) Euronext Amsterdam;
- (d) Euronext Paris;
- (e) Frankfurt Stock Exchange;
- (f) Hong Kong Stock Exchange;
- (g) JSE (also known as the Johannesburg Stock Exchange);
- (h) London Stock Exchange;
- (i) Nasdaq Global Market or the Nasdaq Global Select Market;
- (j) New York Stock Exchange;
- (k) NYSE MKT;
- (l) NZX;
- (m) Singapore Exchange;
- (n) SIX Swiss Exchange;
- (o) Tokyo Stock Exchange; and
- (p) Toronto Stock Exchange.

Our relief only extends to the main board of these markets.

RG 72.55 We have approved these foreign markets because we believe they are comparable to the ASX market in terms of being fair, efficient, well-informed and internationally competitive.

## Criteria for approving other foreign markets

- RG 72.56 We will accept applications for additional foreign markets to be included in the list of approved foreign markets. Applications should address the criteria in RG 72.58. An application should be accompanied by an English translation of the rules of the foreign market and, if applicable, the market's policy manual.
- RG 72.57 A person other than the foreign market may make the application. An application may come from a market participant or a foreign entity with securities listed on the market. In this case, the application must include a letter from the foreign market verifying the information given.
- RG 72.58 When considering the approval of other foreign markets and adding them to the list in RG 72.54, we will take into account whether the market:
- (a) is a member of the World Federation of Exchanges;
  - (b) is internationally recognised (i.e. it has concessional treatment and recognition from other jurisdictions). In particular, we will have regard to whether the body applying for approval is:
    - (i) a designated off-shore securities market under Regulation S of the *Securities Act 1933* (US); and
    - (ii) a Stock Exchange Automated Quotation International eligible exchange under the London Stock Exchange regime;
  - (c) has rules that meet ASX's listing and quotation, market information, regulatory, and trading and settlement principles;
  - (d) is a key world trading centre—determined by:
    - (i) the market's size relative to other exchanges in its geographic region; and
    - (ii) the links the market maintains with other foreign exchanges or with specific Australian industries; and
  - (e) is overseen by a government regulatory authority.

## Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A.
approved foreign market	A foreign financial market listed in our legislative instruments for the purposes of relief: see RG 72.54
ASIC	Australian Securities and Investments Commission
ASX	ASX Limited or the exchange market operated by ASX Limited
bid class	The class or classes of securities the subject of a foreign scrip bid
Ch 6D (for example)	A chapter of the Corporations Act (in this example numbered 6D), unless otherwise specified
[CO 03/606] (for example)	An ASIC class order (in this example numbered 03/606) Note: Legislative instruments made from 2015 are referred to as ASIC instruments.
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
foreign scrip bid	A bid regulated in a foreign jurisdiction where scrip forms all or part of the consideration being offered in the bid class
primary foreign jurisdiction	The place of the approved foreign market on which the securities in the offer class are quoted or, if the securities in the offer class are quoted on more than one approved foreign market, the place of the approved foreign market where it is reasonably expected the largest number of offers will be received
Product Disclosure Statement (PDS)	A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act Note: See s761A for the exact definition.
Pt 5.1 (for example)	A part of the Corporations Act (in this example numbered 5.1), unless otherwise specified
RG 178 (for example)	An ASIC regulatory guide (in this example numbered 178)

<b>Term</b>	<b>Meaning in this document</b>
rights issue	An offering of securities by a company to all its shareholders in proportion to their existing holdings
s708 (for example)	A section of the Corporations Act (in this example numbered 708), unless otherwise specified

## Related information

### Headnotes

approved foreign markets, disclosure, foreign companies, foreign schemes of arrangements, foreign scrip bids, fundraising, PDS, Product Disclosure Statement, prospectus, rights issue, small-scale personal offer

### Class orders and instruments

[CO 03/606] *Financial product advice—exempt documents*

ASIC Corporations (Compromises or Arrangements) Instrument 2015/358

ASIC Corporations (Foreign Rights Issues) Instrument 2015/356

ASIC Corporations (Foreign Scrip Bids) Instrument 2015/357

ASIC Corporations (Foreign Securities—Incidental Advertising) Instrument 2015/360

ASIC Corporations (Foreign Securities—Publishing Notices) Instrument 2015/359

ASIC Corporations (Foreign Small-Scale Offers) Instrument 2015/362

### Regulatory guides

RG 49 *Employee incentive schemes*

RG 51 *Applications for relief*

RG 95 *Disclosing entity provisions relief*

RG 107 *Fundraising: Facilitating electronic offers of securities*

RG 178 *Foreign collective investment schemes*

RG 188 *Disclosure in reconstructions*

RG 190 *Offering financial products in New Zealand and Australia under mutual recognition*

### Legislation

Corporations Act, Chs 6D and 7; Pts 5.1, 6D.2, 6D.3 and 7.9; s111AC, 707(3), 708(2), 708(17), 710, 711(3), 734, 734(2), 734(7), 1012A, 1012B, 1012C, 1012C(6), 1012E, 1018A and 1041H

*Securities Act 1933* (US), Regulation S

## **Consultation papers**

*CP 67 Disclosure in reconstructions*

*CP 79 Disclosure relief for foreign scrip takeovers*

*CP 225 Remaking ASIC class orders on offers of foreign securities*