

## Comparison of registered and unregistered funds

The purpose of this fact sheet is to outline some generic differences between registered and unregistered funds.

The primary reason funds are registered is to enable them to be promoted to retail clients under a product disclosure statement (PDS). Some product issuers also register funds to demonstrate their commitment to compliance and to provide some additional safeguards for investors.

Historically, there were legislative reasons why wholesale client funds were registered; however, due to changes to the *Corporations Act 2001* (Act)

unregistered funds are no longer required to be registered to allow other registered funds to invest.

Generally, it is easier and cheaper to structure and promote a fund as an unregistered fund compared to a registered fund. However, the ability for a fund to be structured as an unregistered fund will be largely dependent on the client base being targeted, i.e. wholesale or retail clients.

The following table sets out a range of generic issues and differences between registered and unregistered funds.

Issue	Registered fund	Unregistered fund
Company requirements of the fund manager	Referred to as the “responsible entity”, which must be a public company with at least three directors.	Commonly referred to as the trustee or manager. The manager can be a public company or a proprietary limited company. Proprietary limited companies can have one director.
Clients	Retail and wholesale clients can generally invest in a registered fund, subject to the type of offer document used.	Wholesale clients; however, in some limited circumstances, up to \$2 million can be raised from up to 20 retail clients in any 12 month period under a “personal offer”.
Establishment requirements	Constitution and compliance plan.  Documents must be lodged with ASIC.	Constitution. No compliance plan required.  No ASIC lodgement required.  The provide flexibility, McMahon Clarke Legal generally prepares constitutions for unregistered fund to enable them to operate as a registered or unregistered fund.
Regulatory requirements	Registered schemes must comply with the Act, which imposes specific requirements regarding the operation of the fund, including winding up and deregistration. The Act will also impact on the way in which the fund is promoted in Australia.	The Act does not impose specific operating requirements on unregistered funds; however; it will impact on way in which such funds are promoted in Australia.

Issue	Registered fund	Unregistered fund
Offer document	<p>A PDS required for offers to retail clients.</p> <p>A PDS can also be used for offers to wholesale clients; however, an information memorandum can also be used to promote a registered fund to wholesale clients.</p>	Information memorandum used to promote unregistered funds.
AFS licence requirements of the fund manager <sup>1</sup>	<p>AFS licence must be held enabling the fund manager to—</p> <ul style="list-style-type: none"> <li>▪ operate a registered managed investment scheme</li> <li>▪ deal in a financial product, and</li> <li>▪ provide advice (although exemptions exist in some circumstances).</li> </ul> <p>AFS licence generally not issued until the nominated fund has been registered.</p> <p>To avoid the need to vary the AFS licence to operate a registered fund, the fund manager is required to hold a “kind of scheme” authorisation for the relevant type of fund (e.g., direct real property or financial assets). The fund manager is required to operate at least two schemes (named on the AFS licence) of the same asset type for at least two years before a “kind of scheme” authorisation will be granted.</p>	<p>AFS licence must be held enabling the fund manager to—</p> <ul style="list-style-type: none"> <li>▪ deal in a financial product</li> <li>▪ provide advice (although exemptions exist in some circumstances), and</li> <li>▪ provide a custodial service.</li> </ul> <p>The issue of the AFS licence is not contingent upon the establishment or registration of the fund. Unregistered funds are not registered with ASIC.</p> <p>AFS licence variations are not required to operate additional funds unless additional “dealing” authorisations are required.</p>
Financial requirements of fund manager	<p>Must meet the base level financial requirements, including solvency and cash needs requirement.</p> <p>In addition, it must meet the net tangible asset requirement of 0.5 percent of the gross assets of the registered funds under management (minimum of \$50,000 and maximum of \$5 million).</p>	Must meet the base level financial requirements, including solvency and cash needs requirement.
External board of directors or compliance committee	An external board of directors or a compliance committee consisting of at least three members (a majority of which must be “external”) is required.	No external board of directors or compliance committee is required.
Reporting requirements	<p>Registered funds must lodge annual audited accounts with ASIC. The compliance plan must also be audited annually.</p> <p>Annual reporting to investors.</p> <p>Periodic statements must be provided to investors and continuous disclosure obligations may also be required to be met.</p>	<p>No lodgement of accounts with ASIC. No requirement for fund accounts to be audited.</p> <p>Investor reporting determined by fund manager.</p>

<sup>1</sup> The issue of interests in a managed investment scheme can be outsourced to an appropriately authorised licensee.

Issue	Registered fund	Unregistered fund
Custody requirements	<p>Fund manager able to hold assets of the fund if it holds sufficient financial resources and meets the custodial standards under ASIC policy.</p> <p>Common for external custodian to be appointed.</p> <p>Licensing exemption available for custodians of registered schemes.</p>	<p>Fund manager able to hold assets of the fund; however; it may be required to hold an AFS licence authorising the provision of a custodial service.</p> <p>Reduced financial resource requirements may apply; however; the custodial standards must still be satisfied.</p> <p>Common for licensed external custodian to be appointed.</p> <p>No licensing exemption available for custodians of unregistered schemes if financial products (other than basic deposit products) are held.</p>
Stamp duty	<p>Stamp duty may be payable on the issue of interests in the fund depending on the States and Territories in which dutiable property is acquired. If possible, it is preferable to avoid the fund acquiring dutiable property (i.e., an interest in land in Queensland or Western Australia) prior to the issue of interests in the fund unless the fund is “widely-held” or meets some other exemption under the relevant legislation.</p> <p>Start-up relief may be available in certain States in Australia; however, this requires a PDS to be issued in most jurisdictions.</p> <p>There may also be issues associated with individual investors (and their associates) in a fund acquiring interests above a certain threshold limit or increasing such unit holdings.</p> <p>We recommend you discuss this issue with your stamp duty or taxation adviser.</p>	<p>Stamp duty may be payable on the issue of interests in the fund depending on the States and Territories in which dutiable property is acquired. If possible, it is preferable to avoid the fund acquiring dutiable property (i.e. an interest in land in Queensland or Western Australia) prior to the issue of interests in the fund unless the fund is “widely-held” or meets some other exemption under the relevant legislation.</p> <p>No start-up relief available.</p> <p>There may also be issues associated with individual investors (and their associates) in a fund acquiring interests above a certain threshold limit or increasing such unit holdings.</p> <p>We recommend you discuss this issue with your stamp duty or taxation adviser.</p>

For more information, contact—

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