

# Foreign Issuers

Practice Note 11

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# Foreign Issuers

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## Practice Note #10

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### The purpose of this Practice Note

Under the Listing Rules the National Stock Exchange of Australia Limited (NSX) is able to receive applications from Issuers that are incorporated outside of Australia and have applied for foreign company registration status with Australian Securities and Investments Commission (“ASIC”)

This practice note outlines the minimum requirements to be met by Foreign Issuers seeking to list on the NSX market. Foreign Issuer’s must seek their own legal advice for a complete review of their obligations under the Australian Corporations Act and NSX Listing Rules.

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### The main points

1. Admission Requirements
2. Exempt Foreign Listing
3. Regulation
4. Communications
5. Disclosure
6. Accounting Standards
7. Depository Interests
8. Security Transfers
9. Corporate Actions
10. ISIN and FIGI Codes
11. Constitution
12. Capital Raising Documents
13. Restricted Securities
14. Governing Law
15. Variable Interest Entities
16. Professional Advice
17. Fees, Charges & Taxes
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### Related materials

- NSX Listing Rules
- NSX Practice Notes
- Australian Corporations Act

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### Guidance

The NSX issues practice notes to promote commercial certainty, reduce costs to business and assist market participants, and we are available to discuss any questions you have in relation to a practice note.

NSX may replace practice notes at any time. Issuers should contact NSX to ensure that they have the latest version of a practice note. As a practice note is only a guide to NSX practice, Issuers are advised to contact NSX to discuss their particular circumstances and the application of the listing rules. NSX cannot give legal advice to Issuers and recommends that they consider taking advice from a qualified professional person.



## Section 1 – Admission Requirements

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1. To be admitted to NSX Listing the Foreign Issuer must meet the requirements set out in Section 1, Chapter 4 and Chapter 5 of Sections 2A, 2B or 2C of the NSX Listing rules depending on the securities to be listed. Also, if the Issuer seeks quotation of equity securities it must be registered as a foreign company under the Australian Corporations Act. Registration requires the appointment of a local agent and may need the appointment of local directors. The Issuer must supply NSX with its ASIC issued Australian Registered Body Number (ARBN).
2. Foreign Issuers are also subject to the Australian Corporations Act<sup>1</sup>.
3. The Issuer must comply with NSX Listing and Business rules as a Listed Issuer irrespective of whether that Issuer is listed on another stock exchange. In assessing suitability for listing<sup>2</sup>, NSX consider a range of factors including:
  - a. the adherence to and applicability of the ASIC Principles for Listing Rules and Principles for Admission Criteria<sup>3</sup>;
  - b. the existence of a clearly defined business model; and
  - c. investment strategies that are likely to be understood by, and resonate with, Australian Investors.
4. Issuers from emerging markets are required to have a sufficient, appropriate and compelling presence and business connection with Australia and a business model and structure that is investible by Australian investors.
5. For more information on the Suitability for Listing please refer to Practice Note 20 *"Suitability for Listing"*.
6. There is no requirement for a minimum number of Australian resident shareholders, directors or officers of the Issuer. The appointment of a Nominated Adviser is required. NSX also requires local representation so that Exchange correspondence (for example continuous disclosure queries) can be dealt with in a timely manner by the Issuer. This representative may be the Nominated Adviser or local agent appointed for ARBN purposes.
7. Admission procedures follow standard NSX procedures for listing and quotation of all securities.

## Section 2 – Exempt Foreign Listing vs NSX Listing

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1. The NSX rules do not recognise a distinction between Exempt Foreign Listing Status and a Full NSX Listing status. In some cases, it is possible that an applicant finds it difficult to comply with a particular listing rule because of the regulatory framework within its home country jurisdiction.
2. In these cases the NSX recommends discussion before application is made and the lodgement of a waiver to a particular rule if required. Exemptions from specific listing rules can only be made by way of a written waiver to the NSX Compliance Committee<sup>4</sup>.

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<sup>1</sup> For example duties of officers and employees and disqualification from managing corporations (Chapter 2D.1, sections 180 to 184 and 186, and Part 2D.6);

<sup>2</sup> Refer to Practice Note 20 Suitability for Listing

<sup>3</sup> ASIC Regulatory Guide 172 Appendix 1.

<sup>4</sup> NSX can advise on the form and requirements for waiver submissions to the NSX Compliance Committee.



## Section 3 – Regulation

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1. Provisions of the Corporations Act including notification of substantial holdings and takeovers do not apply to Issuers established outside of Australia. However, if the holding company of the foreign Issuer is registered in Australia NSX expects the Issuer to provide the same information as required under the Corporations Act and the NSX Listing Rules in order to maintain an informed market (this includes substantial shareholder notices and director holdings).
2. Foreign Issuers should also include statements of place of incorporation or registration (if not Australia), that it may not be subject to Chapters 6, 6A, 6B and 6C of the Corporations Act and any limitations on acquisition of its securities imposed by the jurisdiction in which it is incorporated or registered.

## Section 4 – Communications

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1. The Issuer must maintain Australian resident representation to accept responsibility for issues raised by NSX, ASX Settlement and ASIC within a timely manner and for service of process in Australia. The Australian Corporations Act also requires the appointment of a local agent. Appointment of an agent on this basis may satisfy NSX's listing requirements where communications can be directed to a local registered office of the Issuer.
2. Process  
Either the Agent or some other person appointed by the Issuer must have responsibility for communication with NSX in relation to the Listing Rules. The appointment of a Nominated Adviser would satisfy this requirement.
3. Billing  
The Issuer should also keep NSX informed as to the nominated person for all billing and invoicing enquiries and receipt of invoices.
4. Continuous and Periodic Disclosure Queries  
The Nominated Adviser must have responsibility for receiving queries from the NSX. This is a time critical function and therefore the Nominated Adviser must have access to senior management or the Board in order to obtain responses to NSX queries within a responsible amount of time. It is the Issuer's responsibility to keep NSX informed as to the contact for service of enquiries from the Exchange.
5. Electronic Lodgement of Announcements  
Every Issuer is required by NSX to lodge their announcements electronically. The Issuer and/or their Nominated Adviser or both may be granted access to lodge announcements. All announcements lodged by Issuers are deemed to have been lodged by authority and signed electronically by the Issuer. At all times it is the Issuer's sole responsibility for the accuracy, timeliness of lodgement and the content of announcements.
6. Share Registry  
The Issuer must maintain a share registry service at all times that is able to electronically settle and transfer holdings. The Issuer must notify NSX as soon as they change their Share Registry service.



## Section 5 – Disclosure

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1. The NSX requires that Issuers obey the NSX listing rules with respect to Issuer announcements and disclosure obligations. This means that the Issuer should report electronically all announcements it provides to any other exchange at the time that it makes that announcement to that exchange.
2. The Issuer will endeavour to minimise any potential for a false or artificial market in its securities. For instance, deliberately staggering the release of announcements in each market could have the effect of creating a false and uninformed market. The NSX will not embargo announcements that have been submitted to for release.
3. All announcements to the NSX are to be made electronically via the Regulatory News Service platform.
4. Section 323DA of the Corporations Act 2001 requires that NSX listed Issuers which file information with overseas markets must also disclose that information with the NSX on the next business day before market open.
5. The Issuer would need to abide by the NSX continuous disclosure and periodic disclosure regimes as governed by the Corporations Act and Chapter 6 of Sections 2A, 2B and 2C of the NSX Listing Rules<sup>5</sup>.
6. The Issuer must provide to NSX, in English<sup>6</sup>, all information it provides to the overseas exchange, if listed, or otherwise if it is making the information public.
7. The Issuer may need to report financial information in a dual language if English is not the language of administration in the foreign jurisdiction.
8. NSX requires adherence to international accounting standards. The NSX, in its discretion, may also accept the following accounting standards: New Zealand, Singapore, Hong Kong, UK, USA and Canada or other countries on application until those countries adopt International Accounting Standards.
9. The Issuer would need to have staff or maintain a relationship with suitably qualified Nominated Advisers to ensure that NSX's ongoing reporting requirements are met. At least this means the appointment and maintenance of an NSX registered Nominated Adviser<sup>7</sup>.
10. Where NSX considers it necessary to ensure that the NSX market trades on a fully informed basis the NSX may require additional disclosure by the Issuer. This may entail monthly NTA reports if appropriate to the Issuer or also monthly investment or exploration and drilling reports about its activities or monthly or quarterly cash flow and activities reporting.
11. The Issuer is required to adhere to the timetables for disclosure of periodic information. These timetables may differ from the foreign jurisdiction and NSX is not able to waive these obligations.
12. NSX requires adherence to notification of substantial shareholders and directors' interests.
13. After discussion with the Issuer, the NSX may require that additional information is disclosed to the market before the Issuer is listed. Such information may entail previous financial reports (annual and half yearly), prospectus or other offer documents that may be relevant, the Issuer's letter of application, constitution, suitability for listing disclosure, material contracts or other documentation that the NSX views would enhance disclosure about the Issuer for existing and prospective investors.

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<sup>5</sup> Refer to Practice Notes 6 Continuous Disclosure and 9 Periodic Disclosure.

<sup>6</sup> A requirement of the NSX Listing Rules.

<sup>7</sup> The Issuer should also refer to Practice Note 20 Suitability of Listing where there is a requirement for a close association with Australia.



14. The Issuer should also indicate where information about its previous listing on another exchange may be obtained by investors.

References:

PN 6: Continuous disclosure

PN 9: Periodic Disclosure

PN 20: Suitability of Listing

## Section 6 – Accounting Standards

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1. Auditing standards should be Australian or International Standards or as otherwise may be acceptable to NSX on application. Please refer to the Australian Accounting Standards Board website ([www.aasb.gov.au](http://www.aasb.gov.au)) for further information.
2. Financial statements given to NSX must be prepared in accordance with Australian Accounting Standards or other standards agreed to by NSX. This applies not only to the periodic financial reports, but also to other financial statements, such as those included in prospectuses, Product Disclosure Statements (PDS) and, Information Memorandums (IM). For these purposes, NSX will accept International Financial Reporting Standards (IFRS) as adopted by the European Union and the accounting standards and generally accepted accounting principles applied in Bermuda, Canada, Cayman Islands, Hong Kong, New Zealand, Singapore, South Africa, Papua New Guinea (PNG), United Kingdom and USA as acceptable standards for these purposes. Issuers which wish to use any other accounting standards in preparing financial statements must apply to NSX for advice as to whether those standards are acceptable to NSX.
3. If an entity wishes to use accounting standards in the preparation of its financial statements which NSX considers are not acceptable, NSX will require the Issuer to attach a statement reconciling the financial information in those statements to the equivalent financial information prepared using either Australian Accounting Standards or IFRS.
4. For example, Issuers domiciled in China and using PRC GAAP accounting standards will be required to report in IFRS. As PRC GAAP has converged with IFRS (but is not exactly the same), in many cases a direct or close correlation can be established between individual standards under PRC GAAP and IFRS. Where there are differences between PRC GAAP and IFRS those differences should be stated in the attached statement to the report (for example differences in treatment of related party transactions). The Issuer should seek advice from their auditor who will be able to provide a concordance table mapping between the two standards as the standard applies to the Issuer.
5. Foreign entities seeking listing on NSX must comply with relevant legislations and provisions implemented by its home jurisdiction. NSX will require confirmation from these entities of their compliance status.
6. For example, Ministry of Finance of the People's Republic of China issued the Interim Provisions on the Auditing Business Conducted by Public Accounting Firms for Overseas Listing of Chinese Mainland Enterprises (Interim Provisions) on 26 May 2015 which came into effect on 1 July 2015. The Interim Provisions govern the audit of financial statements in relation to direct or indirect issues of stocks, bonds, or other securities and overseas listings (including pre-IPO) of Mainland Chinese companies and the audit of annual financial statements of overseas-listed Mainland Chinese companies. NSX will require confirmation from these entities that they are in compliance with the provide and may ask for related documentations if need to.



## Section 7 – Depository Interests

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1. DIs are primarily of relevance to companies incorporated in jurisdictions whose laws have the effect that CHES cannot be used for holding legal title to securities. NSX is authorised to use the ASX Settlement CHES service for the electronic transfer of securities. As at the date of this Practice Note, ASX Settlement has advised that legal title to securities of companies incorporated in Australia, New Zealand, Papua New Guinea, Cayman Islands<sup>8</sup>, Israel and Bermuda may be held in CHES. All other jurisdictions<sup>9</sup> will require the creation of a DI facility.
2. The Issuer must contract with a suitable Custodian in order to issue DIs. This would normally be its Share Registry service in Australia.
3. It is the Issuer's responsibility to apply to ASX Settlement to register for CHES Depository Interests. The Issuer's Nominated Advisor may be able to facilitate the application process and NSX can help with information about the process.
4. NSX may recognise other Depository Interest or Receipts instruments that the Issuer may wish to use on application by the Issuer.
5. If an issuer determines that DIs are necessary, the issuer must carefully read Section 13 of the ASX Settlement Operating Rules and related Procedures<sup>10</sup>. The ASX Settlement Operating Rules include information relating to the approval by ASX Settlement of Issuers that may act as Principal Issuers of DIs, the approval of DIs (and types of DIs permitted under the Rules) and the appointment of a nominee company that will hold the underlying financial products on behalf of DI holders.
6. As part of the application, ASX Settlement requires at least three documents:
  - The constitution or articles of association of the Issuer;
  - The appointment of the Depository Nominee under Rule 13.2.2 by way of either a formal letter addressed to ASX Settlement Pty Ltd or by using the Appointment of Depository Nominee template (Appendix 19); and
  - a letter addressed to ASX Settlement Pty Ltd making the appropriate affirmations in compliance with Rule 13.2.3(b) and (c).

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<sup>8</sup> Note that direct access to CHES by Cayman Island registered Issuers is not automatic and is strictly on a case-by-case basis. Issuers registered in the Cayman Islands must apply to ASX Settlement Pty Ltd for approval to have direct access to CHES rather than use the Depository Interests mechanism. In particular, Issuers will need to submit their articles of association (or equivalent memorandum or constitution) for review by ASX Settlement. ASX Settlement may require changes to the constitution to have it comply with the CHES Operating rules. The approval process may add several weeks to the application process. In the first instance Issuers should speak with NSX concerning the basis (direct or via DIs) of their intended access to CHES.

<sup>9</sup> Note that outside of the countries listed Issuers can apply to ASX Settlement to determine if their constitution or articles of association and registered jurisdiction may be acceptable to ASX Settlement and have direct access to CHES rather than the using the DI mechanism. In the first instance Issuers should speak with NSX concerning the basis (direct or via DIs) of their intended access to CHES.

<sup>10</sup> ASX Settlement Rules are available at [ASX Settlement Operating Rules](https://www2.asx.com.au/content/dam/asx/rules-guidance-notes-waivers/asx-settlement-operating-rules/rules/asx_settlement_procedures.pdf) and Procedures are available at: [https://www2.asx.com.au/content/dam/asx/rules-guidance-notes-waivers/asx-settlement-operating-rules/rules/asx\\_settlement\\_procedures.pdf](https://www2.asx.com.au/content/dam/asx/rules-guidance-notes-waivers/asx-settlement-operating-rules/rules/asx_settlement_procedures.pdf)



## Section 8 – Security Transfers

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1. NSX requires that the Issuers securities are registerable and transferable electronically. The mechanism that NSX uses to do this is called CHES operated by ASX Settlement. CHES facilitates the efficient transfer of legal title and settlement of market transactions with an electronic subregister system that provides irrevocable transfer of ownership and cleared funds without using paper documentation.
2. The Issuer must comply with ASX Settlement Rules regarding CHES transfers and have a compatible constitution (Refer to the NSX Sample Constitution). The Issuer must also execute a deed poll to bind the Issuer to ASX Settlement rules. A copy of the Deed Poll is available from NSX's website.
3. In the case where an Issuer is established in a jurisdiction whose laws have the effect that CHES or electronic transfers cannot be used for holding legal title to its securities, depository instruments (or receipts) can be used that allow transactions in those securities of these Issuers to be cleared and settled through CHES. These instruments are called Depository Interests.

The Issuer must create and maintain a securities register (or subregister), or a register of depository receipts with a share registry service that is recognised by NSX. This means that the Issuer must appoint an Australian resident share registry service to facilitate electronic share transfers.





## Section 9 – Corporate Actions

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1. The Issuer should adhere to the NSX published timetables for Corporate Action events<sup>11</sup>. Where this is problematic the Issuer should consult NSX before entering into the Corporate Action event.

## Section 10 – ISIN and FIGI Codes for Foreign Issuers

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1. ISIN

The International Securities Identification Number (ISIN) is allocated to each security that is admitted to the Official List. Where the security is for an Australian Issuer or an Issuer that has issued CDIs then an Australian ISIN will be issued. For CDIs an ISIN is not issued for the underlying ordinary securities as these are domiciled in another jurisdiction. NSX will arrange for all Australian ISINs to be issued.

3. FIGI

The Financial Instrument Global Identifier (FIGI) was first developed by Bloomberg as an alternative to the ISIN. The FIGI is independent of place or registration of the Issuer and therefore there is no dependency for the Issuer to supply a FIGI code to NSX. NSX will arrange on behalf of the Issuer for a FIGI to be issued.

## Section 11 – Constitution

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1. The Issuer's constitution (or articles of incorporation) must be consistent with both the laws in the place where the Issuer is established and with NSX's Listing Rules. The Issuer's constitution must be consistent with the Australian Corporations Act and NSX's Listing Rules<sup>12</sup>.
2. It is up to the Issuer to identify any differences between the requirements in its jurisdiction for its constitution and NSX requirements when it applies for listing.
3. In simple terms the constitution must allow for the Issuer to abide by the Listing Rules and not over-ride them and be able to transfer its securities electronically.

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<sup>11</sup> For example rights issues, bonus issues, splits and consolidations.

<sup>12</sup> A sample NSX constitution is available from the NSX website.



## Section 12 – Capital Raising Documents

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1. Issuers raising capital within the Australian jurisdiction from Australian investors must have an appropriate offer document that has been lodged with ASIC as appropriate and is compliant with the Australian Corporations Act, Chapter 6D.
2. NSX does not review draft prospectuses or offer documents, but will consider information of a more general nature such as background material or information relating to NSX Listing Rules before a prospectus is registered with the Australian Securities and Investments Commission. The information contained in an offer document is governed by the Corporations Act, not by NSX.
3. Before approving a listing application, NSX will review the application to ascertain that it complies with the NSX Listing Rules and that enough information has been provided about the Issuer to allow trading of its securities on a fully informed basis. The NSX may require additional information to be disclosed to the market before trading can commence.
4. Where appropriate, disclosure should be made to highlight any significant legal risks to Australian investors from the Issuer being incorporated in a jurisdiction outside Australia.

## Section 13 – Restricted Securities (Escrow)

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1. NSX may require some securities to be restricted securities. Discussions should be held with the NSX to determine if securities are to be restricted. A submission regarding securities to be listed should be lodged as part of the application process. For more information on the Restricted Securities Policy please refer to Practice Note 12 *“Restricted Securities”*.
2. It is the Issuer’s responsibility to instruct its share registry service to apply a holding lock on all restricted securities. The Issuer should obtain a confirmation letter from the share registry service and forward that letter to NSX as evidence that the appropriate restrictions are in place. It is a requirement that once the restriction period expires the Issuer must lodge with NSX a quotation of additional securities form and pay the required fee to have those securities quoted.

## Section 14 – Governing Law

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1. The Governing Law is to be New South Wales, Australia.
2. If applicable, the Issuer must have the necessary approval from its domestic regulatory jurisdiction that domestic securities can be listed on a foreign exchange. In such circumstances, NSX would require evidence of such approval.



## Section 15 – Variable Interest Entities

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1. In consultation with the Australian Investments and Securities Commission (ASIC), NSX has agreed to a moratorium on Initial Public Offerings (IPOs) where the corporate structure utilises a Variable Interest Entity (VIE) structure.
2. VIE structures are used by some Chinese-based businesses who are raising capital overseas. VIE structures attempt to mimic ownership of the Chinese operating company through a series of complex contractual arrangements, rather than through a more traditional subsidiary structure. This means that the foreign Issuer does not hold shares in the underlying Chinese operating company. Instead, the Issuer has entered into various contracts with the Chinese operating company and its Chinese owners with the aim of passing the economic benefits of the business to foreign investors. These arrangements rely heavily on the Chinese owners performing their contractual obligations.
3. The ASIC review highlighted concerns about the legal status of VIEs in China and the enforceability of key contractual arrangements by foreign investors.
4. While the moratorium is in place NSX will refuse to accept applications from Issuers using a VIE structure.

## Section 16 – Professional Advice

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1. The Foreign Issuer must appoint a Nominated Adviser registered with NSX for that purpose.
2. At all times the NSX recommends that the Foreign Issuer obtain appropriate professional advice about its listing status and obligations by consulting its Nominated Adviser and other professionals as required.

## Section 17 – Fees, Charges & Taxes

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1. The prescribed fees must be paid in advance of application and quotation of securities. All fees are to be paid in Australian dollars and include Australia Goods and Services Tax (GST). GST applies to Foreign Issuers as the Australian Tax Office deems the service to be a domestic supply.
2. Full disclosure of NSX Fees & Charges can be found in Practice Note 1 “*Listing Fees*”.

## Section 18 – Further Information

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For further information, please contact:

National Stock Exchange of Australia Limited  
1 Bligh Street,  
Sydney NSW 2000  
Phone: 02 8378 6400  
Email: [getlisted@nsx.com.au](mailto:getlisted@nsx.com.au)