



Employee Share Schemes

November 2022

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Key Messages

The new employee share scheme regime commenced on 1 October 2022. s 37(1)(b)

Significant amendments would require law reform but we are currently engaging in a public consultation on using our powers to resolve some of the technical issues. This includes expanding a restrictive on-sale provision for quoted financial products.

We have also consulted on transitional technical relief for entities currently relying on the old regime.

We continue to engage with stakeholders in relation to the new employee share scheme regime.

Background

Legislation for employee share schemes (ESS) was passed in March 2022 and commenced on 1 October 2022. The new ESS provisions are intended to replace ASIC's existing class orders 14/1000 and 14/1001.

The new provisions will make it much easier for unlisted companies to offer ESS - with a generous monetary limit of more than \$30,000 per employee.

However, there are some features of the new law that do not work for listed entities, including a very restrictive on-sale provision that means employees would need to hold their shares for 1 year.

The proposed changes will also allow unlisted companies to provide alternative information about valuations of their financial products and foreign companies to provide financial statements prepared in accordance with accounting standards the company is required or permitted to use in the company's place of origin. There are also some minor technical modifications proposed for contribution plans.

ASIC Action

ASIC is in discussions with stakeholders on the issues and has published a public consultation paper ([CP 364 Modifications to the ESS regime](#)) on modifications to fix some of the technical issues. This includes a broader on-sale exemption for financial products that are quoted on a financial market.



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