

CHESS DEPOSITARY INTERESTS

<p>The purpose of this Guidance Note</p>	<ul style="list-style-type: none"> To explain what CHESS Depositary Interests (CDIs) are and how they operate
<p>The main points it covers</p>	<ul style="list-style-type: none"> What are CDIs? The legal effect of CDIs The steps involved in becoming an issuer of CDIs The entitlements of CDI Holders, including how dividends, corporate actions and voting rights are dealt with Converting underlying securities into CDIs and vice versa Divestment of small holdings of CDIs What happens to CDIs when an entity ceases its ASX listing
<p>Related materials you should read</p>	<ul style="list-style-type: none"> Guidance Note 1 <i>Applying for Admission – ASX Listings</i> Guidance Note 4 <i>Foreign Entities Listing on ASX</i> Guidance Note 29 <i>Applying for Admission – ASX Debt Listings</i> Guidance Note 30 <i>Applying for Quotation of Additional Securities</i> Guidance Note 33 <i>Removal of Entities from the ASX Official List</i> ASX's booklet <i>Understanding CHESS Depositary Interests</i>, available at: http://www.asx.com.au/documents/settlement/CHESS_Depositary_Interests.pdf

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Important notice: ASX has published this Guidance Note to assist listed entities to understand and comply with their obligations under the Listing Rules. Nothing in this Guidance Note necessarily binds ASX in the application of the Listing Rules in a particular case. In issuing this Guidance Note, ASX is not providing legal advice and listed entities should obtain their own advice from a qualified professional person in respect of their obligations. ASX may withdraw or replace this Guidance Note at any time without further notice to any person.

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1. Introduction

This Guidance Note is published by ASX Limited (ASX) to explain what CHESS Depository Interests (CDIs) are and how they operate.

Trades in securities quoted on the ASX market are cleared and settled through an electronic system called the Clearing House Electronic Subregister System, or CHESS. CHESS facilitates the paperless transfer of ownership of securities through an electronic subregister system.

Under the CHESS system, the principal register of securities for most listed entities is effectively made up of two electronic uncertificated subregisters – a “CHESS subregister” maintained by ASX Settlement¹ and an “issuer sponsored subregister” maintained by or on behalf of the issuer. Persons holding securities in the entity have the option to register their securities on either subregister.²

¹ ASX Settlement Pty Limited, a wholly owned subsidiary of ASX and the operator of the ASX Settlement facility.

² To register securities on the CHESS subregister, a person must have a sponsorship agreement with a participant in the ASX Settlement facility. Registering securities on the CHESS subregister effectively gives the sponsoring participant control of the holdings for the purposes of settlement.

Ordinarily, to allow ASX to clear and settle transactions in its securities, an entity seeking admission to the ASX official list must be approved as an issuer³ under the operating rules of the CHES facility⁴ and also have the securities it is seeking to have quoted on ASX approved for participation in that facility.⁵ Once these approvals have been obtained, ASX Settlement will then establish the CHES subregister for the entity's quoted securities, which ASX Settlement will administer as the entity's agent.⁶ The entity is responsible for establishing its own issuer sponsored subregister for its quoted securities⁷ and, in practice, will usually engage an Australian registry to establish and administer that subregister on its behalf.⁸

Where, however, an entity is established in a place overseas whose laws have the effect that CHES cannot be used for holding legal title to its securities,⁹ it must instead have CDIs issued over its ASX quoted securities and establish a CHES subregister and an issuer sponsored subregister in those CDIs.¹⁰ To issue CDIs, the entity must be approved as a foreign issuer of CDIs under the operating rules of the CHES facility¹¹ and also have its CDIs approved for participation in that facility.¹² Once these approvals have been obtained, ASX Settlement will then establish the CHES subregister for the entity's CDIs, which ASX Settlement will administer as the entity's agent.¹³ The entity must establish its own issuer sponsored subregister for its CDIs¹⁴ and again, in practice, will usually engage an Australian registry to establish and administer that subregister on its behalf.¹⁵

2. What are CDIs?

CDIs are similar to American Depository Interests in the United States and CREST Depository Interests in the United Kingdom. They are a type of depository receipt that allows investors to obtain all the economic benefits of owning securities without actually holding legal title to them. They were developed by ASX to facilitate the clearing and settlement of transactions in securities through CHES where the issuing entity is domiciled in a country whose laws do not recognise uncertificated holdings or electronic transfer of title.

³ Listing Rule 1.1 condition 15(a) (ASX Listings), Listing Rule 1.11 condition 12(a) (ASX Foreign Exempt Listings), Listing Rule 1.8 condition 11(a) (ASX Debt Listings) and ASX Settlement Operating Rules 8.1.1, 8.1.3 and 8.1.4.

⁴ References to the CHES operating rules or to the operating rules of the CHES facility mean the ASX Settlement Operating Rules.

⁵ Listing Rule 2.1 condition 3(a) (ASX Listings and ASX Debt Listings), Listing Rule 2.2(a) (ASX Foreign Exempt Listings) and ASX Settlement Operating Rules 8.1.1, 8.1.3 and 8.1.4. Once its securities have been approved for participation in the CHES system, the entity must continue to comply with the operating rules for that system in relation to its quoted securities (Listing Rule 8.1).

⁶ Pursuant to ASX Settlement Operating Rules 5.2.1, 8.6.1 and 8.6.2.

⁷ Listing Rule 8.2(a) and ASX Settlement Operating Rule 5.2.2.

⁸ Even though an entity may have appointed an Australian registry to maintain an issuer sponsored subregister for its quoted securities, the entity remains responsible for the performance of those obligations (ASX Settlement Operating Rule 5.1.1).

⁹ At the date of this Guidance Note, ASX understands that New Zealand, Papua New Guinea and Bermuda all allow CHES to be used for holding legal title to securities in entities established in those countries. Entities established in those countries are therefore able to have their securities traded directly on the ASX market without using CDIs.

¹⁰ ASX Settlement Operating Rule 13.5.1(a)(ii) requires an entity which has had CDIs approved for participation in the CHES system to maintain a "CDI Register". This is defined in ASX Settlement Operating Rule 2.13.1 to include both a CHES subregister for CDIs and an issuer sponsored subregister for CDIs. Note that ASX may agree to allow an issuer of CDIs to have a CHES subregister only and not to have an issuer sponsored subregister if the CDIs can only be held by institutional investors (see the note to the definition of "CDI Register" in ASX Settlement Operating Rule 2.13.1). In practice, this will only apply to an ASX Debt Listing which only has wholesale debt securities quoted on ASX (although, in practice, these types of securities are generally held in Austraclear rather than in CHES).

¹¹ Listing Rule 1.1 condition 15(b) (ASX Listings), Listing Rule 1.11 condition 12(b) (ASX Foreign Exempt Listings), Listing Rule 1.8 condition 11(b) (ASX Debt Listings) and ASX Settlement Operating Rule 13.2.1.

¹² Listing Rules 2.1 condition 3(b) (ASX Listings and ASX Debt Listings), Listing Rule 2.2(b) (ASX Foreign Exempt Listings) and ASX Settlement Operating Rule 13.2.1. Once the CDIs have been approved for participation in the CHES system, the entity must continue to comply with the operating rules for that system (Listing Rule 8.1).

¹³ Pursuant to ASX Settlement Operating Rules 5.2.1 (as modified by ASX Settlement Operating Rule 13.9.1(e)), 8.6.1 and 8.6.2.

¹⁴ Listing Rule 8.2(b) and ASX Settlement Operating Rules 13.5.1(a)(ii) and 13.5.4(a).

¹⁵ Where an entity uses an Australian registry to maintain an issuer sponsored subregister for its CDIs, the registry is taken to perform those obligations on behalf of the entity (ASX Settlement Operating Rule 13.5.6). Again, even though an entity may have appointed an Australian registry to maintain an issuer sponsored subregister for its CDIs, the entity remains responsible for the performance of those obligations (ASX Settlement Operating Rule 5.1.1).

A CDI effectively represents a unit of beneficial ownership in an underlying security that is held on trust for the CDI holder by a depositary nominee. CDIs are able to be held in uncertificated form and transferred electronically via CHESS even where the underlying securities themselves are not able to be so held and transferred.

The underlying securities represented by a CDI are registered in the name of the depositary nominee as legal owner but, under the operating rules for the CHESS facility, all of the economic benefits attaching to the underlying securities accrue to the holder of the CDI. The holder also has the right to request the depositary nominee to convert (or “transmute”) the CDI into the underlying security at any time so that they become the legal owner of the security and become directly entitled to receive the economic benefits of ownership if and when they wish to.¹⁶

Currently, the only depositary nominee offering CDI services for ASX quoted securities is CHESS Depositary Nominees Pty Ltd (CDN).

CDN is a wholly owned subsidiary of ASX Limited established specifically to fulfil the functions of a depositary nominee in the CHESS settlement system. CDN holds an Australian Financial Services Licence that authorises it to provide custodial and depositary services to retail and wholesale clients. It is also admitted as a participant in the CHESS facility.

3. The legal effect of offering and trading CDIs

An offer of CDIs to investors by a foreign issuer is treated as an offer of the underlying securities and regulated accordingly under the Corporations Act.¹⁷

Likewise, when CDIs are quoted on ASX, it is the underlying securities that are regarded as having been quoted on ASX.¹⁸

When CDIs are bought and sold on the ASX market, the seller of the CDIs meets their settlement obligation by transferring the CDIs to the buyer.¹⁹ Legal title to the underlying securities remains in the name of the depositary nominee. The result is a transfer of the beneficial ownership of the underlying securities to the buyer, with the depositary nominee now holding the underlying securities on trust for the buyer. The buyer may choose to leave their holdings in the form of CDIs (in which case, legal title remains in the name of the depositary nominee) or to transmute the CDIs into the underlying security²⁰ (in which case, legal title is transferred from the depositary nominee to the buyer).

4. How to become an issuer of CDIs

4.1 Applying for approval as an issuer of CDIs

As mentioned previously,²¹ to issue CDIs, an entity must be approved as a foreign issuer of CDIs under the operating rules of the CHESS facility and also have its CDIs approved for participation in that facility.

An entity's Appendix 1A, 1B or 1C application for admission to the official list operates as an application by the entity for the requisite approvals under the CHESS operating rules.²² It includes:

¹⁶ See '6.2 Transmuting CDIs to underlying securities' on page 12.

¹⁷ See ASIC Regulatory Guide 253 *Fundraising: Facilitating offers of CHESS Depositary Interests* and the ASIC Class Orders published under that guide.

¹⁸ See Listing Rule 19.6B, which provides that, except in Listing Rule 8.2, a reference to “quoted securities” or to securities being quoted by ASX includes, where CDIs have been issued over an entity's securities, the securities over which the CDIs have been issued.

¹⁹ Under ASX Settlement Operating Rule 13.3.2, the participant representing the seller is expressly prohibited from delivering a paper-based transfer of the underlying securities unless the participant representing the buyer has specifically agreed to that and must instead initiate an electronic message in CHESS transferring the applicable quantity of CDIs.

²⁰ Again, see '6.2 Transmuting CDIs to underlying securities' on page 12.

²¹ See notes 11 and 12 above and the accompanying text.

²² ASX Settlement Operating Rule 13.2.1 and Procedure 13.2.1. The Information Forms and Checklists that must accompany an Appendix 1A, 1B or 1C admission application require a foreign issuer to disclose whether it will be issuing CDIs and, if so, the name, address and

- an appointment of CDN to act as the depositary nominee in respect of any CDIs issued over the securities which the entity is seeking to have quoted on ASX²³ and an acknowledgement of the indemnity²⁴ given by the entity to CDN as the depositary nominee, and an acceptance of the power of attorney²⁵ given to the entity by CDN as the depositary nominee, under the CHES operating rules;
- an irrevocable authorisation for the approved clearing and settlement facility (ie CHES) to establish and administer a CHES subregister in respect of those CDIs;
- a commitment to satisfy the technical and performance requirements of the CHES facility and meet any other requirements CHES imposes in connection with the participation of the entity's CDIs in that facility;
- a commitment that when CDIs are issued, the entity will enter them in the CHES holding of the applicant before the securities they are over are quoted, if the applicant instructs the entity on the application form to do so; and
- a commitment from the entity that it will make sure that CDIs are issued over securities if the holder of quoted securities asks for CDIs.

If the entity is approved for admission to the ASX official list, ASX Settlement will notify the entity, usually by way of an emailed letter, that it has been approved as a foreign issuer of CDIs under the operating rules of the CHES facility and that its CDIs have also been approved for participation in that facility.

4.2 The ratio of CDIs to underlying securities

For ease of administration and to simplify matters for investors, CDIs are generally structured so that each holding of CDIs represents an equivalent number of underlying securities (that is, the transmutation ratio of CDIs to underlying securities is one for one).

With the agreement of ASX, CDIs may be issued with a transmutation ratio other than one for one. If an applicant for listing wishes to have a transmutation ratio for CDIs other than one for one, it should discuss that matter with ASX first before submitting an application for admission to the official list. Those discussions are generally best held with the branch office where the entity intends to lodge its application for admission. Typically, this will be the ASX branch office where the applicant will have its home branch if its application for admission is successful.²⁶

4.3 Vesting securities in the depositary nominee

After receiving the approvals referred to in section 4.1, the entity must make arrangements to vest title to the relevant number of underlying securities in CDN as the depositary nominee²⁷ and have its principal registry confirm to ASX Settlement in writing:²⁸

- the number of CDIs that have been issued;
- the transmutation ratio of the CDIs into the underlying securities,

contact details of its CDI registry in Australia, the name, address and contact details of its principal registry offshore and what the proposed transmutation ratio for the CDIs will be.

²³ ASX Settlement Operating Rule 13.2.2.

²⁴ See '10.3 General indemnity' on page 15.

²⁵ See note 35 below and the accompanying text.

²⁶ The ASX home branch for an entity looks after day-to-day matters relating to the entity's listing and makes decisions about the Listing Rules that affect it. ASX has home branches in Perth (servicing entities based in WA), Melbourne (servicing entities based in Victoria and Tasmania) and Sydney (servicing all other entities).

²⁷ ASX Settlement Operating Rule 13.2.3.

²⁸ The requirement to provide this confirmation will be imposed as a condition of the entity's admission to the ASX official list to be satisfied before quotation of the entity's securities commences on ASX. The confirmation itself will be released as pre-quotation disclosure on the ASX Market Announcements Platform.

- that title to the underlying securities has been vested in CDN as the depositary nominee;
- if the underlying securities are certificated, that the certificate(s) representing CDN's holding of the underlying securities are held by the entity's principal registry for safekeeping; and
- if the underlying securities are held in an account with an approved clearing house, that CDN's holding of underlying securities are held in a segregated account with that clearing house.²⁹

4.4 The effect of vesting securities in the depositary nominee

Under the CHES operating rules, a person is entitled to all direct economic benefits and any other entitlements in relation to the underlying securities vested in a depositary nominee if:

- they are the holder of the underlying securities at the time they are transmuted to CDIs; or
- they are subsequently registered as the holder of CDIs for the underlying securities in the entity's CDI register.³⁰

The depositary nominee holds all right, title and interest in the securities vested in it subject to the right of the holder of a CDI to receive all direct economic benefits and any other entitlements in relation to those securities.³¹

The depositary nominee is obliged not to dispose of the underlying securities, nor to create any interest (including a security interest) which is inconsistent with the title of the depositary nominee to the underlying securities or the interests of the holders of CDIs in respect of those securities, except as otherwise specifically allowed for under the CHES operating rules.³²

In addition, the depositary nominee is obliged:

- where the underlying securities are certificated, to make satisfactory arrangements for any certificate representing its holding of the underlying securities to be held by the entity for safekeeping; and
- where the underlying securities are held in an account with an approved clearing house, to ensure that a segregated account is maintained in respect of those securities.³³

5. Entitlements of CDI holders

As mentioned previously,³⁴ under the CHES operating rules, a person who holds CDIs in relation to underlying securities is entitled to all of the direct economic and other benefits attaching to those securities.

The CHES operating rules contain provisions designed to ensure that, as far as practicable, a CDI holder receives those economic and other benefits to the same extent they would have if they held the underlying securities directly.

This includes a power of attorney from the depositary nominee to any entity that has CDIs issued over underlying securities to do all things necessary or desirable to give full effect to the rights and obligations of the depositary nominee under the CHES operating rules.³⁵ The powers under that power of attorney are able to be delegated,

²⁹ ASX Settlement Operating Rule 13.4.3(a). In practice these obligations will be performed on behalf of CDN by the entity or its principal registry utilising the power of attorney referred to in note 35 below and the accompanying text.

³⁰ ASX Settlement Operating Rule 13.4.2.

³¹ ASX Settlement Operating Rule 13.4.1.

³² ASX Settlement Operating Rule 13.4.3.

³³ ASX Settlement Operating Rule 13.4.3(a). In practice these obligations will be performed on behalf of CDN by the entity or its principal registry utilising the power of attorney referred to in note 35 below and the accompanying text.

³⁴ See notes 30 and 31 above and accompanying text.

³⁵ ASX Settlement Operating Rule 13.5.8.

for example, to the Australian registry administering the entity's CDI register on its behalf.³⁶ This enables the entity and its registry to deal directly with the holders of CDIs without the intervention of the depositary nominee.

The Australian registry managing the entity's issuer sponsored subregister of CDIs also has electronic access to the registration details and holding balances of the holders of CDIs entered on the CHESS subregister, as well as the registration details and holding balances of the holders of CDIs entered on the issuer sponsored subregister. This enables the entity and its registry to communicate directly with all CDI holders when sending security holder communications and processing dividends and corporate actions.

5.1 Dividends

An entity that has issued CDIs over underlying securities is obliged to pay any dividend declared in respect of the underlying securities directly to the holders of the CDIs.³⁷

If the entity has a dividend investment scheme or bonus share plan operating in respect of the underlying securities, it must also make available to the holders of the CDIs all benefits and entitlements arising under that scheme or plan.³⁸ The right to make an election under the scheme or plan to receive securities in lieu of a cash dividend must be exercised by the holder of the CDIs rather than the depositary nominee.³⁹ If that right is exercised by the holder of a CDI, the entity must issue the relevant securities to the depositary nominee and distribute corresponding CDIs to the holder.⁴⁰

5.2 Corporate actions

Unless it is prohibited by the laws of its place of establishment from doing so, an entity that has issued CDIs over underlying securities is obliged to administer all corporate actions⁴¹ that result in:

- the issue of additional or replacement securities in respect of the underlying securities; or
- the cancellation, buy back or any other reduction in number of all or any of the underlying securities,

as if each holder of CDIs was a holder of a corresponding number of underlying securities and to adjust the holding of each CDI holder as a result of the corporate action by:

- in the first case above, issuing additional or replacement CDIs to the holder; or
- in the second case above, cancelling or otherwise reducing the number of CDIs in the holder's existing holdings of CDIs.⁴²

³⁶ ASX Settlement Operating Rule 13.5.9.

³⁷ ASX Settlement Operating Rule 13.6.2. For these purposes, the entitlement of a CDI holder to a dividend is calculated using the holder's cum entitlement balance as at end of day on the record date for the dividend and applying the transmutation ratio. The depositary nominee is taken to have directed the entity to distribute any dividend that would otherwise be payable to it under the entity's constitution in accordance with these requirements (ASX Settlement Operating Rule 13.6.3). Payment by the issuer in accordance with these requirements is taken to discharge any obligation the entity might otherwise have to pay the dividend to the depositary nominee, as the legal owner of the underlying securities (ASX Settlement Operating Rule 13.6.4).

³⁸ ASX Settlement Operating Rule 13.6.8(a). Again, the entitlement of a CDI holder to participate in a dividend reinvestment plan or bonus share plan is calculated using the holder's cum entitlement balance as at end of day on the record date for determining entitlements under the scheme or plan and applying the transmutation ratio (ASX Settlement Operating Rules 13.6.8(a) and (b)).

³⁹ ASX Settlement Operating Rule 13.6.8(c).

⁴⁰ ASX Settlement Operating Rule 13.6.8(d).

⁴¹ For these purposes, "corporate action" includes (but is not limited to) bonus issues, rights issues, mergers, reconstructions and any action taken by an entity to reduce, or that will have the effect of reducing, the number of underlying securities held by a depositary nominee (see the concluding paragraphs to ASX Settlement Operating Rules 13.6.7 and 13.6.10).

⁴² ASX Settlement Operating Rule 13.6.7(a). Again, the entitlement of a CDI holder to participate in a corporate action is calculated using the holder's cum entitlement balance as at end of day on the record date for the corporate action and applying the transmutation ratio (ASX Settlement Operating Rules 13.6.7(a) and (c)). The depositary nominee is taken to have directed the entity to administer all corporate actions in accordance with these requirements, and compliance with these requirements is taken to discharge any obligation the entity might otherwise have to make the benefit of the corporate action available to the depositary nominee, as the legal owner of the underlying securities (ASX Settlement Operating Rule 13.6.11).

If the benefits conferred in the corporate action are additional or replacement securities, the entity must ensure that title to those securities is vested in the depository nominee as legal holder and the benefit of those securities is distributed to the holders of CDIs as additional or replacement CDIs.⁴³

Similarly, unless it is prohibited by the laws of its place of establishment from doing so, if a corporate action would give holders of CDIs a fractional entitlement to additional or replacement securities (assuming they held the underlying securities rather than CDIs), the entity must ensure that:

- the number of additional or replacement securities issued to the depository nominee is calculated as if each holder of CDIs is a holder of the corresponding underlying securities; and
- the holders of CDIs receive additional or replacement CDIs reflecting the entitlements so calculated.⁴⁴

Where the laws of its place of establishment prevent the entity from complying with the above obligations, it must notify ASX in writing of that fact⁴⁵ and, if possible under those laws, put forward written details of an alternative proposal designed to put CDI holders, as nearly as practicable, in the same economic position they would have been in if the entity had administered the corporate action in the manner described above.⁴⁶ This may include, for example, the payment of a cash component to compensate the holders for any loss of, or inability to receive, entitlements under the corporate action and/or for any loss of fractional entitlements. The alternative proposal must be acceptable to ASX⁴⁷ and the entity must also provide an undertaking to disclose the details of the corporate action and the alternative proposal to the holders of CDIs in due course.⁴⁸

If the laws of its place of establishment prevent the entity from putting forward an alternative proposal, the entity must provide ASX a statement in writing to that effect.⁴⁹ Again, the statement must be acceptable to ASX⁵⁰ and the entity must also provide an undertaking to disclose the details of the corporate action and the statement to the holders of CDIs in due course.⁵¹

ASX may require the entity to provide additional information or documents for the purpose of evaluating a corporate action and any alternative proposal or statement (as applicable). This may include, if ASX requires it, a legal opinion satisfactory to ASX confirming that the laws of the entity's place of incorporation require it deal with a corporate action in a particular way and any other matters ASX may nominate in relation to the corporate action and the alternative proposal or statement.⁵²

Where ASX accepts such an alternative proposal or statement, the issuer must ensure that the corporate action is administered in accordance with that proposal or statement and the holding of each holder of CDIs is adjusted as a result of the corporate action accordingly.⁵³

⁴³ ASX Settlement Operating Rule 13.6.7(b).

⁴⁴ ASX Settlement Operating Rule 13.6.10(a). Again, the depository nominee is taken to have directed the entity to administer all corporate actions in accordance with these requirements and compliance with these requirements is taken to discharge any obligation the entity might otherwise have to make the benefit of the corporate action available to the depository nominee, as the legal owner of the underlying securities (ASX Settlement Operating Rule 13.6.11).

⁴⁵ ASX Settlement Operating Rule 13.6.7(d)(ii)(A) and 13.6.10(b)(ii)(A).

⁴⁶ ASX Settlement Operating Rule 13.6.7(d)(ii)(B)a and 13.6.10(b)(ii)(B)a.

⁴⁷ ASX Settlement Operating Rule 13.6.7(d)(iii) and 13.6.10(b)(iii).

⁴⁸ ASX Settlement Operating Rule 13.6.7(d)(ii)(C) and 13.6.10(b)(ii)(C).

⁴⁹ ASX Settlement Operating Rule 13.6.7(d)(2)(B)b and 13.6.10(b)(ii)(B)b.

⁵⁰ ASX Settlement Operating Rule 13.6.7(d)(iii) and 13.6.10(b)(iii).

⁵¹ ASX Settlement Operating Rule 13.6.7(d)(ii)(C) and 13.6.10(b)(ii)(C).

⁵² ASX Settlement Operating Rule 13.6.7(d)(ii)(D) and 13.6.10(b)(ii)(D).

⁵³ ASX Settlement Operating Rules 13.6.7(d)(iv) and (v) and 13.6.10(b)(iv) and (v).

5.3 Takeover offers

As a practical matter, where an entity (a 'target') has issued CDIs over some of its securities and a third party (a 'bidder') makes a takeover offer for those securities, ASX would generally expect the bidder to make corresponding offers directly to the holders of CDIs to acquire their CDIs.

Where this occurs, the target has an obligation to provide to the bidder the registered details of the CDI holders, including their HIN, PID or SRN, to facilitate the extension of the takeover offer to them.⁵⁴ This applies regardless of whether the CDIs are entered on the CHESSE subregister or the issuer sponsored subregister.

If the CDIs are held on the CHESSE subregister, takeover offers for the CDIs will be processed electronically by ASX Settlement in the same way that takeover offers for other CHESSE-approved securities are processed. A CDI holder will be able to accept the takeover offer either by:

- instructing its sponsoring participant to accept the offer on its behalf, in which case the sponsoring participant will transmit a message in CHESSE to that effect;⁵⁵ or
- completing an acceptance and transfer form and returning it to the bidder, in which case the "bidder participant"⁵⁶ may accept the offer on behalf of the CDI holder by transmitting a message in CHESSE to that effect,⁵⁷ with that message taking effect if and when the sponsoring participant validates it.⁵⁸

If the CDIs are held on an issuer sponsored subregister, a CDI holder will be able to accept the takeover offer by completing an acceptance and transfer form and sending it to the person/place required under the offer document. Typically, the acceptance and transfer form will be required to be sent to the bidder or to a receiving agent acting for the bidder, who will then on-send it to the target's registry for processing in due course.⁵⁹

If an offer to the holder of a CDI is accepted and the CDI transferred to the bidder, the bidder will then have the choice to retain the CDI in that form or to transmute the CDI into the underlying securities.⁶⁰

In this scenario, the depositary nominee is not required to do, and in practice will not do, anything in relation to the takeover offer for the underlying securities it holds.

In the unlikely event in practice that the bidder chooses only to make a takeover offer for the underlying securities and not to make a corresponding offer for the CDIs, then the following procedures will be followed:

- For CDIs held on the CHESSE subregister, ASX Settlement will treat the offer for the underlying securities as an offer for the CDIs and process electronic instructions to accept that offer in the usual way. ASX will issue an announcement to participants in the ASX market advising them of receipt of the takeover offer and the time and date (the 'CHESSE cut-off time') by which an electronic message accepting the takeover offer must be submitted in CHESSE so that the depositary nominee can then accept the offer for the underlying securities

⁵⁴ ASX Settlement Operating Rules 13.9.1(j) and 14.13.1. To trigger this obligation, the bidder must give a written notice to ASX Settlement under ASX Settlement Operating Rule 14.11.1 that it is making a takeover bid for the CDIs and a written notice to the entity requesting the information required under section 641(1), or a copy of the entity's CDI register under section 173(3), of the Corporations Act 2001 (Cth) (with these sections applied as if the entity were a company incorporated in Australia). If the bidder is not bound by the ASX Settlement Operating Rules, it must also give a written undertaking to the entity under ASX Settlement Operating Rule 14.13.2(b) to comply with the confidentiality obligations relating to HINs and SRNs in ASX Settlement Operating Rule 14.13.3.

⁵⁵ ASX Settlement Operating Rule 14.14.1.

⁵⁶ The participant bidder is a participant in the CHESSE facility representing the bidder who can process messages on its behalf in the CHESSE system (see ASX Settlement Operating Rules 14.12.4 and 14.12.5). If the bidder is a general settlement participant or account participant, it will typically also act as the participant bidder. If it is not general settlement participant or account participant, the bidder may appoint a general settlement participant or account participant to act as participant bidder on its behalf. Alternatively, it or an agent may apply to be admitted as a "specialist settlement participant" in the CHESSE facility whose sole function is to act as the participant bidder in relation to the bid.

⁵⁷ ASX Settlement Operating Rule 14.14.7.

⁵⁸ ASX Settlement Operating Rule 14.14.9(a).

⁵⁹ Pursuant to ASX Settlement Operating Rule 13.5.12(b).

⁶⁰ ASX Settlement Operating Rules 13.3.3, 13.5.12(d) and 13.9.2 to 13.9.6.

on behalf of the CDI holder. Immediately after the CHESSE cut-off time, ASX Settlement will advise the depositary nominee of the number of acceptances received through the CHESSE facility and the depositary nominee will lodge an acceptance of the offer for the relevant number of underlying securities, together with a direction to the bidder to pay or transfer the offer consideration directly to the accepting CDI holders.⁶¹

- For CDIs held on the issuer sponsored subregister, CDN will request the bidder⁶² to send to each CDI holder copies of the offer documentation, including an acceptance and transfer form and any other accompanying documents sent to the holders of the underlying securities in connection with the offer, together with a notice which informs the CDI holder:
 - that they are entitled to accept the offer with respect to the underlying securities corresponding to their CDI holding;
 - that to accept the offer they must complete the acceptance and transfer form in accordance with the offer documentation; and
 - of the time and date (the 'acceptance form cut-off time') by which the acceptance and transfer form must be received by the offeror or its receiving agent to enable the processing of acceptances and the depositary nominee to lodge an acceptance of the offer as holder of the underlying securities prior to close of the offer.⁶³

Immediately after the acceptance form cut-off time, the offeror or its receiving agent will notify the depositary nominee of the number of underlying securities for which valid acceptance and transfer forms have been received from CDI holders and the depositary nominee will lodge an acceptance of the offer for that number of underlying securities, together with a direction to the bidder to pay or transfer the offer consideration directly to the accepting CDI holders.⁶⁴

The depositary nominee will only accept the offer for the underlying securities where it has been instructed to do so by CDI holders in accordance with the procedures above.⁶⁵

5.4 Voting at security holder meetings

As they are not the registered holders of the underlying securities, CDI holders generally are not able to vote those securities at a meeting of security holders. Rather it is CDN, as the registered holder of the underlying securities, who is generally entitled to vote the underlying securities.⁶⁶

The CHESSE operating rules contain provisions designed to ensure that CDI holders, as a group, can exercise the same voting rights that they would otherwise be entitled to exercise as a group if they held the underlying securities. This is achieved through the mechanisms described below.

An entity that has issued CDIs over a class of its securities must give a notice of any meeting that the holders of that class of security holders are entitled to attend to all CDI holders at the same time as it gives the notice of

⁶¹ ASX Settlement Operating Rule 13.7.2.

⁶² In the unlikely event the bidder declines this request, the depositary nominee will request the target to send these documents to the holders of CDIs, relying on the power of attorney in ASX Settlement Operating Rule 13.5.8 and the indemnity in ASX Settlement Operating Rule 13.13.1.

⁶³ ASX Settlement Operating Rule 13.7.3 and Procedure 13.7.3.

⁶⁴ ASX Settlement Operating Rule 13.7.4.

⁶⁵ ASX Settlement Operating Rule 13.7.1.

⁶⁶ If a person holding CDIs wants to vote the underlying securities personally, generally they must first transmute the CDIs into the underlying securities in sufficient time to have their name entered on the entity's register of security holders before the cut-off time for determining voting entitlements at the relevant meeting. See '6.2 Transmuting CDIs to underlying securities' on page 12.

meeting to the security holders in that class.⁶⁷ The entity must permit the holders of the CDIs to attend the meeting unless the laws of the place in which it is established prevent this.⁶⁸

The entity must include in the notice of meeting:

- a statement informing the holders of CDIs of their right to direct the depositary nominee on how it should vote with respect to the resolutions described in the notice;
- provision for a direction to be given by the holders of CDIs in relation to how the depositary nominee should so vote; and
- a statement specifying the time and date by which the holders of CDIs must provide their directions to the depositary nominee.

The entity is required to collect and process any such directions from CDI holders and to provide the depositary nominee with a report in writing that clearly shows how the depositary nominee must exercise its right to vote by proxy at the meeting, in sufficient time to enable the depositary nominee to lodge a proxy for the meeting.⁶⁹

In the ordinary case, the depositary nominee will then appoint two proxies, one to vote in favour of, and the other to vote against, the relevant resolution.⁷⁰ The number of underlying securities for each proxy is determined by taking the number of CDIs in favour of or against the resolution (as the case may be), applying the transmutation ratio to those CDIs and then entering the resultant number of underlying securities on the appropriate proxy.⁷¹

In those cases where the depositary nominee is only entitled to appoint a single proxy under the entity's constitution, the depositary nominee must instead take the number of CDIs in favour of the resolution, take the number of CDIs against the resolution, determine the net voting position either in favour of or against the resolution, apply the transmutation ratio to those CDIs and then enter the resultant number of underlying securities on the proxy.⁷²

Where the appointed proxy or proxies are required to vote on multiple resolutions, the depositary nominee must instruct the proxy or proxies to vote in such manner as will, in the reasonable opinion of the depositary nominee, best represent the wishes of the majority of holders of CDIs.⁷³

6. Transmutation

6.1 Transmuting underlying securities to CDIs

Where an entity has been approved as an issuer of CDIs in relation to underlying securities, a holder of those securities can elect at any time to have them converted into CDIs (referred to as "transmuting" the securities to CDIs) by giving a notice to the entity requesting the transmutation and delivering up any documents (including, if applicable, an executed transfer and any certificates or other documents of title) needed to transfer the underlying securities from the holder to the depositary nominee.⁷⁴

If the holder wants their CDIs entered on the CHESSE subregister and has already appointed a sponsoring CHESSE participant, they will usually make this request through their sponsoring CHESSE participant, who will then liaise with the entity's registry to facilitate the transmutation.⁷⁵ If the holder wants their CDIs entered on the issuer sponsored

⁶⁷ ASX Settlement Operating Rule 13.8.2.

⁶⁸ ASX Listing Rule 14.2A.

⁶⁹ ASX Settlement Operating Rule 13.8.9. Where a holder of CDIs, or a person nominated by a holder of CDIs, is to be appointed the depositary nominee's proxy in accordance with ASX Settlement Operating Rule 13.8.8, the entity must also collect and process all relevant proxy forms in sufficient time to enable the depositary nominee to lodge a proxy or proxies for the meeting.

⁷⁰ ASX Settlement Operating Rules 13.8.3 and 13.8.4.

⁷¹ ASX Settlement Operating Rule 13.8.5.

⁷² ASX Settlement Operating Rule 13.8.6.

⁷³ ASX Settlement Operating Rule 13.8.7.

⁷⁴ ASX Settlement Operating Rule 13.3.1.

⁷⁵ The process for this to occur is outlined in ASX Settlement Operating Rules 13.3.3 and 13.9.7 to 13.9.13.

subregister or they haven't yet appointed a sponsoring CHESS participant, they must make this request directly to the entity's registry.

Upon receipt of such a request and the documents needed to transfer title to the underlying securities from the CDI holder to the depositary nominee, the entity is obliged to cause those securities to be registered in the name of the depositary nominee, to record the holder in its CDI register as being the holder of the relevant number of CDIs, and to notify the holder that the transmutation has been effected.⁷⁶ In practice, this will usually be done on the entity's behalf by its Australian registry, co-ordinating where necessary with its principal registry offshore.

It should be noted that the requirements for transferring the underlying securities from the holder to the depositary nominee may vary, depending on the law and practice of the entity's place of establishment.

6.2 Transmuting CDIs to underlying securities

A holder of CDIs can elect at any time to transmute them to the underlying securities by giving a notice to the entity requesting the transmutation and delivering up any documents (including, if applicable, an executed transfer) needed to transfer the underlying securities from the depositary nominee to the holder.

If the holder's CDIs are entered on the CHESS subregister, they must make this request through their sponsoring CHESS participant, who will then liaise with the entity's registry to facilitate the transmutation.⁷⁷ If the holder's CDIs are entered on the issuer sponsored subregister, they must make this request directly to the entity's registry.

Upon receipt of such a request and any documents needed to transfer title to the underlying securities from the depositary nominee to the CDI holder, the entity is obliged to cause those securities to be registered in the name of the CDI holder and to make a corresponding reduction in the number of CDIs registered in the name of the CDI holder on its CDI register.⁷⁸ In practice, this will usually be done on the entity's behalf by its Australian registry, co-ordinating where necessary with its principal registry offshore.

Again, it should be noted that the requirements for transferring the underlying securities from the depositary nominee to a CDI holder may vary, depending on the law and practice of the entity's place of establishment.

7. Registers and holding statements

7.1 Reconciliation obligations

An entity that has issued CDIs over underlying securities is required to ensure at all times that the total number of CDIs on its CDI register reconciles to the total number of underlying securities registered in the name of the depositary nominee on its principal register.⁷⁹

If the underlying securities are certificated and the entity is holding the certificates for those securities in safe custody for the depositary nominee, the entity is also required to ensure at all times that the certificates in its possession represent the same number of underlying securities as are registered in the name of the depositary nominee.⁸⁰

7.2 Right to inspect registers

An entity that has issued CDIs over underlying securities is required to make its CDI register available for inspection in Australia to the same extent and in the same manner as if that register were a register of members of an

⁷⁶ ASX Settlement Operating Rules 13.3.1 and 13.5.12(c). The power of attorney mentioned in the text accompanying note 35 above also empowers the entity to execute and complete any transfer of the underlying securities on the behalf of the depositary nominee needed to give effect to the transmutation.

⁷⁷ The process for this to occur is outlined in ASX Settlement Operating Rules 13.3.3 and 13.9.2 to 13.9.6.

⁷⁸ ASX Settlement Operating Rule 13.5.12(d). Again, the power of attorney mentioned in the text accompanying note 35 above also empowers the entity to execute and complete any transfer of the underlying securities on the behalf of the depositary nominee needed to give effect to the transmutation.

⁷⁹ ASX Settlement Operating Rule 13.5.2(a).

⁸⁰ ASX Settlement Operating Rule 13.5.2(b).

Australian listed public company.⁸¹ Typically, this obligation will be met on the entity's behalf by its Australian registry.

7.3 CDI holding statements

CDI holders who are sponsored by a participant in CHESS will receive CHESS holding statements for their CDIs whenever they acquire or dispose of CDIs, transmute underlying securities into CDIs or transmute CDIs into the underlying securities, similar to the CHESS holding statements received by the holders of quoted securities in ASX listed entities. ASX Settlement is responsible for issuing these statements and will do so within 5 business days of the end of the month in which any change in holding occurs.⁸²

CDI holders who are issuer sponsored are required to receive holding statements from the entity whenever they acquire or dispose of CDIs, transmute underlying securities into CDIs or transmute CDIs into the underlying securities.⁸³ Usually the entity will engage an Australian registry to do this on its behalf. The statements must be sent within 5 business days of the end of the month in which any change in holding occurs.⁸⁴

8. Divestment of small holdings

The CHESS operating rules include provisions giving an entity that has issued CDIs over its securities the same ability to divest small holdings (that is, holdings worth less than A\$500 that are considered to be less than a "marketable parcel") as any other listed entity has under the Listing Rules.⁸⁵

To qualify to exercise this right:

- the entity must have provisions in its constitution entitling it to divest or sell a holding of underlying securities of less than a specified number of securities;
- if the CDI holder held underlying securities directly instead of CDIs, they would be subject to divestment or sale under those provisions;
- the entity must give a notice of divestment to a holder of CDIs;⁸⁶ and
- the entity must give the CDI holder the benefit of any notice and consent procedure contained in its constitution, the ASX Listing Rules and the rules of any financial market on which its underlying securities are listed or quoted to which the holder would have been entitled if they held the underlying securities directly.⁸⁷

If the depository nominee is reasonably satisfied that the entity has complied with these obligations, the depository nominee is authorised to consent to the sale or divestment of the number of underlying securities which correspond to the holder's CDIs.⁸⁸ The entity must then distribute the proceeds of sale, net of transaction costs, to the holder and cancel the holder's CDIs.⁸⁹

⁸¹ ASX Settlement Operating Rule 13.5.3.

⁸² ASX Settlement Operating Rule 8.20.1.

⁸³ ASX Settlement Operating Rule 5.25.1.

⁸⁴ ASX Listing Rule 8.6.1.

⁸⁵ See ASX Listing Rules 15.13, 15.13A and 15.13B.

⁸⁶ The notice of divestment must accord with ASX Settlement Operating Rule 5.12.2. By giving a notice of divestment, the entity indemnifies the depository nominee and ASX Settlement against any loss, cost, damage, expense or liability which they may suffer or incur as a result of any sale or divestment of the underlying securities and the cancellation of CDIs under these rules (ASX Settlement Operating Rule 13.6.16).

⁸⁷ ASX Settlement Operating Rule 13.6.13.

⁸⁸ ASX Settlement Operating Rule 13.6.14.

⁸⁹ ASX Settlement Operating Rule 13.6.15. If the entity is required under the laws of its place of establishment to distribute the net proceeds to the depository nominee in its capacity as the holder of the underlying securities, the depository nominee is taken to have directed the entity to distribute the net proceeds to the CDI holder.

9. What happens to CDIs when an entity ceases to be listed on ASX?

When an entity ceases to be listed on ASX, its approval as a foreign issuer of CDIs under the operating rules of the CHESS facility and the approval of its CDIs for participation in that facility will be revoked. This will then require the entity (and the depositary nominee) to take steps to unwind the CDIs over the underlying securities.

In the first instance, this will usually involve a communication by the entity to CDI holders inviting them to transmute their CDIs to the underlying securities.⁹⁰ If they do not do so by a nominated date, the depositary nominee will usually revoke the trust under which it holds the underlying securities,⁹¹ cancel the remaining CDIs and endeavor to transfer the underlying securities to the former holders of those CDIs.⁹² If for any reason the depositary nominee is not able to complete the transfer of the underlying securities to a particular CDI holder, the depositary nominee will sell the underlying securities and either account for the net proceeds of sale to the holder or, if they are not able to be located, deal with the money in accordance with the laws applicable to unclaimed moneys.⁹³

If an entity is voluntarily relinquishing its ASX listing, it should refer to Guidance Note 33 *Removal of Entities from the ASX Official List* for the conditions that ASX is likely to impose in those circumstances. These conditions will invariably include, where an entity has issued CDIs over its securities, that it send a written or electronic communication to all security holders, in form and substance satisfactory to ASX, setting out:

- the steps they must take to convert their CDIs to the underlying securities; and
- the steps that will be taken by the CHESS depositary nominee (as outlined above) if they do not convert their CDIs to the underlying securities by a nominated date.⁹⁴

If an entity is being delisted at the instigation of ASX, the depositary nominee will send,⁹⁵ or cause to be sent,⁹⁶ an equivalent communication.

10. Other matters

10.1 Fees

CDN currently does not levy any charges to an entity for acting as depositary nominee and neither ASX nor ASX Settlement⁹⁷ levies any charges to the entity for its participation in the CHESS CDI facility.

10.2 Compliance with tax laws

An entity that has issued CDIs over its securities is required to use its best endeavours to:

- comply with all applicable tax laws as agent and attorney of the depositary nominee;
- ensure that the depositary nominee complies with all applicable tax laws; and

⁹⁰ See '6.2 Transmuting CDIs to underlying securities' on page 12.

⁹¹ ASX Settlement Operating Rule 13.5A.1.

⁹² ASX Settlement Operating Rule 13.5A.2.

⁹³ ASX Settlement Operating Rules 13.5A.2(c) and 13.5A.3.

⁹⁴ This date is to be ascertained by discussions between the entity and ASX Settlement.

⁹⁵ ASX Settlement Operating Rule 13.5A.2(a).

⁹⁶ The depositary nominee will often cause the entity to send this notification on its behalf, relying on the power of attorney in ASX Settlement Operating Rule 13.5.8 and the indemnity in ASX Settlement Operating Rule 13.13.1.

⁹⁷ ASX Settlement does charge fees to bidders who make a takeover offer for an entity that has issued CDIs. ASX Settlement currently charges an offer establishment fee of \$550 (inclusive of GST) to accept an application from a bidder to be admitted to the CHESS settlement facility as a specialist settlement participant and act as the "participant bidder". It also charges a further offer facilitation fee of \$1,100 (inclusive of GST) once that admission has been approved and the participant bidder has been allocated a "user identification code" in CHESS. This latter fee covers the administration and monitoring of the takeover offer by ASX Settlement. Details of these fees are set out in the ASX Clearing, Settlement and Issuer Administration Services Schedule of Fees available online at: <http://www.asx.com.au/about/asx-fees.htm>.

- not do any act or thing which creates a tax liability, or not omit to do any act or thing, the omission of which creates a tax liability, which must be discharged by the depositary nominee, unless provision has been made for the discharge of the liability by some person other than the depositary nominee.⁹⁸

10.3 General indemnity

An entity that has issued CDIs over its securities is required to indemnify the depositary nominee against all expenses, losses, damages and costs that the depositary nominee may sustain or incur in connection with:

- CDIs;
- its capacity as holder of the underlying securities;
- any act done, or required to be done, by the entity (whether or not on behalf of the depositary nominee) under ASX Settlement Operating Rules 13.1 to 13.13; and
- any act otherwise done or required to be done by the depositary nominee under those Rules.⁹⁹

⁹⁸ ASX Settlement Operating Rule 13.11.1. The obligations of the entity and the depositary nominee under the ASX Settlement Operating Rules are subject to all relevant tax laws.

⁹⁹ ASX Settlement Operating Rule 13.13.1.