



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 0093

Practical guidance for operators of foreign collective investment schemes seeking to offer in Australia

About this information sheet

This information sheet is for operators of foreign collective investment schemes (FCIS). It explains what operators must do if they wish to rely on relief provided to FCIS operators by the Australian Securities and Investments Commission (ASIC) from scheme registration and certain licensing, product disclosure and prospectus requirements under the *Corporations Act 2001* (Corporations Act).

In particular, this information sheet is for FCIS operators relying on relief in class orders issued under ASIC Regulatory Guide 178 *Foreign collective investment schemes* (RG 178), which explains ASIC's policy on recognising FCIS. The relevant class orders include:

Where the scheme is regulated (home jurisdiction)	Relevant class order
USA, New Zealand, Jersey	CO 04/526 (as amended by CO 04/1031)
Singapore	CO 07/753 (as amended by CO 07/862)
Hong Kong	CO 08/506 (not yet issued)

Important note

This information sheet provides basic, practical information. It does not cover the whole of the relevant law, policy or procedure and is not a substitute for professional advice. If you have specific questions about this relief, please email us at applications@asic.gov.au.

Getting a copy of ASIC publications

ASIC publications referred to in this information sheet including RG 178, relevant class orders and forms are available free of charge on our website at www.asic.gov.au.

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

1 Applying for registration as a foreign company

As a standard regulatory condition of relief under the relevant class orders, the FCIS operator must register as a foreign company in Australia. Registration under Division 2 of Part 5B.2 of the Corporations Act may be required by the relevant class order or by the Corporations Act itself.

If the relevant FCIS is structured as a company, then the company must register as a foreign company.

How to register as a foreign company

To register as a foreign company, you must complete Form 402 *Application for registration as a foreign company*.

This form asks for general details about the corporation and must be completed in full. The guide to the form (which is included with the form) has more details on how to appropriately complete and lodge the form.

The guide also sets out what documents must accompany the form. These documents include:

- a current certificate of registration, or a document of similar effect, that confirms that the company is currently registered in your home jurisdiction;
- a certified copy of the company's constitution;
- a memorandum of appointment of a local agent, or a power of attorney in favour of a local agent (see 'How to appoint a local agent' below);
- notice of any charges on the company property in Australia or an external territory of Australia; and
- a memorandum stating the powers of certain directors.

If any of the documents accompanying Form 402 are not in English, you must include a certified translation of that document into English.

There are prescribed fees for registering as a foreign company: see the guide to Form 402 or Information Sheet 30 *ASIC fees for commonly lodged documents* (INFO 30) at www.asic.gov.au.

Lodge your completed application with supporting documents and the prescribed fees at any ASIC Service Centre or with a local ASIC representative, or mail it to:

Australian Securities and Investments Commission
PO Box 4000
Gippsland Mail Centre VIC 3841
AUSTRALIA

If the application form and accompanying documents are in complete order, the application process usually takes approximately 1–2 weeks. After your application is processed, ASIC will issue you with a 9-digit identifying number, known as an Australian Registered Body Number (ARBN), and a Certificate of Registration.

How to appoint a local agent

As a registered foreign company, you must appoint a local agent under s601CF of the Corporations Act. A local agent must be a natural person or a company that is resident in Australia. A local agent of a registered foreign company is:

- answerable for doing all acts, matters and things that the foreign company is required to do by or under the Corporations Act; and
- personally liable for any penalties imposed on the foreign company for a contravention of the Corporations Act if a court or tribunal hearing the matter is satisfied that the local agent should be so liable.

There are two ways of appointing a local agent:

- by a memorandum of appointment (see Form 418 *Memorandum of appointment of local agent*); or
- by a power of attorney duly executed by or on behalf of the foreign company.

There are prescribed fees for appointing a local agent: see Information Sheet 30 *ASIC fees for commonly lodged documents* (INFO 30) at www.asic.gov.au.

Lodge the memorandum of appointment or power of attorney with a completed Form 404 *Notification of change to agent of a foreign company* and the prescribed fees at any ASIC Service Centre or mail it to:

Australian Securities and Investments Commission
PO Box 4000
Gippsland Mail Centre VIC 3841
AUSTRALIA

If at any time the local agent you have appointed ceases to act for you, you must appoint a new local agent. A foreign company may have more than one local agent at the same time. So if the old agent ceases acting for you and/or you appoint a new one, you must notify us of these changes on a Form 404.

More information

For more information about registering as a foreign company, appointing a local agent, fulfilling post-registration obligations and other relevant information, see the ASIC website at www.asic.gov.au, particularly Information Sheet 32 *Foreign companies* (INFO 32).

2 Documents you must lodge under class order relief

After registering as a foreign company, a FCIS operator wishing to rely on relief under a particular class order must provide ASIC with the documents listed in the relevant class order, for example:

- in CO 04/526 (USA, New Zealand, Jersey), see Schedule B;
- in CO 07/753 (Singapore), see Schedule A.

All information and documents provided must be in English (or if they are not in English, a certified translation must be provided if required by ASIC).

Evidence of authorisation

The evidence of the operator's authorisation should either be an original of the authorisation from the home regulator or a certified copy of the authorisation from the home regulator.

Deed of covenant

The FCIS operator must provide a deed from the FCIS operator for the benefit of and enforceable by ASIC and other parties referred to in the relevant class order.

The deed must provide, for example, that the FCIS operator will:

- in its conduct in Australia comply with regulatory requirements in its home jurisdiction (for some class orders); and
- submit to the non-exclusive jurisdiction of the Australian courts in the circumstances outlined in RG 178 (for all class orders).

The deed must be either the original or a certified copy of the original.

ASIC does not have a pro forma for the deed; we require that the deed will have the effect intended under the relevant provisions of the relevant class order. Any questions about the

deed required by the class order should be raised with us at applications@asic.gov.au and/or by mail to:

The Manager—Applications
Australian Securities and Investments Commission
GPO Box 9827
Sydney NSW 2001
AUSTRALIA

Written consent

We do not intend to release a pro forma for written consents allowing ASIC and the home regulator to share any information that the home regulator or ASIC has about a FCIS operator: see RG 178.74(f), RG 178.86(c) and the Schedules to the relevant class orders.

The requirement is for written consent to information sharing from the operator. There is no requirement to obtain a written consent from the home regulator.

How to lodge documents

Send all the required documents to:

The Manager—Applications
Australian Securities and Investments Commission
GPO Box 9827
Sydney NSW 2001
AUSTRALIA

There is no fee for lodging these documents with ASIC if you are relying on the class order relief.

Post-lodgement notification

We will notify you in writing if the information you have provided under the class order is adequate and therefore, whether you can rely on the class order relief. The timing of this notice will depend on the adequacy of information you provide to us (i.e. that you have provided us with all relevant and complying documents referred to in the class order).

3 Notifications required under class order relief

Significant changes

A FCIS operator relying on class order relief must notify ASIC promptly if it becomes aware of significant changes to a licence, registration, authorisation or other approval granted by the home regulator that is relevant to the operation of the exempt FCIS.

The notification requirements for significant changes are set out in the relevant class order, for example:

- in CO 04/526 (USA, New Zealand, Jersey), see Schedule C;
- in CO 07/753 (Singapore), see Schedule B.

Essentially, a change in the foreign regulatory regime is significant if it could affect ASIC's previous assessment that the regime is sufficiently equivalent to the relevant Australian regulatory regime. For more information about what we mean by 'significant changes', see RG 178.77.

Breaches

A FCIS operator relying on class order relief must notify ASIC promptly if it becomes aware that it is in breach of any of the requirements of the class order.

We encourage FCIS operators to monitor compliance and report any breaches promptly, rather than leaving reporting to the end of the 10-business day period permitted under the

class order. The later we receive notice of a breach within this period, the greater the risk of relief expiring due to insufficient time for ASIC to consider our response to the breach.

Apart from any modifications or exemptions under the relevant class order or as specified by ASIC, FCIS operators must comply with all other relevant Australian laws, including laws that ASIC administers.

How to notify ASIC

You should notify us of significant changes or breaches by:

- emailing the notification to applications@asic.gov.au; and/or
- sending a hard copy of the notification to:

The Manager—Applications
Australian Securities and Investments Commission
GPO Box 9827
Sydney NSW 2001
AUSTRALIA

There is no fee for lodging these notifications with ASIC if you are relying on the class order relief.

4 Applying for individual relief

Rather than relying on class order relief, a FCIS operator can apply for individual relief that reflects similar terms and conditions to any of the class orders issued under RG 178.

How to apply for individual relief

In your application for relief, you should clearly identify and answer in sufficient detail:

- what type of relief is being applied for;
- what is the legal basis of the application;
- what is the regulatory issue or problem that you want ASIC to consider;
- what are the legal and cost/benefit arguments for relief;
- whether you have consulted with ASIC or other relevant regulatory organisation(s);
- whether any third parties are affected by the application, and if so, whether you have consulted with those third parties;
- whether the application is urgent, and if so, why.

Make sure you include supporting documents and the prescribed fee as required with your application.

More information

The following publications give more guidance on how to apply to ASIC for relief. Other published ASIC policy may include details of how to apply for particular kinds of relief.

Publication	What it covers
Information Sheet 82 <i>Applying for relief</i> (INFO 82)	Concise guidance on applying for relief
Regulatory Guide 51 <i>Applications for relief</i> (RG 51)	Our general policy on applying for relief
Regulatory Guide 21 <i>How ASIC charges fees for relief applications</i> (RG 21)	Details of any applicable fees