

Mergers, Acquisitions & Capital Markets

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Hypothetical notes

Is disclosure required?

The underlying principle of Ch 6D is to require a disclosure document for **all** offers of securities for issue: **s 706**. Some categories of offers and investors are then specifically excluded under **ss 708, 708AA**. In this case, none of the exclusions apply so disclosure will be required.

Initial Public Offer (IPO)

This is the first general public offer that a company makes, usually in conjunction with the company seeking to be admitted to the official list of ASX. This type of offer requires a full prospectus: **709(1)**.

Rights Issues or Entitlement Offers

This refers to an offer made to company's existing shareholders.

There are two options for disclosure for a rights issue:

- A prospectus that takes into account previous disclosure and focuses on the current offer – **section 713**
- “Low doc” offers – **section 708AA** – no prospectus with disclosure focussed on excluded information. This takes into account continuous disclosure compliance – assists with retail participation. Can only be used if a listed company and securities quoted, and have not been suspended for trading for more than 5 days in the last 12 months

A rights issues can be **renounceable** or **non-renounceable** – that is, the shareholder can sell or transfer their right or entitlement to subscribe for new securities or not.

Placements

This is an offer made by a listed company to investors who do not need a prospectus – usually institutional investors (either sophisticated investors as per **708(8)** or professional investors as per ss **9, 708(11)**).

This is capped by ASX for a listed company at 15% of a company's equity in a 12-month period – **Chapter 7 of the Listing Rules (LR)**. However, for a company outside the S&P/ASX 300 and with less than \$300m market capitalisation, approval can be sought from shareholders at an AGM to issue an additional 10% above the 15% limit.

Requires disclosure of “excluded information” through a “cleansing statement” to deal with on-sale – **section 708A**. The company must also be in compliance with its financial reporting and disclosure requirements.

Disclosure document

[Company] must determine what type of disclosure document is required for [the offer] under **s 709**. It must then prepare the disclosure document, ensuring it meets the content requirements in [section] and the general law. The disclosure document must then be lodged with ASIC (**s 718**) (though ASIC does not pre-vet any disclosure documents).

The next step is to make the offer, by providing a copy of the disclosure document to offerees in accordance with **s 721**. The practical effect of **ss 723 and 727(2)** mean the application form must be included in, or accompanied by, the disclosure document.

Information in any disclosure document must be worded and presented in a ‘clear, concise and effective manner’: **s 715A(1)**

The issuer must not issue non-quoted securities within 7 days after the lodgment of the disclosure document – **section 727(3)** (though this may be extended by ASIC to 14 days).

Full prospectus

Section 710 requires the disclosure of all information that investors and their professional advisers would reasonably require to make an informed assessment of the rights and liabilities of the securities being offered and the assets and liabilities, financial position and performance, profits and losses and prospects of the issuer

This is subject to the knowledge of directors, proposed directors, underwriters and some advisers: **s 710(3)**

Section 711 requires specific disclosures in addition to the general test in section 710

- Interests and fees of directors, professional advisers, promoters and underwriters: **711(2)**
- If the securities are to be quoted, that quotation of the securities has or will be sought: **711(5)**
- The expiry date – no later than 13 months after the date of the prospectus: **711(6)**
- That the prospectus has been lodged with ASIC BUT that ASIC takes no responsibility for the prospectus; **711(7)**

ASIC Regulatory Guide 228 also gives advice on preparing a prospectus. A prospectus should contain the following sections:

- **Investment overview** – This should be the first substantive section of the prospectus, and should set out key information about the offer (e.g. key benefits and risks) in a balanced way, providing cross references to other sections of the prospectus
- **Business model** – Should explain how the issuer proposes to make money and generate income or capital growth for investors, or otherwise achieve issuer’s objectives. Includes explaining how business model works (nature of the business, strategy and plans, corporate structure, financing and competition) and what the underlying assumptions and associated risks are

Risks – Key risks in relation to the issuer, the securities being offered and the offer itself should be explained. Risk disclosures should be specific rather than general, and should focus on risks that are likely to occur, difficult to mitigate and, if they were to occur, would