



Guidance Note 5

CHES Depository Interests (CDIs)

Issued: March 2004

Key topics

1. CHES participation by foreign companies
2. Differences between holding CDIs and securities
3. Entitlements of CDI holders
4. Corporate actions
5. Converting CDIs to underlying securities

Listing Rules

1. Listing rule 2.16
2. Listing rule 14.2A

Cross-reference

1. ASTC Settlement Rules – Section 13

Guidance Note History

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Introduction

1. This Guidance Note is published to assist companies* considering listing and listed companies to understand how Clearing House Electronic Subregister System (CHES) Depository Interests (CDIs) operate. It is primarily of relevance to companies incorporated in jurisdictions whose laws have the effect that CHES cannot be used for holding legal title to securities. As at the date of this Guidance Note, legal title to securities of companies incorporated in Australia, New Zealand, Papua New Guinea and Bermuda may be held in CHES.

CHES participation by foreign companies

2. 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.
3. CHES cannot be used directly for the transfer of securities of companies domiciled in countries whose laws have the effect that CHES cannot be used for holding legal title to securities. To overcome this difficulty, ASX developed a type of depository receipt - CDIs. It is a method of transferring and holding these foreign securities in CHES.

4. CDIs can be used for any securities of a foreign company (including an ASX Exempt Foreign Listing company) incorporated in a jurisdiction whose laws do not recognise either (or both) electronic security holdings or electronic transfers. They can be used for either debt or equity securities. Listing rule 2.16 requires a foreign company established in a jurisdiction whose laws have the effect that CHESD cannot be used for holding legal title to securities to have CDIs issued over its quoted securities if the security holder asks for CDIs.

The differences between holding CDIs and holding securities

5. CDIs are units of beneficial ownership in foreign securities held by an Australian depository entity. Companies may choose to use CHESD Depository Nominees Pty Limited (CDN) as the depository entity. CDN is a subsidiary of ASX. Other companies may also offer depository services to foreign companies.
6. The main difference between holding CDIs and holding securities is that the holder of CDIs has beneficial ownership of the equivalent number of securities of the foreign company instead of legal title. Legal title is held by the depository entity. The securities are registered in the name of the depository entity and held by that entity on behalf and for the benefit of the CDI holders.
7. Using CDIs, sellers transfer beneficial ownership of the securities instead of legal title. Buyers may choose either to leave their holdings in the form of CDIs (so that legal title remains in the name of the depository entity) or convert the CDIs into securities (so that the buyers can hold legal title in their own right). ASX encourages institutional investors and others who frequently buy and sell securities to hold their investment in the form of CDIs.

Ratio of CDIs to underlying securities

8. CDIs are generally structured so that each holding of CDIs represents an equivalent number of underlying securities. That is, the conversion ratio of CDIs to underlying securities is one to one. With the agreement of ASX, CDIs may be issued with a conversion ratio other than one for one.

Entitlements of CDI holders

9. The Australian Settlement and Transfer Corporation (ASTC) Settlement Rules, which are recognised under the Corporations Act, contain provisions which ensure that CDI holders have all the direct economic and other benefits of holding the underlying securities, refer ASTC Settlement Rules Section 13.
10. With the exception of voting arrangements, CDI holders have the same rights as holders whose securities are legally registered in their own name.

Voting and security holder meetings

11. The ASTC Settlement Rules require the foreign company to give notice of any meeting of a class of security holders to all CDI holders in that class. Listing rule 14.2A requires the foreign company to permit holders of CDIs to attend the meeting unless the laws of the jurisdiction in which it is established prevent this. The notice must include a form permitting the CDI holder to direct the depository entity to cast proxy votes in accordance with the written directions of the CDI holder. Under the ASTC Settlement Rules the company is required to collect and process these directions.
12. CDI holders cannot vote personally at a meeting of security holders. A person holding CDIs must convert them into the underlying securities in sufficient time before the meeting to enable them to vote personally.

Corporate actions

13. The ASTC Settlement Rules require that all economic benefits such as dividends, bonus issues, rights issues or similar corporate actions flow through to CDI holders as if they were the legal owners of the underlying securities.

Takeovers

14. The depository entity is prohibited by the ASTC Settlement Rules from accepting a takeover offer for any of the companies in which it holds securities on behalf of a CDI holder unless it is instructed to do so by the CDI holder. The depository entity must accept the takeover offer if a CDI holder instructs it to do so.
15. The depository entity must ensure that the offeror or a receiving agent for the offeror processes takeover acceptances from CDI holders. If the CDIs are held on the CHESS subregister, takeover offers will be processed electronically in the same way that other CHESS approved securities are processed.

Communication with CDI holders

16. The Australian registry managing the foreign company's register of legal holders has access to CDI holders' registration details and holding balances. This enables the company to communicate directly with CDI holders when processing corporate actions such as dividends, bonus issues and rights issues and when sending notices from the company and announcements, such as the company's annual report.

Companies applying for admission to the official list

17. As a foreign company seeking admission to the official list is required to issue CDIs if the security holder asks for CDIs to be issued, the application form provided to investors should enable investors to nominate whether the new securities should be issued in the form of certificated holdings or as uncertificated CDI holdings.

18. Investors electing to hold their securities in the form of CDIs will not receive certificates. The company will register the securities in the name of the depository nominee and will create uncertificated CDI holdings in the names of the investors. Statements of beneficial ownership will be issued to all CDI holders.

Converting CDIs

Converting CDIs to underlying securities

19. Holders of CDIs in CHESSE who wish to convert their CDI holdings to underlying securities can do so by instructing their sponsoring participant. The participant transmits a CHESSE message to the company's registry instructing the registry to transfer the securities from the depository nominee into the name of the holder. The company's registry then issues a certificate.
20. Holders of issuer sponsored CDIs who wish to convert their CDI holdings to underlying securities can do so by instructing the issuer's share registry. The registry will transfer the securities from the depository nominee into the name of the holder. The company's registry issues a certificate.

Converting underlying securities to CDIs

21. Holders of underlying securities who wish to convert their certificated holdings to CDIs in CHESSE can do so by lodging their certificate with their sponsoring CHESSE participant and signing the seller side of an Australian Standard Transfer Form. The participant lodges the certificate and transfer form with the company's registry and transmits a CHESSE message to the company's registry instructing the registry to establish a CHESSE holding. The registry then transfers the securities from the investor's name into the name of the depository nominee and establishes a CDI holding in the name of the investor. CHESSE then issues a CHESSE holding statement to the investor.
22. Holders of underlying securities who wish to convert their certificated holdings to issuer sponsored CDIs can do so by lodging their certificate with the issuer's share registry and signing the seller side of an Australian Standard Transfer Form. The registry then transfers the securities from the investor's name into the name of the depository nominee and establishes a CDI holding in the name of the investor. The company's registry issues a holding statement to the investor.

CDI holding statements

23. Security holders who are sponsored by Participants in CHESSE and who have chosen to hold their foreign securities in the form of CDIs will receive periodic CHESSE holding statements similar to CHESSE holding statements for direct holders. CHESSE will issue these statements on behalf of the depository nominee. CDI holders who are issuer sponsored will receive uncertificated holding statements from the company's Australian registry on behalf of the depository nominee.

No ASX fees

24. There are no additional ASX or ASTC fees for using the CDI facility. CDN does not charge fees for acting as the depository entity but may charge an administration fee in the following cases.
- If a takeover offer is made for the issuer and the offeror appoints a receiving agent to process takeover acceptances from CDI holders, refer paragraphs 14 and 15.
 - If the underlying securities are not held on a register in Australia.
25. Companies are advised to consult with their share registry regarding share registry maintenance costs.

*A reference to a listed company is a reference to a listed entity as that term is used in the ASX Listing Rules.