

# Attachment to CS 15: Draft instrument



**ASIC**  
Australian Securities &  
Investments Commission

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## **ASIC Corporations (Offers of CHES Depository Interests) Instrument 2025/XX**

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

Date 2025

[DRAFT ONLY – NOT FOR SIGNATURE]

<signature>

<insert name>

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## Part 1—Preliminary

### 1 Name of legislative instrument

This is the *ASIC Corporations (Offers of CHESSE Depository Interests) Instrument 2025/XX*.

### 2 Commencement

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

Note: The register may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

### 3 Authority

This instrument is made under paragraphs 741(1)(b), 926A(2)(a) and 1020F(1)(c) of the *Corporations Act 2001*.

### 4 Definitions

In this instrument:

*Act* means the *Corporations Act 2001*.

*approved financial market* means a financial market operated by:

- (a) ASX Limited ACN 008 624 691; or
- (b) Sydney Stock Exchange Limited ACN 080 399 220; or
- (c) National Stock Exchange of Australia Limited ACN 000 902 063.

*ASX Settlement* means ASX Settlement Pty Limited ACN 008 504 532.

*CDN* means CHESSE Depository Nominees Pty Limited  
ACN 071 346 506.

*depository interests* means units of beneficial ownership in the underlying securities of a foreign company where:

- (a) the underlying securities are held by CDN; and
- (b) the operating rules of ASX Settlement apply to:
  - (i) the holding of the underlying securities by CDN; and
  - (ii) the recording and transfer of the units of beneficial ownership.

***excluded foreign company*** means a foreign company covered by subsection 766C(5) of the Act.

***underlying securities*** of a foreign company means:

- (a) shares of the foreign company which are, or are proposed to be, admitted to quotation on an approved financial market;
- (b) beneficial interests in shares of the foreign company, where the interests or the shares to which the interests relate are, or are proposed to be, admitted to quotation on an approved financial market; or
- (c) options to acquire, by way of issue, shares of the foreign company, where:
  - (i) the options are, or are proposed to be, admitted to quotation on an approved financial market; and
  - (ii) the shares are in a class of shares that are, or are proposed to be, admitted to quotation on that market.

## **Part 2—Exemption**

### **5 Licensing relief for foreign companies who arrange a dealing in depository interests**

A foreign company (other than an excluded foreign company) does not have to comply with subsection 911A(1) of the Act for the provision of a financial service:

- (a) that consists of arranging for CDN or a holder or proposed holder of depository interests to deal in depository interests that relate to the underlying securities of the foreign company; and
- (b) where the operating rules of ASX Settlement apply to the dealing in the depository interests.

## Part 3—Declaration

### 6 Operation of Chapter 6D in relation to depository interests

Chapter 6D of the Act applies to all persons as if the provisions of Part 6D.1 were modified or varied as follows:

- (a) in subsection 700(1) after “Chapter 7”, insert “and also includes depository interests”;
- (b) after notional subsection 700(1) insert:

“(1A)In this Chapter:

***approved financial market*** means a financial market operated by:

- (a) ASX Limited ACN 008 624 691; or
- (b) Sydney Stock Exchange Limited ACN 080 399 220; or
- (c) National Stock Exchange of Australia Limited ACN 000 902 063.

***ASX Settlement*** means ASX Settlement Pty Limited ACN 008 504 532.

***CDN*** means CHESS Depository Nominees Pty Limited ACN 071 346 506.

***depository interests*** means units of beneficial ownership in the underlying securities of a foreign company where:

- (a) the underlying securities are held by CDN; and
- (b) the operating rules of ASX Settlement apply to:
  - (i) the holding of the underlying securities by CDN; and
  - (ii) the recording and transfer of the units of beneficial ownership.

***underlying securities*** of a foreign company means:

- (a) shares of the foreign company which are, or are proposed to be, admitted to quotation on an approved financial market; or

- (b) beneficial interests in shares of the foreign company, where the interests or the shares to which the interests relate are, or are proposed to be, admitted to quotation on an approved financial market; or
- (c) options to acquire, by way of issue, shares of the foreign company, where:
  - (i) the options are, or are proposed to be, admitted to quotation on an approved financial market; and
  - (ii) the shares are in a class of shares that are, or are proposed to be, admitted to quotation on that market.”;
- (c) after section 703A insert:

**“703AA Application of this Chapter to depository interests**

This Chapter applies in the following way to a foreign company and depository interests in relation to the underlying securities of the company:

- (a) the foreign company that issues the underlying securities is taken to be the issuer of the depository interests;
- (b) an offer of depository interests for issue is taken instead to be an offer of the underlying securities for issue by the foreign company;

Note: This paragraph applies to any offers of depository interests for issue including, but not limited to, initial public offers, rights issues, dividend reinvestment plans and bonus plans.

- (c) where paragraph (b) applies and the offer requires disclosure to investors under Part 6D.2, the disclosure document for the offer must explain the difference between holding depository interests and holding the underlying securities;
- (d) for the purposes of determining whether an offer of the underlying securities for issue by the foreign company is a rights issue:
  - (i) a person that before the offer holds depository interests in relation to the underlying securities is to be treated as holding the securities; and
  - (ii) CDN is to be treated as not holding the securities mentioned in subparagraph (i);

- (e) where the underlying securities are shares—for the purposes of determining whether an offer of the underlying securities for issue under a dividend reinvestment plan or bonus plan does not need disclosure to investors:
  - (i) a person that holds depository interests in relation to the underlying securities is to be treated as holding the securities; and
  - (ii) CDN is to be treated as not holding the securities mentioned in subparagraph (i);
- (f) a sale offer of depository interests on an approved financial market by a person is taken instead to be a sale offer of the underlying securities on the financial market by the person;
- (g) the foreign company is not taken to have issued the underlying securities with the purpose referred to in subparagraph 707(3)(b)(i) (as notionally modified by *ASIC Corporations (Sale Offers That Do Not Need Disclosure Instrument 2016/80)*) merely because it issued the securities to CDN;
- (h) references to the provisions of Chapter 2M are to be read as references to:
  - (i) if section 601CK applies to the foreign company—section 601CK; or
  - (ii) otherwise—the financial reporting laws of the kind set out in Chapter 2M applicable to the foreign company in its place of origin;

Note: Section 601CK may not apply to a foreign company whose place of origin is a country prescribed by regulations made for the purposes of section 601CDA.

- (i) references to orders under section 340 or 341 are to be read as references to declarations under subsection 601CK(7) or exemptions or waivers (however described) under the financial reporting laws of the kind set out in Chapter 2M applicable to the foreign company in its place of origin (as applicable).”.

## 7 Operation of Part 7.9 in relation to depository interests

Part 7.9 of the Act applies in relation to depository interests as if the following provisions were modified or varied as follows:

- (a) in Division 2, after section 1011A, insert:



### **“1011AB Division does not apply to depository interests**

Nothing in this Division applies in relation to depository interests within the meaning of subsection 700(1A).

Note: Offers of depository interests are regulated by Chapter 6D in a particular way: see section 703AA.”;

(b) in Division 3, after subsection 1017F(2), insert:

“(2A)For the purposes of this section, the issuer of a depository interest (within the meaning of subsection 700(1A)) is taken to be the foreign company that issues the underlying securities (within the meaning of subsection 700(1A)) to which the interest relates.”.

## **Part 4—Repeal**

### **8 Repeal**

This instrument is repealed at the start of 1 April 2030.