Cross-Border Listings Guide - Australian Securities Exchange

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# Quick Summary

## Initial financial listing requirements

[Last updated: 1 January 2024, unless otherwise noted]

To qualify for listing, a company must meet at least one of the following tests:

**ASX Listing Profits Test**

A company must have:

Aggregated operating profit for the last three full financial years of at least A$1 million (approx. US$681,200).

Consolidated operating profit of more than A$500,000 (approx. US$340,600) for the 12 months preceding a date no more than two months before the date the company applies for listing.

Three full financial years of audited accounts.

In addition, directors of the company must provide a statement confirming that, following enquiries, nothing has come to their attention to suggest that the company is not continuing to earn profit from continuing operations up to the date of its prospectus, or include such a statement in its prospectus.

**ASX Listing Assets Test**

The company must have:

Net tangible assets of at least A$4 million (approx. US$2.72 million), after deducting the costs of fund raising (except for an investment company where the requirement is A$15 million (approx. US$10.22 million), or a market capitalization of at least A$15 million (approx. US$10.22 million).

Less than half of the company's total tangible assets, after deducting the costs of raising any funds, in cash or in a form readily convertible to cash, or (when this cannot be satisfied) the company must have commitments consistent with its business objectives to spend at least half of its cash and assets that are in a form readily convertible to cash.

Working capital of at least A$1.5 million (approx. US$1.02 million), which may include budgeted revenue for the first full financial year after listing, after allowing for the first full year's budgeted administration costs and cost of acquiring assets referred to
in the prospectus.

Two full financial years of audited accounts (subject to limited exceptions) for the company and also for any significant entity or business that it has acquired in the 12 months prior to applying for admission or that it proposes to acquire in connection with its listing.

**ASX Foreign Exempt Listing**

A company may seek an exempt foreign listing if the company is already listed on another stock exchange and its primary listing is on a home exchange that is acceptable to the ASX, and the company has either:

Operating profit (before income tax and derived from its ordinary activities) for each of the last three full financial years of at least A$200 million (approx. US$136.24 million).

Net tangible assets or a market capitalization of at least A$2 billion (approx. US$1.36 billion).

## Other initial listing requirements

[Last updated: 1 January 2024, unless otherwise noted]

*Share price.* Issue price for securities to be listed must be at least A$0.20 (approx. US$0.14).

*Distribution.* To list its securities, a company must have:

A minimum 20% free float of securities held by non-affiliated security holders, which excludes securities held by affiliated security holders being:

Restricted securities (such as ASX imposed escrow).

Securities subject to voluntary escrow.

Securities held by related parties (such as directors) and their associates and persons that the ASX considers should be treated as affiliated with the entity.

At least 300 security holders, each holding securities with a value of at least A$2,000 (approx. US$1,362) (excluding affiliated security holders (as listed above), which is required to be confirmed by the company’s lawyer).

While it is encouraged, there is no general requirement for a minimum number of Australian resident security holders. However, the ASX does has the power to impose, as a condition of listing, a requirement that the company has a minimum number of Australian resident security holders, with a minimum size or value of holding. This usually only occurs in relation to companies from emerging or developing markets.

*Accounting standards*. Australian Accounting Standards or other standards acceptable to the ASX such as IFRS and GAAP applicable in Canada, Hong Kong, New Zealand, Singapore, South Africa, United Kingdom and USA.

*Financial statements.* The prospectus must generally include three full financial years' audited financial statements for companies seeking listing under the profits test and two full financial years' audited financial statements (subject to limited exceptions) for companies seeking listing under the assets test. This usually also includes pro forma historical information for the same period. Forecast financial information also may be included.

*Operating history.* There is no requirement to demonstrate a particular length of trading history or a particular length of time in operation if admission is sought under the assets test. If admission is sought under the profits test, the company must demonstrate a history of profitable operations of the company or businesses that it has acquired for the last three financial years (or such shorter period acceptable to the ASX).

*Management continuity.* The ASX does not require any specific period of continuity of management. However, all directors must satisfy requirements that they are of good fame and character.

## Listing process

[Last updated: 1 January 2024, unless otherwise noted]

Listing involves the company applying to be admitted to the official list of the ASX. The ASX will typically review the company's structure and operations, to determine its suitability for listing on the ASX. A prospectus is required to be prepared and lodged with the Australian Securities and Investments Commission (ASIC) and given to the ASX. The following is a fairly typical process and timetable for a listing of a foreign private issuer on the ASX via an initial public offering in Australia.

[Link to Timetable](https://resourcehub.bakermckenzie.com/en/-/media/crossborder-listings-handbook/files/2022-update/2022-aus-listing-process-gantt-chart.pdf?sc_lang=en)

## Corporate governance and reporting

[Last updated: 1 January 2024, unless otherwise noted]

There are no specific corporate governance requirements for a foreign company applying for ASX Foreign Exempt Listing. All other companies listed on the ASX must comply with certain corporate governance requirements or provide reasons why the requirements are not being complied with. The requirements deal with matters such as:

Board composition.

Remuneration and performance reviews.

Audit and risk management.

Share trading policies (mandatory under the ASX listing rules).

Communications with shareholders.

Codes of conduct.

Additionally, any company, including a foreign company, that will be included in the S&P/ASX 300 Index must have an audit committee that complies with the best practice recommendations set by the ASX Corporate Governance Council in relation to composition, operation and responsibility of the audit committee as well as a remuneration committee comprised solely of non-executive directors.

An ASX-listed company has disclosure and reporting obligations to both the ASX and ASIC.

There are no residency requirements for directors or officers of foreign companies, although a local agent is required to be appointed by the foreign company. A company seeking an ASX listing will also need to provide documentation to the ASX confirming all directors are of good fame and character.

## Fees

[Last updated: 1 January 2024, unless otherwise noted]

A company seeking to list must pay both initial listing fees and annual fees which increase based on the market capitalization of the company. There will be additional costs for a listing for printing, registration fees with ASIC, underwriters and brokers fees and advisers fees.

# Overview of exchange

## Overview of exchange

[Last updated: 1 January 2024, unless otherwise noted]

The Australian Securities Exchange encompasses ASX (formerly known as the Australian Stock Exchange Limited), which is an internationally recognized market for companies in a range of industries, including resources, energy, financial services, technology and healthcare, and across a range of geographical regions.

The ASX is particularly attractive for early-stage companies as the ability to list under the assets test (described below) provides a viable avenue for resource exploration, technology, healthcare and other early-stage companies to access capital markets by listing on the exchange. As a result, the ASX offers an appealing platform for companies to grow, with the potential to be included in ASX indices or to seek dual listings on other exchanges once they have established a track record and stronger financial and market position.

In addition, the ASX offers an efficient listing process. Listing on the ASX can be typically achieved in a timely, efficient and cost-effective manner relative to many other stock exchanges. The ASX has clear requirements for listing  and takes a transparent approach  in applying its criteria. No formal interview or hearing is required.

The ASX has three separate listing categories.

***ASX Listing*** is the main ASX admission category. A foreign company may apply under this category, regardless of whether it is already listed on another stock exchange. The ASX does not distinguish between primary listings and secondary listings, and there is no fast track for a company already listed on a foreign exchange unless it qualifies for an ASX Foreign Exempt Listing (described below). A foreign company that is listed as an ASX Listing is subject to the ASX's usual on-going listing rules, even if it is listed on another stock exchange, unless the foreign company is able to obtain a waiver of specific ongoing requirements. Such waivers will usually only be granted where the foreign company's primary exchange has equivalent or higher ongoing requirements to the relevant ASX requirements.

***ASX Foreign Exempt Listing*** is available to companies that are already listed on another stock exchange, with a significant profit history or significant net tangible assets. The ASX Foreign Exempt Listing requirements are designed for large international companies and acknowledge the extent of regulation and supervision applying to such companies under their home exchange.

***ASX Debt Listing*** is designed for the admission of companies seeking quotation of debt securities only.

This summary focuses only on ASX Listings and ASX Foreign Exempt Listings.

Generally, there is no distinction between the listing requirements and ongoing obligations under the ASX listing rules for an Australian or a foreign company, unless the foreign company is already listed on another exchange and qualifies for an ASX Foreign Exempt Listing or the foreign company is able to obtain waivers of specific listing rule requirements from the ASX.

The ASX has listing rules, which govern the conduct of companies listed (or proposing to list) on the ASX. These rules address matters such as the admission of new market participants, continuous-disclosure monitoring, price queries, the monitoring of financial positions, the disclosure of directors' interests and corporate governance. The ASX and the Australian Securities and Investments Commission (ASIC) are responsible for supervision and enforcement of the listing rules.

As at December 2023:

The aggregate market capitalization of listed shares on the ASX was approximately A$2.63 trillion (approximately US$1.79 trillion).

There were about 45 IPOs during 2023, raising more than A$1.10 billion (approximately US$749.32 million).

There were around 2,200 companies listed on the ASX.

There were more than 230 foreign companies or businesses listed on the ASX and a significant number of ASX-listed companies with foreign businesses or operations in many countries worldwide.

The ASX has a continued focus on new listings of foreign companies, particularly companies in the healthcare and IT and telecommunications sectors, which account for approximately 40% of the total market capitalization of all listed foreign companies.

# Principal listing and maintenance requirements and procedures

## Principal listing and maintenance requirements and procedures

[Last updated: 1 January 2024, unless otherwise noted]

There are no jurisdictions of incorporation or industries that would not be acceptable for a listed company. However, many foreign businesses wishing to list will establish a holding company in Australia or an English-speaking jurisdiction, such as England, Canada, USA or the British Virgin Islands.

A foreign company wishing to apply for admission as an ASX Listing or ASX Foreign Exempt Listing must be registered in Australia under the Corporations Act 2001 as a "foreign corporation."

*ASX Foreign Exempt Listing*

Any foreign company wishing to apply for ASX Foreign Exempt Listing must have a home exchange that is acceptable to the ASX. The foreign exchanges that are considered acceptable include: Borsa Italiana, Bursa Malaysia, Deutsche Börse, Euronext (Amsterdam), Euronext (Brussels), Euronext (Lisbon), Euronext (Paris), Frankfurt Stock Exchange, HKSE, JSE, Nasdaq, NYSE, NZX, LSE, SGX, SIX Swiss Exchange, TSE (Tokyo) and TSX (Toronto).

If a foreign company wishes to list on the ASX but its home exchange is not listed above, they may still be considered. Second boards in developed markets and exchanges in emerging or developing markets are considered carefully by the ASX and will only be considered acceptable if they have a regulatory framework broadly equivalent to that which exists in Australia. The entity seeking listing must make submissions to the ASX to confirm the acceptability of their home exchange.

To qualify for an ASX Foreign Exempt Listing as a secondary listing on the ASX, a company must meet certain financial requirements. These requirements may be met by providing evidence either that:

The company's operating profit (before income tax and derived from its ordinary activities) for each of the last three full financial years were at least A$200 million (approximately US$136.24 million).

The company's net tangible assets or market capitalization are at least A$2 billion (approximately US$1.36 billion).

A company which is able to list as an ASX Foreign Exempt Listing will not be required to satisfy most of the requirements for a primary ASX Listing, and there are no specific ongoing financial requirements applicable to it.

*Profits or assets*

For other foreign companies to undertake a primary ASX Listing, they must satisfy the financial requirements under either the profits test or the assets test applicable to all companies seeking an ASX Listing.

*Profits*. Under the profits test, the company must have:

Aggregated operating profit for the last three full financial years of at least A$1 million (approximately US$681,200).

Consolidated operating profit of more than A$500,000 (approximately US$340,600) for the 12 months preceding a date no more than two months before the date the company applies for listing.

Three full financial years of audited accounts.

In addition, directors of the company must provide a statement confirming that, following inquiries, nothing has come to their attention to suggest that the company is not continuing to earn profit from continuing operations up to the date of its prospectus, or include such a statement in its prospectus.

*Assets*. Under the assets test, the company must, at the time of admission, have:

Net tangible assets of at least A$4 million (approximately US$2.72 million), after deducting the costs of fund raising (except for an investment company where the requirement is A$15 million (approximately US$10.22 million), or a market capitalization of at least A$15 million (approximately US$10.22 million).

Less than half of the company's total tangible assets, after deducting the costs of raising any funds, in cash or in a form readily convertible to cash, or (when this cannot be satisfied) the company must have commitments consistent with its business objectives to spend at least half of its cash and assets that are in a form readily convertible to cash. This requirement seeks to discourage the listing of "cash box" companies.

Working capital of at least A$1.5 million (approximately US$1.02 million), which may include budgeted revenue for the first full financial year after listing after allowing for the first full year's budgeted administration costs and cost of acquiring assets referred to in the prospectus. The prospectus must also state that the company has enough working capital to carry out its objectives, or the company must provide the ASX with such a statement from an independent expert.

Two full years of audited accounts (subject to limited exceptions) for the company and also for any significant entity or business that it has acquired in the 12 months prior to applying for admission or that it proposes to acquire in connection with its listing.

*History*. A foreign company does not need to demonstrate a particular length of trading history or a particular length of time in operation if it seeks admission under the assets test. However, a company applying for an ASX Listing under the profits test will have to demonstrate a history of profitable operations of the company or businesses that it has acquired for the last three financial years (or such shorter period acceptable to the ASX).

*Ongoing financial requirements*

A foreign company that is listed as an ASX Listing must comply with all the ASX listing rules in the same way as an Australian company, irrespective of whether it is already listed on another stock exchange, unless it is able to obtain a waiver of specific ongoing requirements. There are a number of ongoing financial requirements after the initial listing that must be satisfied, including that:

The company's financial condition (including operating results) must, in the ASX's opinion, be adequate to warrant the continued quotation of its shares and its continued listing.

Less than half of the company's total assets must be cash or in a form readily convertible to cash, otherwise the ASX may suspend quotation of the company's shares until it invests those assets or uses them for the company's business, in which case the company must give its ordinary shareholders in writing details of the investment or use. This rule does not apply to a bank or non-bank financial institution or a mining exploration company (unless the ASX decides otherwise).

The level of a company's operations must, in ASX's opinion, be sufficient to warrant the continued quotation of its shares and its continued listing.

*Shareholder spread; ownership*

A foreign company that applies for an ASX listing must satisfy a minimum 20% free float requirement for shares held by non-affiliated shareholders, which excludes shares held by affiliated shareholders being:

Restricted shares (such as ASX imposed escrow).

Shares subject to voluntary escrow.

Shares held by related parties (such as directors) and their associates and persons that the ASX considers should be treated as affiliated with the entity.

The company must also have a satisfactory spread of shareholders after the IPO. This requires the company to have at least 300 shareholders, each holding shares with a value of at least A$2,000 (approximately US$1,362) (excluding affiliated shareholders (as outlined above)). This must be reviewed and confirmed by the company’s lawyer.

While it is encouraged, there is no general requirement for a minimum number of Australian resident shareholders. However, the ASX does has the power to impose, as a condition of listing, a requirement that the company has a minimum number of Australian resident shareholders, with a minimum size or value of holding. This usually only occurs in relation to companies from emerging or developing markets.

There are no minimum number of shareholder requirements for an ASX Foreign Exempt Listing.

The ASX may seek to suspend or de-list a company if it fails to maintain an adequate shareholder spread, which usually requires a minimum of 200 shareholders, each holding at least A$2,000 (approximately US$1,362) worth of shares.

There are no other ownership requirements applicable to the listing of a foreign company's shares.

*Minimum trading price*

There is no requirement for a listed foreign company to maintain a minimum trading price for its shares.

*Corporate governance*

There are no specific corporate governance requirements for a foreign company applying for an ASX Foreign Exempt Listing. However, the ASX listing rules require that any company included in the S&P/ASX 300 Index at the beginning of its financial year, comply with the Corporate Governance Principles and Recommendations of the ASX Corporate Governance Council (ASX Corporate Governance Principles) in relation to the composition, operation and responsibility of the audit committee. Any company in the S&P/ASX 300 Index must also have an audit committee that complies with the best practice recommendations set by the ASX Corporate Governance Council in relation to composition, operation and responsibility of the audit committee and a remuneration committee comprised solely of non-executive directors. All companies listed on the ASX must have a shares trading policy that complies with the ASX listing rules, which specifies the periods during which directors and other employees must not trade in the company's shares.

A company applying for an ASX Listing must comply with corporate governance requirements of the ASX listing rules and the ASX Corporate Governance Principles or explain the reasons why those recommendations have not been followed. See section 5 below for further information.

Another key condition for an ASX Listing requires that an issuer (or in the case of a trust, the responsible entity) satisfy the ASX that its directors, CEO and CFO or proposed directors, CEO and CFO at the date of listing are of good fame and character. The listing application will require that companies provide to the ASX for each director, CEO and CFO or proposed director, CEO and CFO at the date of listing, a police check, a bankruptcy check and a completed statutory declaration affirming, amongst other things, that they have not been the subject of relevant disciplinary or enforcement action by an exchange or securities market regulator, or if such confirmation cannot be provided, a statement to that effect and a detailed explanation of the circumstances involved.

*Sponsors, brokers and advisers*

There is no requirement for a company to obtain a sponsor and/or broker that is established with the ASX in order to list its shares. However, in larger IPOs, brokers are generally appointed to assist in selling the company's shares.

There is no requirement that a company obtain a compliance adviser that is established with the ASX in order to maintain its listing.

*Trading and clearance*

The trading price of shares of foreign companies will be in A$ irrespective of the currency denomination of the relevant shares. The issue price for shares to be listed must be the equivalent of at least A$0.20 (approximately US$0.14), and if the company has options on issue, the exercise price for each underlying share must be the equivalent of at least A$0.20 (approximately US$0.14).

Every company must comply with Clearing House Electronic Subregister System (commonly known as CHESS). Under CHESS, the company does not issue certificates to investors. Instead, investors receive a statement (similar to a bank account statement) that sets out the number of shares allotted to each of them. Further monthly statements are provided to shareholders that reflect any changes in their holding during the month.

Every foreign company listed on ASX, whether as an ASX Listing or ASX Foreign Exempt Listing, must establish and maintain a share register (or subregister), a register of depositary receipts or other appropriate facilities for the registration of share transfers. If in their home jurisdiction the company's shares can only be held in certificated form, the company must establish and maintain an Australian subregister and establish a CHESS Depositary Interest facility (similar to ADRs in the United States).

*Restricted shares and escrow*

For primary listings, the ASX may classify some or all of the company's shares issued before the IPO as "restricted shares." These shares are held in "escrow," meaning that they cannot be sold or otherwise dealt with by holders for a period of up to two years after listing. Where shares are subject to escrow restrictions, the ASX will require either the company to give a "restriction notice" or its holders must enter into a "restriction agreement" to this effect (each in the form provided in the ASX Listing Rules).

The escrow restrictions do not apply to companies qualifying under the profits test. They will generally apply in circumstances where the company is admitted under the assets test, except where the company can either demonstrate a track record of profitability or revenue or has a substantial proportion of its assets as tangible assets or assets with a readily ascertainable value.

The number of shares to be escrowed and the applicable escrow period will depend on the nature of the relevant holder's relationship with the company (for example directors, lead capitalists, promoters or vendors of assets), and the consideration they provided for the issue of the shares.

Key persons associated with the company prior to the IPO (such as directors and senior management) may also enter into voluntary escrow arrangements (arrangements that are not ASX-imposed) to voluntarily "lock-up" their holdings for a limited period after listing. These arrangements may be required by the underwriter to minimize the potential overhang of shares in the market after the IPO.

For foreign companies seeking ASX Foreign Exempt Listing, the ASX will not impose restricted shares or escrow requirements.

*Further requirements*

Additional ASX Listing requirements include:

The company's structure and operations must be appropriate for a listed company.

The company must have a constitution that is consistent with the ASX listing rules.

A prospectus or product disclosure statement (or information memorandum if agreed to by the ASX) must be issued and lodged with ASIC and given to the ASX.

The company must apply for, and be granted permission for, quotation of all the shares in its main class of shares.

The company must appoint a person to be responsible for communication with the ASX. This person must have attained a satisfactory pass mark in an approved listing rule compliance course.

The company must agree in writing with the ASX that documents may be given to the ASX and authenticated electronically, and establish the facilities required for the company to give documents to the ASX electronically.

# Listing documentation and process

## Listing documentation and process

[Last updated: 1 January 2024, unless otherwise noted]

*Overview*

For an ASX Foreign Exempt Company listing, the company is not required to provide a prospectus. To apply for admission to the official list as an ASX Foreign Exempt Listing, the company must:

Submit the requisite listing application to the ASX.

Give the ASX a copy of its last annual report and any subsequent interim report.

Agree to give the ASX, after admission, additional copies of certain documents specified in the listing rules or otherwise required by the ASX.

For an ASX Listing, the applicant company must issue a prospectus and lodge that document with ASIC and give a copy to the ASX. Usually, this is done in the context of an IPO, whereby the company raises necessary funds and obtains the necessary shareholder spread. The prospectus provides investors with detailed information about the company's business, its directors and management, financial position and performance, prospects, details of the industry in which it operates and risks, so that investors can make an informed investment decision.

The ASX may accept an information memorandum instead of a prospectus for a compliance listing, if a company has no intention to raise capital in the next three months. However, the content requirements for an information memorandum and prospectus are broadly similar.

A company must also complete a listing application and submit it to the ASX within seven days after the date of the prospectus. The ASX reserves the discretion whether or not to admit the company to the official list and may admit the company on any conditions it thinks appropriate. The applicant must also pay the prescribed listing fees, which are calculated on the basis of the value of the shares for which quotation is sought (see section 8 below).

There is no requirement for a foreign company to conduct interviews with the ASX as part of the listing process. However, it is recommended that a company and its advisers liaise with the ASX in relation to its listing application, to ensure that the ASX's requirements can be met by the time that the company's formal application is considered by the ASX Listings Committee. The ASX makes its decision to list a company based on the listing application and other documents lodged with that application, as described further below.

*Prospectus*

ASIC does not have a formal checklist approach to the contents of a prospectus. Instead, a prospectus must contain all information that investors and their professional advisers would reasonably require for the purpose of making an informed assessment of:

The rights and liabilities attaching to the shares being offered.

The assets and liabilities, financial position and performance, profits and losses, and prospects of the company.

A prospectus must also specifically disclose:

The terms and conditions and expiry date of the offer.

The nature and extent of interests held by, and benefits given to, for example, directors, advisers, promoters and underwriters.

Information on the quotation of the shares.

The fact that the prospectus has been lodged with ASIC.

The prospectus must also be presented in a clear, concise and effective manner. ASIC Regulatory Guide 228 (RG 228) sets out the form and content requirements that issuers and their advisers should take into account in order to provide effective prospectus disclosure for Australian retail investors. Although that guide is not intended to be a checklist, given the extensive detail it contains, the guide is usually closely followed to minimize regulatory risk involving ASIC.

A prospectus may also incorporate by reference information that is contained in a document already lodged with ASIC.

The prospectus will include historical financial information and typically an investigating accountant's report. This report will generally include a review of the company's historical financial information, together with its financial statements. For issuers with an operating history, RG 228 states that a prospectus should generally include:

A consolidated audited statement of financial position for the most recent financial year (or audited or reviewed half year depending on the date of the prospectus), showing the major asset, liability and equity groups and a corresponding pro forma statement of financial position showing the effect of the IPO.

The following audited financial information for at least the three most recent financial years for companies seeking listing under the profit test (or two most recent financial years (subject to limited exceptions) for companies seeking listing under the assets test):

A consolidated income statement showing major revenues and expense items, and profit or loss, including earnings before interest and taxes and net profit after tax.

Other information that is material from the notes to those financial statements.

Any modified opinion by the auditor.

All events that have had a material effect on the company since the date of the most recent financial statements.

A warning that past performance is not a guide to future performance.

Often, a prospectus will also contain historical and forecast pro forma financial information to show the position and performance of the company, as if the business and structure of the company throughout the pro forma financial periods were the same as those of the company on completion of the IPO.

If the issuer is a start up with no operating history, it should include its most recent statement of financial position and pro forma statement or financial information showing the effect of the IPO.

A prospectus in Australia will often contain forecasts. ASIC's view is that a prospectus should only include prospective financial information if it is not misleading and there are objectively reasonable grounds for its inclusion. Under the Corporations Act 2001, if a prospectus contains a statement about a future matter and there are no reasonable grounds for making the statement, the statement is taken to be misleading. It is market practice for an investigating accountant to report on the forecast financial information and the assumptions underlying it, to demonstrate that the company has reasonable grounds for making the forecast. Start-ups or companies seeking to float with no track record should not include forecasts in their prospectuses.

Depending on the nature of its business, it may be necessary for a company to retain an independent expert, such as a technical expert, to provide an overview of the technical aspects of the company's business operations for inclusion in the prospectus. Such an expert's report is often included by a company in the resources or technology sector, where the company's business is untested.

In addition to meeting these general requirements, the ASX would expect the prospectus of a foreign company 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 shareholders under the laws of its home jurisdiction covering:

What types of transactions require share approval.

Whether shareholders have a right to request or requisition a meeting of shareholders.

Whether shareholders have a right to appoint proxies to attend and vote at meetings on their behalf.

How changes in the rights attaching to shares are regulated.

What rights do shareholders have to seek relief for oppressive conduct.

What rights do shareholders have to bring or intervene in legal proceedings on behalf of the company.

A concise summary of how the disclosure of substantial holdings and takeovers are regulated under the law of its home jurisdiction.

A summary of any taxes or duties payable in its place of incorporation, registration or establishment by an investor in relation to the acquisition, holding or disposal of securities in the company or, if there are no such taxes or duties, a statement to that effect.

If the company, its directors or others involved in the preparation of the prospectus become aware, after the prospectus is lodged with ASIC, that there is a misleading statement in the prospectus, that the prospectus omitted material information or that there has been a change in circumstances rendering the prospectus misleading or incomplete, then the company must correct the defect by preparing and lodging with ASIC either a supplementary prospectus (which is an "addendum" to be distributed with the original document) or a replacement prospectus (which is a new prospectus that has been updated or corrected).

In Australia, ASIC does not pre-vet, review or approve a prospectus before it is lodged, unlike many other jurisdictions. The prospectus must be lodged with ASIC and is subject to an "exposure period" of seven days, during which the company must make copies of the prospectus generally available to the public, preferably through a website. This gives the market and ASIC time to assess the prospectus. The company must not process any applications for shares during the exposure period.

ASIC may extend the exposure period by up to seven days, particularly where it appears to ASIC that the prospectus may be defective.

If ASIC's concerns cannot be satisfactorily resolved within the exposure period, ASIC may impose an interim stop order on the prospectus for up to 21 days. The company cannot offer, issue, sell or transfer shares under the prospectus whilst the order is in place. ASIC may lift the interim order if the company issues a supplementary or replacement prospectus that corrects any deficiencies. If not, ASIC may impose a final and permanent stop order on the prospectus.

*Financial information*

A company applying for an ASX Listing under the profits test must provide each of the following:

Audited accounts for the last three full financial years. If the company applies for admission less than 90 days after the end to its last financial year, unless the company has audited accounts for its latest full financial year, the accounts may be for the three years to the end of the previous financial year. The audit reports must be given to the ASX and must not be qualified in any way that goes to whether the company can continue as a going concern or has satisfied the profit levels required.

If the last full financial year for which accounts must be given to the ASX ended more than six months and 75 days before the company applies for admission, audited or reviewed accounts for the last half year (or longer period if available) from the end of the last full financial year, together with the audit report or review.

A company applying for an ASX Listing under the assets test must provide any accounts, together with any audit report or review:

For the last two full financial years (or shorter period if the ASX agrees).

If the last full financial year ended more than six months and 75 days before the company applied for admission, for the last half year (or longer period if available) from the end of the last full financial year. If the accounts have not been audited or reviewed, the company must inform the ASX.

A company seeking an ASX Listing and applying under either the profits test or assets test must also provide a reviewed pro forma balance sheet, and for foreign companies a review conducted by an overseas equivalent of a registered company auditor or by an independent accountant.

Financial information in the prospectus or otherwise given to the ASX must be in accordance with Australian Accounting Standards or other standards acceptable to the ASX. The ASX will accept International Financial Reporting Standards (IFRS) and the standards or GAAP applicable in Canada, Hong Kong, New Zealand, Singapore, South Africa, United Kingdom and United States of America.

Where a company wishes to use accounting standards or GAAP not accepted by the ASX, it must attach a statement reconciling that financial information to the equivalent financial information prepared using either Australian Accounting Standards or IFRS.

Similarly, the auditing standards used in auditing financial information provided to the ASX should be Australian auditing standards, International Standards on Auditing or other standards acceptable to the ASX, such as those applicable in Canada, Hong Kong, New Zealand, Singapore, South Africa, United Kingdom and United States of America.

*Listing application*

Under the ASX Listing Rules, the ASX has absolute discretion on admission and quotation decisions.  This is particularly relevant to international companies from emerging economies. If there are any concerns about a company's suitability for admission, it can apply to ASX for in-principle advice on the appropriateness of the company's structure and operations before undertaking the effort and expense of lodging an application for admission.

The company must submit a listing application to the ASX within seven days of lodging the prospectus with ASIC. The ASX will review the application and the prospectus to ensure compliance with the ASX listing rules. The ASX may seek additional information from the company, to ensure that sufficient information is available for investors to make informed decisions. Once the ASX has considered the listing application, the company will be advised in writing of the outcome. This will be in the form of resolutions containing:

The conditions that must be satisfied before the company is admitted to the official list, such as closing the offer, raising the minimum subscription amount, allotting and issuing shares and having sufficient shareholder spread.

The conditions that must be fulfilled before quotation can commence, such as the dispatch of holding statements, return of any refund money, the provision of a shareholder distribution schedule, a statement setting out the names of the top 20 shareholders and the provision of copies of restriction agreements for all escrowed shares.

*Typical process and indicative timetable for a listing of a foreign company as an ASX Listing*

[Link to Timetable](https://resourcehub.bakermckenzie.com/en/-/media/crossborder-listings-handbook/files/2022-update/2022-aus-sec-exchange--listing-process.pdf?sc_lang=en)

The documentation and process requirements described in this section do not vary from what would be expected of a domestic company seeking ASX Listing.

# Continuing obligations/periodic reporting

## Continuing obligations/periodic reporting

[Last updated: 1 January 2024, unless otherwise noted]

Companies listed on the ASX have a number of continuous disclosure and ongoing financial reporting obligations.

A foreign company admitted as an ASX Listing, must comply with all the ASX listing rules in the same way as an Australian company, irrespective of whether it is already listed on another stock exchange, unless it is granted a waiver of any such requirements by the ASX.

The extent to which the ASX may be prepared to grant such waivers will depend on factors such as:

Whether the corresponding requirement of the home stock exchange is consistent with the underlying policy of the relevant ASX listing rule.

The company track record in complying with the rules of its home stock exchange.

Whether the inconvenience of complying with the relevant ASX listing rules, in addition to the rules of its home stock exchange, outweighs any detriment to users of the ASX markets from not applying ASX's requirements.

A foreign company admitted as an ASX Foreign Exempt Listing must:

Continue to comply with the listing rules of its overseas home stock exchange.

Provide the ASX with copies of all information provided to that home exchange.

Comply with certain limited ASX listing rules, relating to transfers and registers of shares and certain procedural and administrative matters.

In addition, every foreign company listed on the ASX must appoint at least one person to be responsible for communication with the ASX in relation to ASX listing rule matters.

*Continuous disclosure*

Under the continuous disclosure requirements of the Corporations Act and ASX listing rules, once a company is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the company's shares, the company must immediately inform the ASX of that information. The requirement to immediately disclose material information should be satisfied if such information is provided to the ASX promptly and without delay. A reasonable person would be taken to expect information to have a material effect on the price or value of shares if the information would (or would be likely to) influence persons who commonly invest in shares in deciding whether or not to subscribe for, or buy or sell, the first mentioned shares.

However, the continuous disclosure obligation does not apply in respect of certain information if:

The information is confidential, and the ASX has not formed the view that the information has ceased to be confidential.

One or more of the following applies:

It would be a breach of a law to disclose the information.

The information concerns an incomplete proposal or negotiation.

The information comprises matters of supposition or is insufficiently definite to warrant disclosure.

The information is generated for the internal management purposes of the company.

The information is a trade secret.

A reasonable person would not expect the information to be disclosed.

Examples of the type of information that the ASX may require to be disclosed include:

A change in the company's financial forecast or expectations.

A transaction where the consideration payable or receivable exceeds 5% of the company's consolidated assets.

The giving or receiving of notice of intention to make a takeover.

A change in accounting policy or the credit rating of the company.

In addition to the continuous disclosure regime, there are a number of other specific disclosure requirements that companies admitted as ASX Listings must comply with. These include:

Immediately informing the ASX of the details of:

Any reorganization of its capital.

The issuance of shares.

The lodging of any prospectus or other disclosure document.

The establishment or amendment of a dividend or distribution plan.

Informing the ASX, in the time periods specified in the ASX listing rules, of a number of other specific events, including:

The forthcoming release of restricted shares and shares subject to voluntary escrow.

A change of chairperson, director, chief executive officer (or equivalent), chief financial officer (or equivalent), company secretary or auditor.

The outcome in respect of each resolution put to a meeting of shareholders.

The interests of a director of the company on the date the company is admitted to the official list and on the date the director is appointed, in addition to any changes to a director's interests and the date that a director ceases to be a director of the company.

The continuous disclosure obligation requires a foreign company that is already listed on an overseas exchange to give the ASX in English all material information that it gives to an overseas stock exchange or other regulator and that is available to the public. This would include, for example, quarterly reports that could contain material information.

*Financial statements*

A foreign company admitted as an ASX Listing must issue periodic financial reports. In summary, such a company must provide:

Statutory accounts and financial report for the half year (or equivalent if the foreign jurisdiction does not require a half-year report) as soon as they are available, and no later than two months from the end of the relevant period, provided at the same time as provided to ASIC or the relevant overseas corporate regulator.

A preliminary final annual report, as soon as available and no later than two months from the end of the relevant period.

Statutory accounts for the full year lodged with ASIC or the relevant overseas corporate regulator, at the same time as provided to ASIC or the relevant overseas corporate regulator.

The half-year report and the annual accounts report must be audited (or reviewed, in the case of the half yearly report) by the company's auditor.

There are additional ongoing reporting requirements for a mining company, including the provision of quarterly reports on its mining activities immediately as it is available for release (for example, when it has been properly compiled, verified and approved) and in any event within one month after the quarter end. A company that is admitted under the assets test on the basis of commitments to spend funds will generally be required to provide quarterly cash flow reports, within one month of the quarter end, for at least the first two years after listing. These quarterly accounts do not need to be audited or reviewed.

*Additional information to be provided*

A foreign company with an ASX Listing is required to include in each annual report:

A prominent statement about its place of incorporation or registration.

A statement that it is not subject to Chapters 6, 6A, 6B and 6C of the Corporations Act 2001 dealing with the acquisition of shares (i.e., substantial holdings and takeovers).

Any limitations on the acquisition of shares imposed by the jurisdiction in which it is incorporated or registered.

The ASX generally requires a foreign company with an ASX Listing to undertake to give information about ownership of its shares to the ASX for release to the market. The usual undertakings are to:

Inform the ASX as soon as the company is aware of a person becoming a substantial holder (within the meaning of the Corporations Act 2001), being a person who acquires a relevant interest in 5% or more of the company's shares.

Disclose any details of the substantial holding.

Inform the market of subsequent changes in the substantial holdings of which the company becomes aware.

*Other ASX requirements*

There also are a number of other ongoing requirements for ASX Listed companies. These include the requirement to obtain shareholder approval in certain circumstances, such as for:

The issuance of shares (or other securities convertible to shares) that would exceed 15% of the company's issued shares, or any issue of shares to directors, other than on a pro-rata basis or unless otherwise exempted. For companies that have a market capitalization of A$300 million (approximately US$204.36 million) or less and that are not included in the S&P/ASX 300 Index, this threshold can be increased by a further 10% for issues of shares for cash consideration to enable total issues of up to 25%, if annual shareholder approval is obtained at the company's AGM for that additional 10% capacity.

The acquisition from, or disposal to, a director or other related party of a material asset.

Disposal of the company's main undertaking.

*Insider trading*

The Corporations Act 2001 regulates insider trading of what are known as "Division 3 financial products." These include shares, derivatives, managed investment products, superannuation products (unless excluded by regulation) and any other financial products that can be traded on a financial market. For an offence to be committed:

A person (the Insider) must possess "inside information".

The Insider must know, or ought reasonably to know, that the relevant information is not generally available.

The Insider:

Must (or must enter into an agreement to) apply for, acquire or dispose of the relevant financial products.

Must procure another person to do so.

Must communicate the information to someone that the insider knows, or ought reasonably to know, would likely apply for, acquire or dispose of the relevant financial products or "tip" another person to trade in the financial products.

"Inside information" is defined to mean that the information is not generally available, and (were it to be generally available) it would, or would be likely to, influence persons who commonly acquire financial products in deciding whether to acquire or dispose of the relevant financial products.

Additionally, the insider trading laws provide that a company will be deemed to possess information that an officer of the company possesses and that came into their possession in the course of the officer's performance of duties as an officer, or that the officer of the company ought to reasonably know because they are an officer. An officer of the company is a director or secretary of the company and any other person who participates in making decisions that affect the whole or a substantial part of the business of the company or who has the capacity to affect significantly the company's financial standing.

A breach of these prohibitions carries both criminal and civil consequences, both for those directly involved and for persons who aid or abet any such activity.

There are various exceptions to the prohibitions, and also certain defenses to criminal or civil prosecutions.

A company will not contravene the insider trading laws merely because it is aware of its own intention to enter into (or because it proposes to enter into) a transaction or agreement in relation to a financial product issued by another.

The requirements described in this section 4 do not vary from what would be expected of a domestic company.

# Corporate governance

## Corporate governance

[Last updated: 1 January 2024, unless otherwise noted]

There are no specific corporate governance requirements for a foreign company applying for ASX Foreign Exempt Listing.

All other companies listed on the ASX must comply with the corporate governance requirements of the ASX listing rules and the Corporate Governance Principles and Recommendations of the ASX Corporate Governance Council. If the company does not intend to follow all the recommendations on its admission to the official list, the company must identify the recommendations that will not be followed and give reasons for not following them.

The Corporate Governance Principles and Recommendations deal with matters such as:

Board composition, including recommending that the Chairperson is an independent non-executive director and that the Board comprise a majority of independent non-executive directors.

Remuneration and performance reviews.

Audit and risk management.

Share trading policies.

Communications with shareholders.

Codes of conduct.

Prior to admission, a company must provide the ASX with copies of the various Board charters, corporate governance and share trading policies and codes of conduct, which address these recommendations.

A company that will be included in the S&P All Ordinaries Index must have an audit committee. The ASX listing rules require that any company included in the S&P/ASX 300 Index at the beginning of its financial year, comply with the ASX Corporate Governance Principles in relation to the composition, operation and responsibility of the audit committee, and a company must also have a remuneration committee comprised solely of non-executive directors.

A company must include in its annual report or on its website, a statement disclosing the extent to which the company has followed the recommendations set by the ASX Corporate Governance Council during the reporting period. If the company has not followed all of the recommendations, the company must identify those recommendations that have not been followed and give reasons for not following them. If a recommendation has been followed for only part of the period, the company must state the period during which it was followed.

# Specific situations

## Specific situations

[Last updated: 1 January 2024, unless otherwise noted]

There are no additional requirements, or any changes in the normal requirements, that apply to very large multinational companies or smaller companies.

Extended reporting requirements apply to mining companies, as discussed above under section 4.

Other than an ASX Foreign Exempt Listing, there are no situations in which a "fast track" or expedited listing can be procured.

# Presence in the jurisdiction

## Presence in the jurisdiction

[Last updated: 1 January 2024, unless otherwise noted]

Under the ASX Listing Rules, there is no general requirement that listed foreign companies maintain a presence in Australia, except that:

The ASX requires the company to have an Australian resident representative to accept responsibility for prospectuses issued by the company and for ongoing compliance with the ASX listing rules.

The company must appoint a person to give the ASX documents and reports, lodge announcements, liaise with shareholders, the public and the media, and generally represent the company in Australia.

For a foreign company to be admitted as an ASX Listing, it must be registered as a foreign company under the Corporations Act 2001.

# Fees

## Fees

[Last updated: 1 January 2024, unless otherwise noted]

There is no difference between fees payable for primary and secondary listings. Most companies listed on the ASX are subject to the following three types of equity listing fees:

Initial listing fees, which are payable at the time of listing the company.

Annual listing fees, which are payable annually by the company to remain listed.

Subsequent listing fees, which are payable if the company raises additional capital once listed.

*Initial listing fee*. The ASX charges fees on admission by using a formula based on the market capitalization of the company. The value of the shares is based on the issue price or sale price of shares under the prospectus.

For foreign companies admitted as ASX Listings where there is no issue price or sale price, the value of the shares for these purposes is to be the higher of A$0.20 (approximately US$0.14) and the amount set by ASX. For Foreign Exempt Listings, if there is no issue or sale price, the value of the shares for which quotation is sought will be determined by the ASX by reference to the closing price of the company's shares on its overseas home exchange on the last trading day before quotation on the ASX commences. The minimum listing fee is A$47,700 (approximately US$32,493) (excluding GST).

*Annual listing fee*. The annual fee is based on the market capitalization of the company, based on the closing price of the shares at 31 May multiplied by the number of shares quoted at the close of trading on that date. For ASX Foreign Exempt Listings, the annual fee is calculated based on the closing price of the quoted shares at 31 May multiplied by the number of quoted shares at the close of trading. The minimum annual listing fee for equity shares is A$14,989 (approximately US$10,211) (excluding GST).

*Subsequent listing fees*. If a company seeks quotation of additional equity shares, it must pay a subsequent listing fee according to the formula provided by the ASX, which is based on the value of the shares for which quotation is sought.

# Additional Information

## Additional Information

[Last updated: 1 January 2024, unless otherwise noted]

All information and materials submitted to the ASX or disclosed to the market in Australia must be in the English language.

***Key differences in requirements for domestic companies***

Generally, there is no distinction between the listing requirements and ongoing obligations under the ASX listing rules for an Australian or foreign company, unless the foreign company is already listed on another exchange and qualifies for an ASX Foreign Exempt Listing or the foreign company is able to obtain waivers of specific listing rule requirements from ASX.

Further details regarding the IPO and ASX listing process in Australia and the ongoing obligations of ASX-listed companies is available in the Australian offices' *IPO Guide, Australian IPO Guide for US Companies* and *Public Listed Companies Guide* publications.

# Contacts

## Contacts within Baker McKenzie

Frank Castiglia in the Sydney office, Richard Lustig in the Melbourne office and Derek Pocock in the Brisbane office are the most appropriate contacts within Baker McKenzie for inquiries about prospective listings on the ASX.

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