



**ASIC**  
Australian Securities &  
Investments Commission

# Explanatory Statement

## *ASIC Corporations (Foreign Rights Issues) Instrument 2025/611*

This is the Explanatory Statement for *ASIC Corporations (Foreign Rights Issues) Instrument 2025/611 (Instrument)*.

The Explanatory Statement is approved by the Australian Securities and Investments Commission (**ASIC**).

### Summary

1. Chapter 6D of the Corporations Act 2001 (**Act**) regulates the making of offers for the issue or sale of securities. Most offers of securities to retail investors in Australia require a disclosure document (e.g. a prospectus), unless an exemption applies.
2. Section 708AA provides a specific disclosure exemption for pro rata offers to existing holders (**rights issue**) by entities listed on an Australian market where the securities offered are in a class of quoted securities. This exemption does not extend to rights issues by companies listed on foreign markets and ordinarily these offers would require a disclosure document if they were received in Australia.
3. The Instrument provides conditional relief from Chapter 6D, analogous to the exemption in s708AA, for rights issues by foreign companies listed on an approved foreign market.

### Purpose of the instrument

4. The requirement to prepare an Australian prospectus may discourage foreign companies from extending rights issues to a relatively small number of Australian shareholders where the cost of complying with Chapter 6D will be disproportionate to the funds raised under those offers. This may result in the exclusion of Australian shareholders from a rights offer and therefore a dilution of their interests.
5. The purpose of the Instrument is to provide conditional relief from Chapter 6D for rights issues by foreign companies listed on an approved foreign market where only a small proportion of the offerees are in Australia. This relief is analogous to the disclosure exemption in s708AA, as notionally modified by *ASIC Corporations (Non-Traditional Rights Issues) Instrument 2016/84* and many of the conditions are similar.

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6. The Instrument provides relief, on largely the same terms as *ASIC Corporations (Foreign Rights Issues) Instrument 2015/356* which was scheduled to expire on 1 October 2025.

### **Consultation**

7. On 9 July 2025, ASIC published simple consultation CS 25 *Proposed remake of disclosure relief for offers of foreign securities and interests to Australian investors* on its website (CS 25).
8. On 9 July 2025, ASIC also published an accompanying news item *ASIC proposes to remake disclosure relief for offers of foreign securities and interests to Australian investors*.
9. ASIC brought CS 25 to the attention of its external stakeholders through the Corporate Finance Update published July 2025.
10. ASIC did not receive any submissions in response to CS 25 (which closed 15 August 2025).

### **Operation of the instrument**

11. The Instrument commences on the day after it is registered on the Federal Register of Legislation
12. The Instrument provides relief from Parts 6D.2 and 6D.3 to foreign companies conducting a pro rata offer of securities where:
  - (a) the company making the offer reasonably believes that the offer is made in accordance with the relevant foreign regulatory requirements;
  - (b) the terms of the offers made to Australian offerees are no less favourable than those extended to other offerees;
  - (c) the number of securities offered to Australian residents is no more than 10% of the number of securities offered to all offerees;
  - (d) the securities are in a class of securities that were quoted on an approved foreign market at all times in the 3 months before the day the offer is made;

Note: **approved foreign market** has the meaning given by section 9 of the Act, as notionally inserted by *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669*.

- (e) trading in that class of securities was not suspended for more than 5 days during the shorter of the (i) period during which the class of the securities were quoted and (ii) the period of 12 months before the day on which the offer was made; and

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- (f) Australian offerees are given the same disclosure that is given to offerees in the primary foreign jurisdiction (in English if an English version is available).

Note: *primary foreign jurisdiction* means the place of the approved foreign market on which the securities in the offer class are quoted or if the securities are quoted on more than one approved foreign market – the place of the approved foreign market where it is reasonably expected the largest numbers of offers will be received.

13. The relief also extends to shortfall offers – these are offers that were not taken up by the shareholders and which are re-offered to holders within two months.
14. The Instrument also gives relief from the on-sale restrictions in subsections 707(3). Without on-sale relief, a person who received securities under a foreign rights issue conducted without a prospectus would be restricted from selling those securities in Australia for the first 12 months after receiving them.

### **Legislative instrument and primary legislation**

15. The subject matter and policy implemented by the Instrument is more appropriate for a legislative instrument rather than primary legislation because the matters contained in the Instrument are highly specific and only apply where a relatively small subset of offerees are located in Australia. The instrument provides administrative relief in circumstances where strict compliance with the primary legislation produces anomalous outcomes that would be inconsistent with the intent of the primary law. If the matters in the instrument were to be inserted into the primary legislation, they would insert, into an already complex statutory framework, a set of specific provisions that would apply only to a relatively small group of entities. This would result in additional cost and unnecessary complexity for other users of the primary legislation.
16. It will be a matter for the Government and for Parliament as to whether the Act or Regulations may be amended in future to include the relief in the Instrument.

### **Duration of the instrument**

17. The Instrument will expire after 5 years.
18. This allows sufficient time for the Government and for Parliament to determine whether to amend the Act or Regulations to include the relief.

### **Legislative authority**

19. ASIC makes the Instrument under subsection 741(1) of the Act.
20. Subsection 741(1) provides that ASIC may:
- (a) exempt a person from a provision of Chapter 6D; or
  - (b) declare that Chapter 6D applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

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21. The Instrument is disallowable under section 42 of the Legislation Act 2003

**Statement of Compatibility with Human Rights**

22. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

## **Statement of Compatibility with Human Rights**

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### ***ASIC Corporations (Foreign Rights Issues) Instrument 2025/611***

#### Overview

1. This instrument provides conditional relief from the disclosure provisions in Chapter 6D of the *Corporations Act 2001* for a pro rata offer of securities that are in a class quoted on an approved foreign market.

#### Assessment of human rights implications

2. This instrument does not engage any of the applicable rights or freedoms.

#### Conclusion

3. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.