



World Stock Exchanges

A Practical Guide, Second Edition

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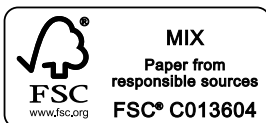


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1. Introduction

The Australian Securities Exchange (ASX) is Australia's primary stock exchange, hosting over 2,200¹ listed entities across a range of industry sectors and geographical locations.

A number of smaller securities exchanges operate in Australia, but over 80% of the publicly traded securities in Australia are traded via the ASX.

The ASX has a total market capitalisation of around A\$1.9 trillion, making it one of the world's top 10 listed exchange groups by market capitalisation.²

2. The regulatory framework

2.1 Legislative framework

Financial markets in Australia are governed by the Corporations Act 2001 (Cth) (the 2001 Act).³ The 2001 Act regulates the requirements for operating a financial market in Australia, and for listing on such a financial market. It requires the operator of a financial market in Australia either to hold an Australian market licence or to obtain a ministerial exemption from the requirement to hold one.

Penalties apply where a person falsely holds out that he or she has an Australian market licence, that his or her operation of a financial market is authorised by an Australian market licence (or is exempt from the requirement to hold one) or that the person is a participant in a licensed market.

The key obligations imposed on the ASX as the holder of an Australian market licence⁴ include:

- so far as reasonably practicable, to do all things necessary to ensure that the market is a fair, orderly and transparent market;
- to have adequate arrangements in place for operating the market, including handling conflicts and monitoring and enforcing compliance with the market's operating rules;
- to have sufficient resources (financial, technological and human) to operate the market properly;
- to notify the Australian Securities and Investments Commission (ASIC)⁵ of

1 Market metrics are as at 31 December 2017.

2 Market metrics are as at 31 December 2017.

3 An act of the Commonwealth of Australia, ie, federal legislation.

4 Division 3 of Part 7.2 of the 2001 Act.

5 See 2.2(b) below.

various matters regarding licence holders, market participants and entities listed on the market;

- to assist ASIC in the performance of ASIC's functions; and
- to establish operating rules dealing with the conduct of the market, market participants and companies listed on the market, and the operation of the market's settlement and clearing facilities.

ASIC has the power to vary, suspend or cancel market licences in prescribed circumstances.

The 2001 Act also sets out provisions for the content, legal effect and enforcement of the listing rules of the ASX.⁶

2.2 Regulatory bodies

The activities of both the ASX and companies listed on ASX are principally regulated by the ASX, ASIC and the Takeovers Panel.

(a) *The ASX*

ASX Limited is the company that holds the market licence for the ASX. It is responsible for operating and governing participation on this exchange. It is also responsible for monitoring and enforcing compliance with the ASX's rules.

ASX Limited is itself a public company listed on the ASX (ie, it is not a government agency). Its rules for conduct of the exchange are set out in the ASX Listing Rules and the ASX Operating Rules, which are legally enforceable:

- under the 2001 Act; and
- as a contract between the ASX and each participant, and between each participant, under which each of those persons agrees to observe the operating rules.

The ASX's Listing Rules set out the requirements for a company or managed investment scheme to be admitted to the official list of the ASX, and for its securities to be granted official quotation.⁷ An entity must submit an application to be granted admission to the official list, setting out the entity's compliance with those requirements. Before lodging an application, it is common practice to brief the ASX regarding the entity, its operations and any initial issues regarding compliance with the ASX's admission requirements. In certain circumstances, the ASX may grant a 'waiver' of one or more of its listing rules. Early consultation with the ASX offers the best prospects of a successful listing. The ASX will appoint a listing officer to the entity, who will assist the entity and its advisers throughout the listing process.

The ASX's Operating Rules set out the requirements for market participants (those involved in trading on the ASX) and for conducting and settling trades on the ASX.

6 See 2.2(a) below.

7 Those requirements are set out in more detail at 4 below.

(b) ASIC

The Australian Securities and Investments Commission (ASIC) is a statutory body⁸ and Australia's corporate, markets and financial services regulator. ASIC administers the 2001 Act and regulations made under it and is the regulatory body responsible⁹ for supervising trading on Australian licensed financial markets.

Part 7.2A of the 2001 Act establishes a rule-making regime whereby ASIC is able to make market integrity rules dealing with activities and conduct in relation to licensed financial markets, including participants in the relevant market. ASIC is responsible for supervising trading activities and the conduct of business by market participants.

ASIC may grant relief from the obligation to comply with particular provisions of its market integrity rules. This relief can be general (known as class order relief, it applies to all eligible entities and does not require any application to be made in order to rely on that relief) or specific to a particular case of category (where the relief may be given to a particular entity, in response to an application). ASIC also issues guidance notes and information statements in relation to its policy in applying and enforcing its market integrity rules and the 2001 Act.

ASIC's regulatory role extends to the supervision of entities seeking listing on the ASX. An entity seeking admission to the ASX should consider the requirements of the 2001 Act and ASIC's market integrity rules and, if it is unable to comply with any of those requirements, seek appropriate relief from ASIC.

(c) The Takeovers Panel

The Takeovers Panel (the Panel) is also a statutory body¹⁰ and regulates transactions affecting the control of Australian public companies.

The Panel has the power to declare circumstances in relation to the affairs of a company to be unacceptable. It is concerned with ensuring that the aims of Chapter 6 of the 2001 Act are met. These aims are:

- that the acquisition of control of voting power takes place in an efficient, competitive and informed market;
- that holders of shares or interests in an entity, and the directors of the entity, have sufficient information about a proposal to acquire a substantial interest in it;
- that all holders of interests in a class have a reasonable and equal opportunity to participate in the benefits of any such proposal; and
- that an appropriate procedure is followed as a preliminary to compulsory acquisition.

Importantly, the Panel may make a declaration of unacceptable circumstances regardless of whether the circumstances constitute a contravention of the 2001 Act.¹¹ If shareholders (together with their associates) will hold voting power of more than

8 Established under the Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act).
 9 Pursuant to the Corporations Amendment (Financial Market Supervision) Act 2010 (Cth).
 10 Established under the ASIC Act and deriving powers from both the ASIC Act and the 2001 Act.
 11 Section 657A(1) of the 2001 Act.

20%, consideration should be given to guidance from both ASIC and the Takeovers Panel regarding what constitute acceptable circumstances.

3. Types of entity eligible for listing

Australian companies, foreign companies and trusts may list on the ASX.

3.1 Australian companies

The most common entity listed on the ASX is a public company incorporated in Australia. An Australian proprietary company cannot list on the ASX, as the 2001 Act provides that such a company must not have more than 50 shareholders and must not issue shares pursuant to a disclosure document (eg, a prospectus). These restrictions mean that a proprietary company cannot meet the ASX's requirements for listing. Public companies are also subject to higher reporting and compliance obligations than proprietary companies. A proprietary company seeking to list on the ASX must first be converted into a public company.

3.2 Foreign companies

Companies incorporated outside Australia may list on the ASX either under the general admission tests¹² or as a foreign exempt listing. A foreign company seeking admission to the ASX must be registered as carrying on business in Australia under the 2001 Act.

A foreign exempt listing is for an entity that has its primary listing on another securities exchange and seeks a secondary listing on the ASX. The admission requirements for a 'foreign exempt listing' are significantly higher than the general admission requirements¹³ and include a requirement that the entity has either:

- an operating profit before income tax for each of the last three full financial years of at least A\$200 million; or
- net tangible assets of at least A\$2 billion or a market capitalisation of at least A\$2 billion;

An entity admitted as a foreign exempt listing entity must comply with the rules of its primary exchange and is exempt from complying with most of the ASX's Listing Rules.

3.3 Trusts

If the entity seeking admission is a trust, it must either:

- be a registered managed investment scheme; or
- be exempted by ASIC from the requirement to register and operate through a responsible entity that is either an Australian company or a foreign company registered as carrying on business in Australia.

¹² See 4 below.

¹³ The exception is an entity that is incorporated in New Zealand and has its primary listing on the New Zealand Stock Exchange; such an entity is only required to satisfy the ASX's general admission requirements.

No person must be under an obligation to buy back units in the trust or allow a unit holder to withdraw from the trust.

4. Eligibility requirements

Chapters 1 and 2 of the ASX Listing Rules set out a list of conditions that must be met, to the ASX's satisfaction, in order for an entity to be admitted to the official list. These include 20 general conditions for admission to the official list and six conditions regarding quotation of the entity's main class of securities. The key conditions include the following.

4.1 Financial criteria

- The ASX's primary requirement is that the entity is financially suitable for listing on the exchange. To do so, the entity must meet either the 'profit test' or the 'asset test'.

To meet the profit test, an entity must:

- have aggregated profit from continuing operations of at least A\$1 million over the last three full financial years, and at least A\$500,000 consolidated profit for the last 12 months (up to a date no more than two months before the date the entity applied for admission); and
- be a going concern and must have had the same main business activity during the last three full financial years.

To meet the asset test, an entity must:

- have net tangible assets of at least A\$4 million after deducting the costs of fund raising, or a market capitalisation of at least A\$15 million;
 - after raising any funds, have less than 50% of its tangible assets as cash or, if more than 50% of its tangible assets are cash, then the entity must have commitments (detailed in an expenditure programme) to spend at least half of its cash; and
 - have working capital of at least A\$1.5 million, or would have if the entity's budgeted revenue (after budgeted costs) for the first full financial year after listing were included in the working capital.
- The entity must give the ASX audited accounts for the last three full financial years to satisfy the profit test. To satisfy the asset test, the entity must provide audited accounts for two full financial years, plus audited or reviewed accounts for the last half year (if the last full financial year ended more than eight months previously), and a reviewed *pro forma* statement of financial position. However, ASIC will generally still require an entity to provide audited accounts for the last three full financial years if available.
 - To satisfy the asset test, if the entity acquired in the past 12 months (or is proposing to acquire) another entity or business that is significant in connection with its admission, the entity must also give the ASX the same financial information for the other entity or business.

4.2 Shareholder criteria (see also 9 below)

- The entity must have a 'free float' of at least 20% of its main listed class of

securities at the time of its admission. The expression 'free float' means the percentage of the main class of securities that are not restricted or subject to voluntary escrow and are held by non-affiliated security holders. The expression 'non-affiliated security holder' means a security holder who is not a related party, associate of a related party or someone whom the ASX considers should be treated as affiliated with the entity.

- The entity must have at least 300 non-affiliated security holders, each of whom holds a parcel of the main class of securities worth at least A\$2,000. These securities must not be restricted securities or subject to voluntary escrow.

See also 8 below for further information about shareholders.

4.3 Minimum securities price

- Shares
The issue price or sale price of all the securities for which the entity seeks quotation (except options) must be at least 20 cents in cash.
- Options
If the entity has options on issue, the exercise price for each underlying security must be at least 20 cents in cash.

4.4 Restriction on 'classified assets'

If, in the two years prior to admission, the entity acquired a 'classified asset' from a related party, the consideration must have comprised restricted securities, unless either the consideration was reimbursement of expenditure incurred in developing the classified asset, or another exemption applies.

A 'classified asset' is an interest in:

- a mining exploration area or an oil and gas exploration area or similar tenement or interest;
- intangible property that is substantially speculative or unproven, or has not been profitably exploited for at least three years, and which entitles the entity to develop, manufacture, market or distribute the property;
- an asset which, in the ASX's opinion, cannot readily be valued; or
- an entity, the substantial proportion of the assets of which (held either directly or through a controlled entity) is property of the three types referred to above.

4.5 Required documents

- Prospectus
The entity must issue and lodge a prospectus or product disclosure statement (PDS) with ASIC. The ASX may agree to accept an information statement *in lieu* of a prospectus in limited circumstances, including:
 - where the entity has no need to undertake an offer of securities in connection with the listing (either to raise capital or to meet the ASX's minimum spread requirement); or
 - where the entity is a government-owned entity that is being privatised

and is making an offer of securities that is not subject to prospectus or PDS requirements.

- **Governing documents:**

The entity must have the following governing documents:

- a constitution that is consistent with the ASX Listing Rules;
- a corporate governance statement disclosing its compliance with the recommendations set by the ASX Corporate Governance Council; and
- a trading policy that complies with the ASX Listing Rules.

See 8 below for further information about the documents required for listing.

4.6 Committees

- **Audit committee**

If the entity will be included in the S&P All Ordinaries Index¹⁴ on admission to the official list, it must have an audit committee. If the entity will be included in the S&P/ASX 300 Index,¹⁵ it must, on admission to the official list, also comply with the recommendations set by the ASX Corporate Governance Council in relation to composition and operation of the audit committee.

- **Remuneration committee**

If the entity will be included in the S&P/ASX 200 Index,¹⁶ it must, on admission to the official list, have a remuneration committee comprised solely of non-executive directors.

4.7 Directors

The entity must satisfy the ASX that each of its directors or proposed directors at the date of the listing is of good reputation and character, which will require satisfactory police and bankruptcy checks from each director or proposed director.

4.8 Foreign entity

If the entity is a foreign company, it must register under the 2001 Act as a foreign company carrying on business in Australia.

4.9 Partly paid securities

If the securities to be quoted are partly paid securities, there must be a defined call programme setting out the date and amount of each proposed call. The call program for a mining entity or an oil and gas entity must require payment in full within two years after the issue date. This condition does not apply to a 'no liability' company.¹⁷

14 This index comprises the 500 largest companies listed on the ASX, by market capitalisation.

15 This index comprises up to 300 of the largest companies listed on the ASX, by float-adjusted market capitalisation.

16 This index comprises the 200 largest companies listed on the ASX, by float-adjusted market capitalisation.

17 A company may be registered as a no liability company if it has a share capital, its constitution states that its sole objects are mining purposes and it has no contractual right to recover calls made on its shares from a shareholder who fails to pay them. Note that this is not the same as a 'limited liability' company.

5. Flotation costs

5.1 Admission fees

Companies seeking admission to the ASX must pay a listing fee, which is calculated on the basis of the value of the securities that are being quoted on the exchange. The table below outlines the sliding scale for the ASX’s initial listing fee as at 1 July 2018:

Value of securities for which quotation is being sought	Fee (payable on application for admission)
Up to A\$3 million	A\$36,750
A\$3,000,001 to A\$10 million	A\$36,750 plus 0.525000% on excess over A\$3 million
A\$10,000,001 to A\$50 million	A\$73,500 plus 0.105000% on excess over A\$10 million
A\$50,000,001 to A100 million	A\$115,000 plus 0.073500% on excess over A\$50 million
A100,000,001 to A\$500 million	A\$152,250 plus 0.044625% on excess over A\$100 million
A\$500,000,001 to A\$1 billion	A\$330,750 plus 0.039900% on excess over A\$500 million
Over A\$1 billion	A\$530,250 plus 0.033390% on excess over A\$1 billion

The ASX charges a fee of A\$15,000 to review an application for ASX listing, which will be offset against the entity’s initial listing fee if the listing proceeds.

5.2 Annual fees

Entities listed on the ASX are charged an annual fee, which is calculated based on the value of the entity’s securities quoted on the exchange. The table below outlines the sliding scale for the ASX’s annual fee as at 1 July 2018:

Value of quoted securities	Fee (payable on application for admission)
Up to A\$3 million	A\$13,864
A\$3,000,001 to A\$10 million	A\$13,864 plus 0.17873950% on excess over A\$3 million
A\$10,000,001 to A\$100 million	A\$26,376 plus 0.02069475% on excess over A\$10 million
A\$100,000,001 to A\$1 billion	A\$45,001 plus 0.00418200% on excess over A\$100 million
Over A\$1 billion to \$10 billion	A\$82,639 plus 0.00139400% on excess over A\$1 billion
Over A\$10 billion	A\$208,099 plus 0.00034850% on excess over A\$10 billion (capped at A\$450,000)

An entity seeking admission to the ASX during the current financial year will be required to pay a *pro rata* annual fee for the remainder of that year.

5.3 Additional fees

The ASX charges additional fees for various activities, including review of certain specified documents, provision of certain in principle advice and review of other documents (including applications for waiver of the ASX's Listing Rules) where the ASX estimates that the work will take more than 10 hours to process.

5.4 Costs of broker/lead manager

The costs of a broker or lead manager will vary depending on a number of factors, including the size of the entity being listed, the size of any capital raise being undertaken as part of the listing and the extent of advice and services required of the adviser. A lead manager, who will assist with raising funds in connection with the listing, may typically charge between 2% and 5% of the funds being raised. If a separate underwriter is appointed, his or her fees may range between 3% and 5% of the amount underwritten.

5.5 Costs of lawyers/financial advisers

The costs of legal and financial advisers will also vary, depending on the same factors as those applicable to brokers/lead managers (see 5.4 above) and the complexity of the listing. Legal costs may be in the range of A\$70,000 to A\$500,000, while the costs of financial advisers (including an investigating accountant's report) may be in a similar range.

5.6 Other costs

The admission process will involve additional costs, including the design and printing of documentation, share registry costs and ASIC fees. These will vary on a case by case basis.

6. Professional advisers

6.1 Sponsor/nominated adviser

The ASX does not have a requirement for entities to appoint a sponsor or nominated adviser.

6.2 Other advisers

An entity seeking admission to the ASX will require advice from a number of specialists, including the following.

- **Corporate finance adviser/investment bank**
A corporate adviser will perform the services commonly associated with a sponsor or nominated adviser in managing the listing process. Depending on the existing expertise within the entity, these services may include strategic advice on the timing, structure and valuation for the listing, participating in the due diligence process, liaising with regulatory bodies and marketing the listing.
- **Underwriter**
Where the entity is raising capital as part of its listing, an underwriter may be appointed. The underwriter will commit to subscribing for a minimum level of securities to ensure the entity's funding requirements are met and the ASX's listing conditions can be satisfied. In some cases, the corporate finance advisers/investment bank may also fulfil the role of underwriter.
- **Lawyer**
The entity's lawyers will be responsible for advising on the structure of the entity, conducting due diligence, assisting with the preparation of the admission application and the prospectus, liaising with the ASX and ASIC and advising on ancillary documents or issues in connection with the listing.
- **Investigating accountant**
The investigating accountant will assist with conducting financial due diligence, reviewing historical and forecast financial information to be provided in the prospectus and advising generally on accounting issues in connection with the listing. The investigating accountant will provide a report for inclusion in the prospectus.
- **Technical expert**
Depending on the nature of its business, an entity may also engage a technical expert to report on aspects of the business or underlying assets. These may include geological, intellectual property or industry reports.
- **Securities registrar**
The securities registrar will assist with administering the entity's securities registry both during and after the listing, including processing applications for the initial public offering (IPO), managing the entity's securities registry and managing logistics for security holder communications.

7. Flotation process and timetable

7.1 Sample timetable

The process of listing an entity on the ASX, from the decision to list to the allotment of securities, typically takes between five and nine months. However, there are a number of variables that can impact on this timeframe, such as the quality of the application for admission and associated documentation or the complexity of the entity seeking to list; as such, the process can take anywhere from three months to two years.

A sample timetable for the listing process is detailed below.

Timeframe	Task
Weeks 1–3	<p>Establish company structure</p> <p>Company to brief advisers (lawyers, auditors, accountants and independent experts)</p> <p>Consider board structure and senior management</p> <p>Appoint board members</p> <p>Consider and appoint lead manager/underwriter (if applicable)</p>
Weeks 2–10	<p>Due diligence process</p> <p>Form due diligence committee</p> <p>Hold due diligence meetings, conduct due diligence investigations and complete due diligence questionnaires</p> <p>Prepare historical financial statements and accountant's reports, including independent accountant's report and forecasts/projections</p> <p>Due diligence reports from the lawyer and due diligence committee</p>
Weeks 3–11	<p>Drafting key documents</p> <p>Begin drafting prospectus and investor presentation</p> <p>Draft ancillary documents as applicable – eg, voluntary escrow deeds, underwriting agreement, director deeds of indemnity, access and insurance</p> <p>Finalise corporate governance policy and share trading policy</p> <p>Organise director and officer liability and prospectus liability cover</p> <p>Apply for any necessary ASX/ASIC waivers, declarations, relief etc</p>

continued on next page

Timeframe	Task
Weeks 10–12	Pre-lodgement marketing Secure printers and appoint share registrar Commence institutional marketing/roadshows Verification of prospectus
Weeks 12–13	Lodge prospectus with ASIC ASIC exposure period Printing and dispatch of prospectus
Weeks 12–17	Lodge listing application with ASX Prospectus to be released on company's website
Weeks 14–18	Retail marketing and offer period Offer opens Retail investor marketing/roadshows Media releases
Weeks 19–20	Issue closes Allotment of shares Approval for admission to official list of ASX and quotation of shares Announcement and press releases Trading commences on ASX

7.2 The marketing process

The 2001 Act imposes strict rules concerning the advertising of an offer of securities prior to the entity lodging a prospectus with ASIC. Consequently, the marketing process is split into two phases: pre-lodgement and post-lodgement. The first phase focuses on institutional (and sophisticated) investors and brokers and the second phase focuses on retail investors.

During the first phase, the entity will present information to institutional investors who hold an Australian financial services licence. This process can occur in a number of different forms, such as one on one meetings, seminars or roadshows.

The entity is also allowed to publish notices prior to lodgement stating that a prospectus will soon be released, where it will be available, that an application form is included in or attached to it and stipulating the securities being offered.

A pathfinder prospectus can be circulated during the first phase to those who are defined under the 2001 Act as “sophisticated investors” and “professional investors”. The use of a pathfinder prospectus is optional, but can often reduce the timetable set out at 7.1 above, in that it can fast track approval of the final prospectus and the entity's listing application with the ASX. A pathfinder prospectus is used to settle the

contents of the prospectus and facilitate the pricing of the relevant securities, but does not seek subscriptions.

Marketing to retail investors can begin following the lodgement of the prospectus and the completion of the exposure period. The scale of marketing will depend on the size of the float and can range from brokers merely contacting their private clients to newspaper advertisements and brochures.

The marketing process can be integral to the success of the float and is often coordinated by the underwriter.

8. Required documentation

In applying for admission to the ASX official list, an entity will be required to submit an admission application and accompanying documents, including a copy of the prospectus that has been lodged with ASIC. There is also additional documentation that does not need to be lodged with ASIC or the ASX, but which the entity needs to have prepared prior to lodging its application.

Appropriate care and due diligence must be taken in preparing this information, as the 2001 Act establishes a number of criminal offences relating to the provision of misleading or false information to investors or the ASX in relation to an application for admission.

8.1 Application/pre-admission documentation

The admission application comprises:

- the ASX Listing Application and Agreement;
- the Information Form and Checklist and the details and documents referred to within it;
- a completed signed Electronic Lodgement Agreement;
- a copy of the prospectus as lodged with ASIC; and
- a cheque payable to the ASX for anticipated listing fees of the entity.

The Information Form and Checklist serves as a checklist for entities to ensure they are complying with the ASX's admission requirements and to assist the ASX in navigating the supporting documentation for the admission application. There are a number of annexures to this checklist that will be relevant, depending on the nature of the industry in which the entity operates.

The entity must lodge its application for admission within seven days of lodging its prospectus with ASIC. The securities for quotation must be admitted on the ASX within three months of the date of the entity lodging its prospectus. This period can be 'refreshed' by the release of a supplementary prospectus in the prescribed form.

8.2 Post-admission documentation

A company will need to release a number of documents to the market once it is admitted to the ASX (but prior to the commencement of quotation) to ensure potential investors are adequately informed. These documents are uploaded to the ASX Market Announcements Platform as part of the pre-quotation disclosure process and will typically include:

- the Listing Application and Agreement and the Information Form and Checklist referred to at 8.1 above;
- the entity's constitution (which may need to be amended to ensure it is compliant with the Listing Rules);
- a statement setting out the entity's largest 20 security-holders in each class of securities to be quoted as well as the distribution schedule of the numbers of holders in each class;
- any financial statements provided to the ASX; and
- additional information about the entity, such as its corporate governance statement, trading policy and information about executive employment contracts (if this information is not included in the prospectus).

The ASX may require additional documentation be provided by a company or additional information be disclosed to the market.

8.3 Prospectus

Chapter 6D of the 2001 Act governs when and to what extent disclosure to investors is required in relation to offers of securities. As such, the adequacy of any prospectus is determined by ASIC.

A prospectus is most commonly used in connection with an application for admission to the ASX and is the more substantial form of disclosure document. A prospectus should be directed towards retail investors and their professional advisers, to provide them the opportunity to make an informed investment decision in relation to the securities on offer.

Both ASIC and section 715A of the 2001 Act require a prospectus to be drafted in a manner that is "clear, concise and effective" in regard to both presentation and language used. Tables and diagrams can be used and the language should be plain, highlight key information and be logically ordered. ASIC may issue a stop order if this section is contravened. A stop order may be issued on an interim or final basis and prohibits the entity from offering or issuing securities under the prospectus for the duration of the order.

A prospectus must provide an overview of the relevant investment at the beginning of the document, highlighting key information in a way that balances both the benefits and the risks. And must include cross-references to more detailed information that is contained in the later sections of the document.

The document should also include the following information pertinent to the entity:

- an explanation of its business model;
- its financial position and performance;
- its prospects;
- the risks associated with it and with the investment; and
- details of the offer, such as the effect it will have on the entity, the proposed use of funds raised and the terms and conditions of the offer.

Details about key management personnel and directors, highlighting their

interests in the entity and any benefits they receive, should also be included. Any relevant industry codes or guidance that apply should also be noted.

8.4 Other key documentation

In preparing for admission to the ASX, an entity will need to ensure its corporate structure and business plan are compliant with what is expected of a listed entity. As part of this process, the entity will need to undergo significant due diligence procedures and enquiries. A due diligence committee will need to be formed and will need to ensure a number of due diligence reports are produced, such as:

- a legal due diligence report;
- a financial due diligence report; and
- the report of the due diligence committee itself.

Directors and managers will also be required to fill out questionnaires addressing governance of the entity and past business practices, including anything that may affect its future success. In addition to the legal due diligence report, the entity's lawyers will also need to prepare verification notes that verify the statements of fact and opinion contained within the prospectus, as well as any investor presentations or marketing materials.

Audited financial information will need to be prepared in addition to the financial due diligence report. Much of this information will be collated in preparation for the relevant financial disclosure that is required in the prospectus.¹⁸ The board will also prepare their own memorandum on the financial reporting procedures and working capital, in reliance on an accountant's working capital report.

9. Shareholders

9.1 Minimum shareholder spread

To ensure that there is appropriate investor interest in the entity seeking admission to the official list, the ASX imposes what is referred to as a "minimum spread requirement". In order to meet this requirement, the entity seeking to be listed must have at least 300 non-affiliated shareholders, each of whom holds a parcel of shares with a value of no less than A\$2,000 (based on the issue price of those shares). This requirement excludes shareholders who are related parties, such as controllers, relatives and directors.

There is no strict requirement for a listed entity to have a minimum number of Australian-resident shareholders at the time of its admission. However, the ASX advises that the entity should have a reasonable number of Australian-resident shareholders with significant shareholding to ensure local interest and liquidity. In some cases, the ASX will exercise its discretion under the ASX Listing Rules and require a minimum number of Australian-resident security holders as a condition of the entity's admission.

18 See section 10 below for further details.

The ASX has the power to suspend trading in an entity's securities if it suspects the entity has been admitted to the official list without having reached the minimum spread requirement. In addition, the ASX will not include shareholding for minimum spread purposes if the spread has been achieved through artificial means. The expression 'artificial means' includes securities that have been given away, or are offered under non-recourse loans or are owned using a combination of nominee and company names.

9.2 Substantial shareholding

Any shareholder must provide notification when he or she has, or ceases to have, a substantial holding in the securities of a listed entity. Notification is also required when there is a movement of at least 1% in the shareholder's substantial shareholding.

The 2001 Act defines a person as having a substantial holding of shares where the voting power under the control of a person or his or her associates is more than 5% of the total voting power in the company. Associates may include a director or company secretary of that entity or a related body corporate and its corporate officers.

The objective behind the identification of substantial shareholdings is to inform market participants of substantial blocks of voting shares in any listed entity.

9.3 Public float (free float)

The public float in an entity provides potential investors with an indicator of the securities in that entity's volatility. Stocks with small public float tend to be more volatile. This is because when there is major trading news, only a limited number of shares can be bought or sold.

An entity seeking official quotation on the ASX must, at the time of admission, ensure that it has a public float of not less than 20%. The 'free float' is the percentage of the entity's main class of securities that are not restricted, such as shares subject to either voluntary or ASX-imposed escrow or those held by shareholders who are not related parties, or associates of related parties (non-affiliated shareholders). Securities held by, or for, an employee incentive plan are also not regarded by the ASX as forming part of an entity's free float.

9.4 Lock-in (restricted securities)

Restricted securities are securities that are issued before (and in some cases after) admission to the ASX to persons falling within the definitions of seed capitalist, vendor, promoter, professional or consultant or participant in an employee incentive scheme belonging to the entity.

Shares classified as restricted securities may not be dealt with for a specified time (referred to as the restriction period or escrow period). When shares are placed in escrow, the transfer of effective ownership of them is prevented. The delay allows the market price of the entity's securities to adjust before the vendor receives full consideration for his or her shareholding. The intended result is a sharing of the business risk between the vendor of the entity's securities and market participants.

Depending on whether the person is a related party of the entity or a promoter, this period ranges between 12 and 24 months.

The ASX has discretion to provide an entity with relief from escrow for securities that would otherwise be caught under the definition of restricted securities. These include circumstances involving donations to charities and where an entity may have many unrelated security holders with small holdings.

Where an entity has issued certificates for the restricted securities, a certificate may be lodged with a bank or a recognised trustee. The bank or trustee then provides an undertaking to the ASX not to release the certificates without ASX consent. Alternatively, where the restricted securities are uncertificated, the registry of the entity is required to provide an undertaking to the ASX that it will apply a holding lock so as to prevent any trade movement. Any release of this holding lock is again subject to consent of the ASX. ASX consents associated with certificates or sub-registration are usually only provided at the conclusion of the escrow period. The ASX may consent to an earlier release, for example, in the event of securities affected by a deceased estate.

10. Financial information

10.1 Accounting standards

Entities seeking admission to the ASX must prepare financial statements in accordance with the Australian Accounting Standards as set by the Australian Accounting Standards Board (AASB)¹⁹ or other standards acceptable to the ASX.

The ASX will accept the International Financial Reporting Standards (IFRS) and generally accepted accounting principles applied in Hong Kong, Singapore and the USA. If a company wishes to prepare its accounts using accounting standards other than these, the entity must apply to the ASX for a determination regarding whether those standards are acceptable.

10.2 Audited financial statements

An application for admission to the ASX must include audited accounts for the last three full financial years, together with the audit report. For the purposes of the ASX Listing Rules, audited accounts comprise:

- a statement of financial position (also referred to as the 'balance sheet');
- a statement of comprehensive income (also referred to as the 'profit & loss statement');
- a statement of cash flows;
- a statement of changes in equity,
- applicable notes and ancillary disclosures regarding the above; and
- any other information necessary to give a true and fair view of the financial position and performance of the entity.

The audit report or review for the above information must not include a

19 The AASB is an independent Australian government agency.

modified opinion, emphasis of matter or other matter paragraph that the ASX considers unacceptable.

10.3 **Pro forma financial information**

The application must also include a reviewed *pro forma* statement of financial position together with the review, unless the ASX agrees it is not needed.

An entity may also elect to include additional *pro forma* financial information to show the effect of any transactions being undertaken in connection with the application, eg, a capital raising or acquisition.

Disclosure of *pro forma* financial information is regulated by ASIC. An examination of the requirements for disclosure of such information is beyond the scope of this chapter, but broadly speaking the entity must ensure that the information is not misleading.

10.4 **Interim financial information**

If the entity's last full financial year ended more than six months and 75 days before it applies for admission, the entity's admission application must include audited or reviewed accounts for the last half-year (or a longer period, if available), together with the audit report or review.

10.5 **Working capital requirements**

Entities seeking admission to the ASX under the asset test²⁰ must either:

- have working capital of at least A\$1.5 million; or
- would have working capital of A\$1.5 million if the company's budgeted revenue for the first full financial year after admission were included in the working capital.

This amount must be available after allowing for the first full year's budgeted administration costs and taking into account the costs of acquiring any assets referred to in its prospectus.

Companies seeking admission to the ASX under the profit test²¹ are not required to satisfy any express working capital requirement.

In both instances, the prospectus for the listing application must also include a statement that the entity has sufficient working capital to carry out its stated objectives.

11. **Corporate governance**

11.1 **Framework**

The corporate governance regime applicable to entities listed on the ASX is set out in the following:

- the ASX Listing Rules;

²⁰ See 4.1 above.

²¹ *Ibid.*

- the ASX Corporate Governance Principles and Recommendations;
- ASX guidance notes;
- the 2001 Act; and
- ASIC regulatory guides and information statements.

A description and analysis of every aspect of the corporate governance requirements that may impact on entities is beyond the scope of this chapter. In addition, the corporate governance and continuing obligation regime that applies to overseas companies differs from that which applies to Australian incorporated companies. However, an overview of the key areas is set out below.

11.2 Continuous disclosure

Chapter 3 of the ASX Listing Rules and Chapter 6CA of the 2001 Act requires entities to comply with continuous disclosure obligations. Chapter 5 of the ASX Listing Rules deals with additional reporting requirements for mining entities and oil and gas entities.

The continuous disclosure requirement is broad and requires that once an entity becomes aware of any information that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must immediately apprise the ASX of that information (Listing Rule 3.1).

The ASX has also provided an exception to this rule for information where:

- it would be a breach of a law to disclose the information;
- it concerns an incomplete proposal or negotiation;
- it comprises matters of supposition or is insufficiently definite to warrant disclosure;
- it is generated for internal management purposes; or
- it is a trade secret.

The information must meet the following additional conditions:

- the information is confidential and the ASX has not formed the view that the information has ceased to be confidential; and
- a reasonable person would not expect the information to be disclosed. This exception provides a balance to the broad disclosure obligation by preventing a false market for the entity's securities and allowing entities to keep commercially sensitive information confidential if and until it no longer meets the requirements.

11.3 Periodic reporting

Chapter 4 of the ASX Listing Rules and Part 2M of the 2001 Act require entities to provide periodic quarterly, half-yearly and annual disclosure, to support and supplement the entity's continuous disclosure obligations discussed at 11.2 above. An entity has one month after the end of the quarter, two months (75 days for a mining exploration entity or oil and gas exploration entity) after the end of the half year or three months after the end of the full year to lodge the applicable reports with both the ASX and ASIC. The ASX also requires the annual report to be sent to shareholders.

11.4 Continuing obligations

Chapter 12 of the ASX Listing Rules provides ongoing requirements an entity must satisfy while it is listed on the ASX. These relate to an entity's:

- level of operations;
- financial condition, including operating results;
- proportion of assets in cash, such that an entity cannot have half or more of its total assets in cash or in a form readily convertible to cash (to prevent 'cash box' entities);
- level of spread, to ensure that there is an orderly and liquid market of the entity's securities;
- appropriate structure and operations; and
- compliant trading policy.

These obligations are consistent with the initial admission requirements (see 4 above) and must be maintained throughout the entity's listing on the ASX.

11.5 Corporate Governance Principles

Under the ASX Listing Rules and as part of the requirements for admission, an entity must comply with the Corporate Governance Principles, which are a set of recommendations issued by the ASX Corporate Governance Council. The ASX has taken an 'if not, why not?' approach to the recommendations, so that if an entity does not comply with a particular recommendation, it must explain why it has not complied and what (if any) alternative governance practices it intends to adopt *in lieu* of the recommendation.

The Corporate Governance Principles seek to promote the following eight central principles:

- laying solid foundations for management and oversight;
- structuring the board to add value;
- acting ethically and responsibly;
- safeguarding integrity in corporate reporting;
- making timely and balanced disclosure;
- respecting the rights of security holders;
- recognising and managing risk; and
- remunerating fairly and responsibly.

The Corporate Governance Principles set out 29 specific recommendations that are intended to give effect to these principles.

An entity is required to include in its annual report either its corporate governance statement or a link to a page on its website where the statement is located (Listing Rule 4.10.3). The entity must disclose the extent to which the entity has followed the recommendations during the applicable reporting period.

11.6 Significant transactions

- Related party transactions
Transactions involving persons in a position of influence with the entity are

under a higher level of scrutiny because of the inherent nature of those persons' ability to influence the commercial terms of the transactions for their personal benefit. Chapter 10 of the ASX Listing Rules discusses those transactions, including the acquisition and disposal of substantial assets by the entity and acquisition of securities in the entity, which ultimately require shareholder approval before the entity can complete the transaction. There are some exceptions for obtaining shareholder approval with regard to the issuance of securities to related parties, such as those pursuant to:

- a *pro rata* issue;
- an underwriting agreement;
- a dividend or distribution plan;
- an employee incentive scheme;
- an off-market takeover bid or scheme of arrangement; or
- a security purchase plan.

In addition, payments to directors for their fees and any termination benefits require shareholder approval.

- Substantial transactions

If an entity proposes to make a significant change, either directly or indirectly, to the nature or scale of its activities, it must (pursuant to Chapter 11 of the ASX Listing Rules) provide full details to the ASX before making the change and must obtain majority shareholder approval if the ASX requires it. The ASX may determine that, due to a significant change in the nature or scale of the entity's activities, that entity must re-comply with chapters 1 and 2 of the Listing Rules (see 4 above), as if it were applying for admission as a new entity.

- Reverse takeovers

A reverse takeover occurs when a company (the bidder) issues its own shares as consideration for the acquisition of a second company (the target), resulting in the target company's shareholders acquiring a majority holding in the bidder company. The ASX Listing Rules provide that where an entity issues shares in excess of 100% of its existing share capital as consideration for an acquisition by way of a takeover bid or scheme of arrangement, shareholder approval will be required. Separate issues will be aggregated if, in the ASX's opinion, they form part of the same commercial transaction.

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