

REGULATORY GUIDE 190

Offering securities in New Zealand and Australia under mutual recognition

March 2011

About this guide

This is a guide for New Zealand and Australian issuers offering securities or interests in managed or collective investment schemes in both countries. It explains what issuers have to do under the trans-Tasman mutual recognition scheme for offers of securities.

This is a joint guide published by the Australian Securities and Investments Commission (ASIC) and the New Zealand Securities Commission (NZSC).

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This version was issued on 17 March 2011 and is based on legislation and regulations as at 17 March 2011.

Previous versions:

- Superseded Regulatory Guide 190, issued 13 June 2008, reissued 21 January 2009

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Australian *Corporations Act 2001* or the New Zealand *Securities Act 1978* and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

The trans-Tasman mutual recognition scheme allows an issuer to offer securities or interests in collective or managed investment schemes in Australia and New Zealand using one disclosure document prepared under regulation in its home country.

Issuers who wish to operate under the scheme will be able to comply with minimal entry and ongoing requirements agreed to between the two countries and prescribed in each country's law.

The Australian Securities and Investments Commission (ASIC), the New Zealand Companies Office (NZCO) and the New Zealand Securities Commission (NZSC) have established processes for cooperation between the authorities in administering the mutual recognition scheme.

The mutual recognition scheme

- RG 190.1 The trans-Tasman mutual recognition scheme for offers of securities promotes investment between Australia and New Zealand. It allows an issuer to offer securities or interests in managed or collective investment schemes in both countries using one disclosure document prepared under the fundraising laws in its home country.
- RG 190.2 The aim of the scheme is to remove unnecessary regulatory barriers to trans-Tasman securities offerings and reduce costs of capital raising in both Australia and New Zealand. At the same time the scheme maintains investor protection through appropriate disclosure and supervision of offerings.
- RG 190.3 The mutual recognition scheme is contained in the following law:
- (a) for New Zealand issuers wishing to extend an offer into the Australian market (a 'recognised offer')—Ch 8 of the *Corporations Act 2001* (Australian Corporations Act) and the Corporations Regulations 2001 (Australian corporations regulations) (collectively, the Australian securities law); and
 - (b) for Australian issuers wishing to extend an offer into the New Zealand market (a 'regulated offer')—Pt 5 of the *Securities Act 1978* (NZ Securities Act) and the Securities Regulations 2009 (NZ regulations 2009) (collectively, the NZ securities law), and the Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008 (NZ mutual recognition regulations).
- RG 190.4 To help Australian and New Zealand issuers who wish to participate in the scheme, the NZSC and ASIC have issued this joint regulatory guide

highlighting the key features of each country's securities offering regime and key requirements under the scheme.

Note: For the purposes of this regulatory guide, we have used the term 'issuer' throughout to describe all offerors or issuers that may be entitled to participate in the mutual recognition scheme. Despite the use of the term 'issuer', this guidance is intended to apply to offers for sale that are covered by the mutual recognition scheme.

Requirements for issuers

RG 190.5 Under the mutual recognition scheme, issuers are not required to comply with most of the requirements of the other country's fundraising laws. Instead, issuers who wish to operate under the scheme are able to comply with some minimal entry and ongoing requirements: see Table 1 and Section B (for New Zealand issuers) and Section C (for Australian issuers).

Table 1: Requirements for issuers under the mutual recognition scheme

	New Zealand issuers	Australian issuers
Entry requirements (before making an offer)	The offer must require disclosure under Pt 2 of the NZ Securities Act (Australian corporations regulations, reg 8.2.01).	The offer must require disclosure under the Australian Corporations Act (NZ mutual recognition regulations, reg 4).
	The issuer must be incorporated under the law of New Zealand and not be disqualified or banned.	The issuer must be incorporated by/under the law of Australia, or be a registered foreign company under the Australian Corporations Act, and not be disqualified or banned.
	The offer can apply to shares, debentures and interests in managed investment schemes, and certain rights, interests and options in these financial products under s1200A of the Australian Corporations Act.	The offer can apply to equity or debt securities, interests in collective investment schemes, and any interest in, or option to acquire, these securities under reg 4 of the NZ mutual recognition regulations.
	The issuer must lodge with ASIC a written notice of the intention to make the offer, including an offer document that is accompanied by a warning statement (Australian Corporations Act, s1200C(5)). The issuer must also notify the NZCO (NZ mutual recognition regulations, reg 15). See also RG 190.14–RG 190.18.	The issuer must lodge with the NZCO a written notice of the intention to make the offer, including an offer document that is accompanied by a warning statement (NZ mutual recognition regulations, reg 11). The issuer must also notify ASIC (Australian Corporations Act, s1200S). See also RG 190.33–RG 190.37.
Ongoing requirements (from commencement of the offer)	Issuers must comply with specific ongoing conditions, which include ensuring that the offer remains open to investors in the home jurisdiction and notifying the relevant regulator in the country in which the foreign offer of securities is being made of certain circumstances: see Table 2–Table 3 (for New Zealand issuers) and Table 4–Table 5 (for Australian issuers).	

Role of regulators

- RG 190.6 In Australia, ASIC is the regulator for offers of securities, and investigates suspected contraventions of Australian law.
- RG 190.7 In New Zealand, there are two regulators for securities offers. The NZSC is responsible for market conduct and has enforcement powers to require offer documents and advertisements to comply with New Zealand law. The NZCO is responsible for the registration of corporate bodies and corporate documents, which includes registration of prospectuses for offers of securities in New Zealand.
- RG 190.8 Under the mutual recognition scheme, ASIC, the NZSC and the NZCO will exercise their usual powers for offers of securities. ASIC, the NZSC and the NZCO have also established arrangements for cooperation and information sharing in administering the mutual recognition scheme: see Section D.

B What must New Zealand issuers do?

Key points

A New Zealand issuer who wants to offer securities to Australian investors under the mutual recognition scheme must:

- be entitled under the NZ securities law to offer the securities (i.e. the offer must require disclosure under Pt 2 of the NZ Securities Act); and
- comply with all applicable New Zealand laws.

The issuer must also comply with specified requirements for offering securities into Australia, including lodging a notice with ASIC and ensuring that the offer document is accompanied by a warning statement.

While the offer remains open to Australian investors, the New Zealand issuer must comply with the offering conditions, including ensuring that the offer remains open to New Zealand investors and notifying ASIC of certain circumstances.

Before making an offer (entry requirements)

What is a 'recognised offer'?

- RG 190.9 An offer of securities by a New Zealand issuer into the Australian market under the mutual recognition scheme is called a 'recognised offer'. To be a recognised offer, the offer must require disclosure under Pt 2 of the NZ Securities Act.
- RG 190.10 ASIC considers that an offer in respect of which the NZSC exempts the person from compliance with Pt 2 in its entirety, as opposed to a partial exemption, is not a recognised offer.

Who can make an offer?

- RG 190.11 The issuer must be incorporated under the law of New Zealand or be a natural person resident in New Zealand or be a legal person established under the law in New Zealand. An entity that is registered as an overseas company under New Zealand law will not be able to opt into this scheme.
- RG 190.12 The New Zealand issuer or any person concerned in the management of the issuer must *not* be:
- (a) disqualified from being concerned in the management of the issuer under New Zealand law;

- (b) disqualified from managing corporations under Pt 2D.6 of the Australian Corporations Act (e.g. as an undischarged bankrupt or having been convicted of certain offences);
- (c) banned by ASIC from providing financial services (e.g. because the person has not complied with the law, become insolvent or committed a fraud) or disqualified by a court under the Australian Corporations Act; or
- (d) previously banned by ASIC from making a recognised offer in the future under s1200P of the Australian Corporations Act.

Note: See Australian Corporations Act, s1200G(6).

What securities can be offered in Australia?

- RG 190.13 The mutual recognition scheme applies to shares, debentures and interests in managed investment schemes, and certain rights, interests and options in these financial products: Australian Corporations Act, s1200A.

What must be lodged with the NZCO?

- RG 190.14 If a New Zealand issuer proposes to make an offer of securities in Australia, the New Zealand issuer must lodge with the NZCO written notice of its intention to make the offer under the mutual recognition scheme. This notification must be no later than the time ASIC is notified of the New Zealand issuer's intention: see RG 190.16–RG 190.18.

Note: Notification forms are available on the NZCO website at www.business.govt.nz/companies/learn-about/other-entities/more-entities/overseas-issuers/mrso/mrso-forms/.

- RG 190.15 The notice must be sent to the NZCO:
- Companies Office
Northern Business Centre
Private Bag 92061
Victoria Street West
Auckland 1142
NEW ZEALAND

What must be lodged with ASIC?

- RG 190.16 At least 14 days before the day on which the offer is first made in Australia, and no later than the time the NZCO is notified, the New Zealand issuer must lodge with ASIC a written notice of the intention to make the offer, together with:
- (a) any offer document required by the NZ securities law (e.g. a prospectus and an investment statement);

- (b) the constituent documents of the New Zealand issuer or the scheme constitution;
- (c) details of any exemption from the NZ securities law that applies to the offer, including:
 - (i) details of any general exemption that applies to the offer or to the offeror in relation to the offer; and
 - (ii) a copy of any specific exemption that applies to the offer or to the offeror; and
- (d) an address for service in Australia.

Note: See Australian Corporations Act, s1200D. As at the date of this guide, there is no prescribed form for the purposes of s1200C(5) of the Australian Corporations Act. Unless a form is prescribed, the written notice can be provided in a covering letter accompanying the documents required under s1200D.

RG 190.17 The offer document must be accompanied by a prescribed warning statement that the offer is regulated under the NZ securities law and that Australian law does not apply to the offer, along with certain prescribed warnings about tax differences and any currency risk: Australian Corporations Act, s1200E and Australian corporations regulations, regs 8.2.02–8.2.03.

RG 190.18 The notice and related documents should be sent to ASIC:
 FE Registration Services
 Australian Securities and Investments Commission
 GPO Box 9827
 Sydney NSW 2001
 AUSTRALIA

ASIC's power to declare an offer a 'recognised offer'

RG 190.19 If a New Zealand issuer's offer would be a recognised offer except for a failure to meet the conditions in s1200C(5) and 1200C(6) of the Australian Corporations Act and ASIC is satisfied that the failure is minor or technical, ASIC may declare in writing that the offer is a recognised offer: Australian Corporations Act, s1200B(3). ASIC does not have a general exemption or modification power in respect of Ch 8 of the Australian Corporations Act.

Note: See ASIC's Regulatory Guide 51 *Applications for relief* (RG 51) for information relating to applying to ASIC for relief, including declarations under s1200B(3) of the Australian Corporations Act.

While the offer is open (ongoing requirements)

RG 190.20 At all times while the offer remains open to Australian investors, the New Zealand issuer must comply with the offering conditions (see Table 2), which include ensuring that the offer remains open to New Zealand investors and notifying ASIC of certain circumstances (see Table 3).

Table 2: Offering conditions for New Zealand issuers

The offer	<p>At all times while the offer is open to Australian investors, the offer must:</p> <ul style="list-style-type: none"> • remain a recognised offer in New Zealand (Australian corporations regulations, reg 8.2.01); • comply with the NZ securities law (Australian Corporations Act, s1200G(5)); and • be open to acceptance by persons in New Zealand (Australian Corporations Act, s1200G(1) and 1200G(2)).
The issuer	<p>At all times while the offer is open to Australian investors, the New Zealand issuer must:</p> <ul style="list-style-type: none"> • give a prospective investor, on request and free of charge, copies of the constitution of the issuer (Australian Corporations Act, s1200G(8)); • comply with the notification requirements (Australian Corporations Act, s1200G(9))—see Table 3; • maintain an address for service in Australia (Australian Corporations Act, s1200H); and • ensure that the following persons are <i>not</i> concerned in the management of the issuer (Australian Corporations Act, s1200G(6)): <ul style="list-style-type: none"> – anyone who is disqualified from managing corporations, or from being concerned in the management of the issuer, in New Zealand or Australia; or – anyone who is subject to a banning order under s920A or a court order under s921A(2)(a) of the Australian Corporations Act. <p>If the offer is an offer of interests in a managed investment scheme and the issuer's records indicate that interests are held by someone who resides in Australia, the issuer must comply with the dispute resolution condition under s1200J of the Australian Corporations Act: see RG 190.21–RG 190.23.</p>

Note: A New Zealand issuer may be required to comply with the requirements in s1200H and 1200J of the Australian Corporations Act after the offer has closed in Australia.

Complying with the dispute resolution condition (ongoing requirements)

RG 190.21 Where a New Zealand issuer's offer relates to interests in a managed investment scheme, the New Zealand issuer must have a dispute resolution process that complies with s1017G(2) of the Australian Corporations Act: Australian Corporations Act, s1200J.

RG 190.22 This dispute resolution system must consist of:

- (a) an internal dispute resolution procedure that:
 - (i) complies with the standards and requirements made or approved by ASIC; and
 - (ii) covers complaints made by retail clients in relation to the financial services provided; and
- (b) membership of one or more ASIC-approved external dispute resolution schemes that cover complaints made by retail clients in relation to the financial services provided.

RG 190.23 The New Zealand issuer must maintain the dispute resolution processes in Australia for as long as the issuer's records show that an Australian resident holds securities in the class of securities that was the subject of the offer.

Note: See ASIC's Regulatory Guide 165 *Licensing: Internal and external dispute resolution* (RG 165) and Regulatory Guide 139 *Approval and oversight of external dispute resolution schemes* (RG 139) for information relating to Australian dispute resolution requirements.

Ongoing notification requirements (New Zealand issuers)

RG 190.24 The New Zealand issuer must notify ASIC of certain circumstances set out in Table 3.

Table 3: Notification requirements for New Zealand issuers (s1200G(9) of the Australian Corporations Act)

If ...	You must lodge with ASIC ...	By this time ...
A change is made to an offer document, or any other document, required by the NZ securities law	A copy of the document as changed.	No later than 7 days after the day on which the issuer notified (or should have notified) the NZCO of the change.
A change is made to the warning statement that is included with the offer document in Australia	A copy of the warning statement as changed.	
A supplementary or replacement offer document is required by the NZ securities law	A copy of the supplementary or replacement offer document.	
A change is made to the constitution or constituent document of the entity whose securities are being offered	A copy of the constitution or constituent document as changed.	
The NZSC makes, changes or revokes an exemption that applies <i>exclusively</i> to the offer or the issuer under the NZ securities law	A copy of the exemption, the exemption as changed, or notice in the prescribed form (if any) of the details of the revocation.	No later than 7 days after the making, change or revocation of the exemption occurs.
The NZSC or the NZCO makes, changes or revokes an exemption that applies, but <i>not</i> exclusively, to the offer or the issuer under the NZ securities law	Written notice in the prescribed form (if any) of the details of the exemption, change or revocation.	No later than 14 days after the making, change or revocation of the exemption occurs.
The NZSC or the NZCO begins enforcement action, or exercises a power it has under law, in relation to the issuer or offer	Written notice in the prescribed form (if any) of the details of the action taken or power exercised.	No later than 7 days after the action is taken or the power is exercised.

What happens if an offering condition is breached?

- RG 190.25 A breach of an offering condition amounts to a breach of Australian law, which ASIC can investigate: Australian Corporations Act, s1200Q. In addition, under Ch 8 of the Australian Corporations Act, ASIC may:
- (a) make a stop order under s1200N; or
 - (b) ban the issuer from making a recognised offer for a specified period under s1200P.

What other Australian securities laws apply to a recognised offer?

- RG 190.26 A recognised offer is exempt from many of the provisions of the Australian Corporations Act, including:
- (a) if the offer relates to debentures (Ch 2L) or to a managed investment scheme (Ch 5C);
 - (b) the requirements for disclosure for the offer of securities (Ch 6D, except for the hawking provisions: see RG 190.27); and
 - (c) the requirements to be licensed or authorised to provide financial advice and to provide disclosure for financial products (Pts 7.6, 7.7, 7.8 and 7.9 of Ch 7, except for the hawking and short selling provisions).
- RG 190.27 Other Australian laws apply to recognised offers. In Australia, there is a broad-ranging prohibition in relation to dealing in securities (including offers of securities) in a manner that is likely to mislead or deceive. There are also general content rules for pre-offer advertising for securities and for interests in managed investment schemes. In addition, a person must not offer securities for issue or sale in the course of, or because of, an unsolicited meeting with another person or an unsolicited telephone call to another person (this is known as ‘hawking’).
- RG 190.28 Under Australian law, an issuer with at least 100 members must comply with continuous disclosure rules even if it is not listed on a financial market: see Australian Corporations Act, s111AC, 111AD, 111AF(2) and 1200K. For example, the issuer must lodge with ASIC on an ongoing basis information that a reasonable person would expect to have a material effect on the price or value of the securities or undertake website-based disclosure in accordance with ASIC’s good practice guidance: see Regulatory Guide 198 *Unlisted disclosing entities: Continuous disclosure obligations* (RG 198). An issuer is also prohibited from short selling securities.

C What must Australian issuers do?

Key points

An Australian issuer who wants to offer securities to New Zealand investors under the mutual recognition scheme must:

- be entitled under the Australian securities law to offer the securities (i.e. the offer of securities must require a disclosure document or a Product Disclosure Statement (PDS) under the Australian Corporations Act); and
- comply with all applicable Australian laws.

The issuer must also comply with specified requirements for an offer of securities in New Zealand, including lodging a notice with the NZCO and ensuring that the offer document is accompanied by a warning statement.

While the offer remains open to New Zealand investors, the Australian issuer must comply with the offering conditions, including ensuring that the offer remains open to Australian investors and notifying the NZCO of certain circumstances.

Before making an offer (entry requirements)

What is a 'regulated offer'?

RG 190.29 An offer of securities by an Australian issuer into the New Zealand market under the mutual recognition scheme is a 'regulated offer'. To be a regulated offer, the offer of securities must require a disclosure document or a Product Disclosure Statement (PDS) under the Australian Corporations Act. The Australian issuer must be entitled under Australian law to offer the securities. If the disclosure document or PDS is required to be lodged with ASIC under Australian law, then the issuer must lodge the disclosure document or PDS with ASIC and any exposure period must have expired.

Note: An offer can still be a regulated offer even if the PDS does not need to be lodged with ASIC under s1015B of the Australian Corporations Act. In this situation, s1015D of the Australian Corporations Act will instead require the Australian issuer to lodge an in-use notice with ASIC.

Who can make an offer?

RG 190.30 The issuer must be incorporated under the law of Australia or be a natural person resident in Australia or be a legal person established under the law of Australia or be a registered foreign company under the Australian Corporations Act.

- RG 190.31 The issuer or any person concerned in the management of the issuer must *not* be:
- (a) prohibited by, or under a power exercised under, Australian law from being concerned in the management of a company in Australia (NZ mutual recognition regulations, reg 13(2)(b));
 - (b) prohibited by, or under power exercised under, New Zealand law from being concerned in the management of a company in New Zealand (NZ mutual recognition regulations, reg 13(2)(b)); or
 - (c) previously banned by the NZSC from making a regulated offer (NZ mutual recognition regulations, reg 13(4)).

What securities can be offered in New Zealand?

- RG 190.32 The mutual recognition scheme applies to equity or debt securities, interests in collective investment schemes, and any interest in, or option to acquire, these securities: NZ mutual recognition regulations, reg 4.

What must be lodged with ASIC?

- RG 190.33 If an Australian issuer proposes to make an offer of securities in New Zealand, the Australian issuer must lodge with ASIC written notice of its intention to make the offer under the mutual recognition scheme: see Australian Corporations Act, s1200S. An Australian issuer may provide written notice of its intention to offer under the mutual recognition scheme by selecting the option that confirms the offer will be made available in a recognised jurisdiction (e.g. New Zealand) under the foreign recognition scheme when completing either the ASIC OFFERlist form or PDS in-use notice and submitting it to ASIC in the usual way. This notification must be no later than the time the NZCO is notified of the Australian issuer's intention: see RG 190.35–RG 190.37.

- RG 190.34 The notice should be sent to ASIC:
- FE Registration Services
 Australian Securities and Investments Commission
 GPO Box 9827
 Sydney NSW 2001
 AUSTRALIA

What must be lodged with the NZCO?

- RG 190.35 Before making the offer in New Zealand, an Australian issuer must lodge with the NZCO a written notice of its intention to make the offer under the NZ mutual recognition regulations: NZ Securities Act, s73(1)(c) and NZ mutual recognition regulations, reg 11. (Issuers will receive confirmation

from the NZCO that their offer documents have been accepted, and should await this notice before making the offer.) The notice must:

- (a) state that the issuer intends to make an offer according to the NZ mutual recognition regulations;
- (b) specify the securities to be offered;
- (c) specify the proposed offer period for each of:
 - (i) the offer of the securities in New Zealand; and
 - (ii) the offer of the securities in Australia;
- (d) give the name and address of a person who is authorised to accept service in New Zealand;
- (e) state that the Australian issuer submits to the jurisdiction of the courts of New Zealand;
- (f) state the Australian issuer's New Zealand overseas issuer registration number (if any);
- (g) be signed by a person who is authorised to act on the issuer's behalf; and
- (h) be accompanied by the following documents:
 - (i) an offer document required by Australian law (e.g. a prospectus or, if the offer relates to a managed investment scheme, a PDS);
 - (ii) details of any exemption or declaration under the Australian Corporations Act that is relevant to the offer (whether applying specifically to the issuer or the offer, or generally); and
 - (iii) the constitution of the company or scheme.

Note: Notification forms are available on the NZCO website at www.business.govt.nz/companies/learn-about/other-entities/more-entities/overseas-issuers/mrso/mrso-forms/.

RG 190.36 The offer document must be accompanied by the prescribed warning statement required under regs 13(1)(d)–13(1)(g) of the NZ mutual recognition regulations that the offer is principally regulated under Australian rather than New Zealand law, along with disclosure of any dispute resolution process or other tax differences and currency risks.

RG 190.37 The notice and related documents must be sent to the NZCO:

Companies Office
Northern Business Centre
Private Bag 92061
Victoria Street West
Auckland 1142
NEW ZEALAND

The NZSC's power to declare a failure to meet a requirement as non-material

RG 190.38 If an Australian issuer's offer of securities would be exempt except for a failure to meet a requirement contained in regs 11 and 12 of the NZ mutual recognition regulations and the NZSC is satisfied that the failure is minor or technical only, the NZSC may declare in writing that it is a non-material breach: NZ mutual recognition regulations, reg 8(3). The effect of a declaration of a non-material breach is that the requirement in question is deemed to have been complied with: NZ mutual recognition regulations, reg 8(4).

While the offer is open (ongoing requirements)

RG 190.39 At all times while the offer remains open to New Zealand investors, the Australian issuer must comply with the offering conditions (see Table 4), which include ensuring that the offer remains open to Australian investors and notifying the NZCO of certain circumstances (see Table 5).

Table 4: Offering conditions for Australian issuers

The offer	<p>At all times while the offer is open to New Zealand investors, the offer must:</p> <ul style="list-style-type: none"> • remain a regulated offer in Australia (NZ mutual recognition regulations, reg 13(1)(a)); • comply with Australian securities law (NZ mutual recognition regulations, reg 13(1)(b)); • be open to acceptance by persons in Australia (NZ mutual recognition regulations, reg 13(1)(c)); and • ensure that an offer document given to a person is accompanied by the prescribed warning statement (NZ mutual recognition regulations, regs 13(1)(d)–13(1)(g)).
The issuer	<p>At all times while the offer is open to New Zealand investors, the Australian issuer must:</p> <ul style="list-style-type: none"> • give a prospective investor, on request and free of charge, copies of the constitution of the company or scheme (NZ mutual recognition regulations, reg 13(2)(a)); • comply with the notification requirements (NZ mutual recognition regulations, reg 13(3))—see Table 5; • maintain an address for service in New Zealand (NZ mutual recognition regulations, reg 13(2)(c)); and • ensure that anyone who is prohibited by, or under a power exercised under, Australian or New Zealand law from being concerned in the management of a company in Australia or New Zealand is <i>not</i> concerned in the management of the issuer (NZ mutual recognition regulations, reg 13(2)(b)).

Availability of dispute resolution in New Zealand (ongoing requirements)

RG 190.40 Where an Australian issuer's offer relates to interests in a collective investment scheme and any dispute resolution process described in the offer document is not available in New Zealand, reg 13(1)(g) of the NZ mutual recognition regulations provides that the offer document must be accompanied by the following additional warning statement:

The dispute resolution process described in this offer document is only available in Australia and is not available in New Zealand.

Ongoing notification requirements (Australian issuers)

RG 190.41 The Australian issuer must notify the NZCO of certain circumstances set out in Table 5.

Table 5: Notification requirements for Australian issuers (including regs 13(3), 16 and 17 of the NZ mutual recognition regulations)

If ...	You must lodge with the NZCO ...	By this time ...
A change is made to an offer document, or any other document, required by the Australian securities law	Notice of change to the offer document stating the date on which the Australian issuer notified (or should have notified) ASIC of the change and a copy of the document as changed with the changes marked.	No later than 5 working days after the day on which the issuer notified (or should have notified) ASIC of the change.
A supplementary or replacement offer document is required by the Australian securities law	Notice of supplementary or replacement offer document stating the date on which the Australian issuer filed (or should have filed) the supplementary or replacement document and a copy of the supplementary or replacement offer document.	As soon as practicable after and no later than 5 working days after the day on which the issuer filed (or should have filed) the supplementary or replacement offer document with ASIC.
The issuer's address for service changes	Notice of change of address for service containing the new address for service and the date on which the change takes effect.	At least 5 working days before the change takes effect.
A change is made to the constitutional document of the entity whose securities are being offered	Notice of change to the constitutional document stating the date on which the Australian issuer notified (or should have notified) ASIC of the change and a copy of the constitutional document as changed with changes marked.	No later than 5 working days after the day on which the issuer notified (or should have notified) ASIC of the change.

If ...	You must lodge with the NZCO ...	By this time ...
ASIC makes, changes or revokes a general exemption relevant to the offer	Notice of grant of, amendment to, or revocation of, general exemption specifying the general exemption, stating whether it has been granted, amended or revoked and the date of its grant, amendment or revocation.	No later than 10 working days after the day ASIC made, changed or revoked the exemption or modification.
ASIC makes, changes or revokes an exemption or modification relevant to the offer that is specific to the offer or the issuer	Notice of grant of, amendment to, or revocation of, specific exemption specifying the specific exemption and, if the exemption has been granted or amended, a copy of the exemption or amended exemption (with changes marked), and the date the exemption was granted, amended or revoked.	No later than 5 working days after the day ASIC made, changed or revoked the exemption or modification.
ASIC begins enforcement action, or exercises a power it has under law, in relation to the issuer or offer	Notice of enforcement action taken or power exercised stating the date on which the enforcement action began or the power was exercised and giving details of the nature of the enforcement action or the exercise of the power.	No later than 5 working days after the day on which ASIC took the action or exercised the power.

What happens if an offering condition is breached?

- RG 190.42 A breach of a term or condition that must be complied with under the mutual recognition scheme is an offence under New Zealand law: NZ Securities Act, s76. In addition, the NZSC may:
- (a) make an order prohibiting the distribution of the Australian offer document (NZ mutual recognition regulations, reg 6(3) and NZ Securities Act, s38B); and
 - (b) ban the issuer from making an offer under the NZ mutual recognition regulations (NZ mutual recognition regulations, reg 13(4)).

What other New Zealand securities laws apply to a regulated offer?

- RG 190.43 The following provisions of the NZ Securities Act will apply to securities offered by an Australian issuer in New Zealand under the mutual recognition scheme:
- (a) prohibition of door-to-door sales (NZ Securities Act, s35);
 - (b) all Australian offer documents are advertisements under the NZ Securities Act, and while pre-offer advertising is permitted in certain

circumstances (NZ mutual recognition regulations, reg 6(3)), the NZSC has broad powers to prohibit the distribution of any advertisements that are likely to deceive, mislead or confuse in a material regard (NZ Securities Act, s38B); and

- (c) criminal liability for untrue or misleading statements or omissions in offer documents (NZ Securities Act, s58).

D How will ASIC, the NZCO and the NZSC work together?

Key points

ASIC, the NZCO and the NZSC have established arrangements for cooperation and information sharing in administering the mutual recognition scheme.

- RG 190.44 ASIC and the NZCO have entered into a Memorandum of Understanding (MOU) for the exchange of data and information relating to companies carrying on business on both sides of the Tasman and for mutual assistance. In addition to this, ASIC, the NZCO and the NZSC have established protocols for cooperation between the authorities in administering the mutual recognition scheme. These protocols describe how ASIC, the NZCO and the NZSC intend to cooperate and share information under the mutual recognition scheme.
- RG 190.45 ASIC and the NZSC have also established arrangements for cooperation and information sharing in the administration of the mutual recognition scheme. For example, the arrangements deal with notification by one regulator to the other if it initiates enforcement action against an issuer, where a complaint is made against an issuer, or where changes are made to offer documents.

Key terms

Term	Meaning in this document
ASIC	Australian Securities and Investments Commission
Australian Corporations Act	<i>Corporations Act 2001</i> (Cth) of Australia
Australian corporations regulations	Corporations Regulations 2001 (Cth) of Australia
Australian securities law	<i>Corporations Act 2001</i> (Cth) of Australia and regulations made under that Act
home jurisdiction	The country in which the issuer of the securities is domiciled
mutual recognition scheme	The trans-Tasman mutual recognition scheme for offers of securities as contained in the law referred to in RG 190.3
NZCO	New Zealand Companies Office
NZ mutual recognition regulations	Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008 of New Zealand
NZSC	New Zealand Securities Commission
NZ regulations 2009	Securities Regulations 2009 of New Zealand
NZ Securities Act	<i>Securities Act 1978</i> of New Zealand
NZ securities law	<i>Securities Act 1978</i> of New Zealand and regulations made under that Act
PDS	A Product Disclosure Statement under the Australian Corporations Act
recognised offer	An offer of securities by a New Zealand issuer into the Australian market
regulated offer	An offer of securities by an Australian issuer into the New Zealand market

Related information

Headnotes

collective investment schemes, disclosure document, entry requirements, fundraising, information sharing, issuers, managed investment schemes, mutual recognition, New Zealand, notification requirements, offer document, offering conditions, offerings, ongoing requirements, Product Disclosure Statement (PDS), recognised offer, regulated offer, securities, trans-Tasman

Regulatory guides

RG 51 *Applications for relief*

RG 139 *Approval and oversight of external dispute resolution schemes*

RG 165 *Licensing: Internal and external dispute resolution*

RG 198 *Unlisted disclosing entities: Continuous disclosure obligations*

Legislation

Corporations Act 2001 (Cth) of Australia, s111AC, 111AD, 111AF(2), Pt 2D.6, Chs 2L, 5C, 6D, Pts 7.6, 7.7, 7.8, 7.9, Ch 8, s920A, 921A(2)(a), 1015B, 1015D, 1017G, 1200A, 1200B, 1200C, 1200D, 1200E, 1200G, 1200H, 1200J, 1200K, 1200N, 1200P, 1200Q, 1200S; *Corporations Regulations 2001* (Cth) of Australia, regs 8.2.01, 8.2.02, 8.2.03

Securities Act 1978 of New Zealand, Pts 2, 5, s35, 38B, 58, 73(1)(c), 76; *Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008* of New Zealand, regs 3, 4, 6(3), 8, 11, 12, 13(1), 13(2), 13(3), 13(4), 15, 16, 17

Securities Regulations 2009 of New Zealand