



FACT SHEET

Offer documents: product disclosure statements vs information memorandums

This factsheet describes a range of issues and differences between product disclosure statements (PDSs) and information memorandums (IMs).

PDSs are used to promote a range of financial products, such as managed funds. A PDS is generally used to promote such offers to retail clients.

An IM can generally only be used to promote offers to wholesale clients, although “personal offers” to retail clients can also be promoted under an IM.

A “personal offer” has to satisfy certain requirements under the Corporations Act. Under a “personal offer”, a maximum of \$2 million can be raised from up to 20 retail clients in any 12 month period.

The following table sets out a range of generic issues and differences between PDSs and IMs. Despite these differences, IMs often contain a similar type and level of disclosure as PDSs to ensure investors are not misled or deceived; and to ensure recipients receive sufficient information to make an investment decision about the offer.

HOW CAN WE HELP?

Our expert funds management lawyers understand what’s involved in preparing offer documentation. Please contact a member of our team for assistance or more information.

COMPARATIVE SUMMARY

ISSUE	PDS	IM
General requirements	PDSs are highly regulated and must comply with specific requirements of the Corporations Act and ASIC policy.	IMs are not regulated and there are no specific requirements under the fundraising provisions of the Corporations Act. However, common law requirements still apply as well as those under the general provisions of the Corporations Act which relate to misleading and deceptive conduct.
Due diligence defence	Due diligence defence is available. Requires the issuer to undertake due diligence on the PDS and to verify every statement in the PDS.	No due diligence defence. However, it is advisable to undertake due diligence on the IM and to verify every statement in the IM.
Clients	Retail and wholesale clients.	Wholesale clients (and retail clients pursuant to a “personal offer”).

COMPARATIVE SUMMARY

ISSUE	PDS	IM
ASIC notification	ASIC notification required via a PDS in-use notice is required for unlisted funds.	No ASIC notification required.
Content requirement	There are specific content requirements for PDSs under the Corporations Act and ASIC policy, such as taxation, rights of investors, terms and conditions of interests in the fund, dispute resolution, borrowings and other significant characteristics.	No specific content requirements.
Details of the issuer	The PDS must include specific details of the risks of an investment in the fund, including specific risks associated with the assets to be acquired.	Whilst not required, it is advisable to include specific details of the risks of an investment in the fund, including specific risks associated with the assets to be acquired.
Fees and expenses	Prescribed fee tables must be adopted together with additional information such as the buy/sell spread, the impact of GST and the manner in which adviser fees will be paid.	Details of the fees and expenses need to be included. However, there is no requirement to include the prescribed fee tables and information.
Taxation	Information about the taxation implications of an investment in the fund and the taxation treatment of distributions must be included.	No requirement to include information about the taxation implications of an investment in the fund and the taxation treatment of distributions.
Minimum subscription obligations	<p>If the PDS states a minimum amount to be raised, then interests in the fund cannot be issued until this amount has been raised.</p> <p>Issuers have up to four months to raise the minimum subscription amount.</p> <p>A supplementary PDS is required to reduce the minimum subscription amount. Investors generally have a right to withdraw their application at this time.</p>	<p>No specific requirement to raise a minimum subscription amount within a particular time period.</p> <p>Issuers should consider whether a supplementary IM must be issued if the minimum subscription amount is being decreased for any reason, eg if the acceptance of the reduced amount significantly changes the nature of the offer or prospect for forecast returns.</p>

COMPARATIVE SUMMARY

ISSUE	PDS	IM
<p>Updating the offer document</p>	<p>A PDS is required to be up to date for as long as investors are able to subscribe for interests under it. Generally, this is an issue for open funds that can accept applications under a PDS at any time.</p>	<p>No specific requirement to keep an IM up to date. A supplementary IM may need to be issued to correct a material error or omission.</p>
<p>Cooling-off rights</p>	<p>PDSs must state whether cooling-off rights apply with respect to an investment in the fund. Coolingoff rights will apply if the fund is "liquid". The fund may be "liquid" depending on the nature of the fund's assets.</p>	<p>There are no mandatory cooling-off rights for investors in unregistered funds.</p>



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