



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 155

Prospectus disclosure: Improving disclosure for retail investors

April 2011

About this paper

In this paper, we consult on proposed guidance on how to word and present prospectuses and other documents in a 'clear, concise and effective' manner.

We also consult on proposed guidance to issuers and their advisers about how to prepare prospectuses that satisfy the content requirement in s710 of the *Corporations Act 2001* (Corporations Act).

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

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

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 12 April 2011 and is based on the Corporations Act as at 12 April 2011.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information. We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on disclosure in prospectuses. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section F, Regulatory and financial impact.

Making a submission

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any financial information) as confidential.

Comments should be sent by 7 June 2011 to:

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What will happen next?

Stage 1	12 April 2011	ASIC consultation paper released with draft regulatory guide
Stage 2	7 June 2011	Comments due on the consultation paper
Stage 3	December 2011	Regulatory guide released

A Background to the proposals

Key points

This consultation paper sets out our proposals to give new guidance on:

- how to word and present prospectuses and other documents in a ‘clear, concise and effective manner’; and
- how to satisfy the content requirement for prospectuses.

Our proposals are designed to address the problems we have identified with prospectuses and to help retail investors make informed investment decisions.

Disclosure requirements for prospectuses

- 1 The purpose of prospectuses is to help retail investors assess the risks and returns associated with an offer and make informed investment decisions. Chapter 6D of the *Corporations Act 2001* (Corporations Act) sets out the disclosure requirements for prospectuses.
- 2 An issuer preparing a prospectus must:
 - (a) word and present the prospectus in a ‘clear, concise and effective’ manner (s715A);
 - (b) include the information required by the general disclosure test in s710;
 - (c) make specific disclosures, including disclosure about interests and benefits of persons involved in the offer (s711); and
 - (d) ensure their document is not misleading or deceptive (s728(1)).

Note: For offers of continuously quoted securities or options over continuously quoted securities, issuers may be able to comply with the reduced disclosure requirements in s713. For further discussion on prospectuses that comply with the disclosure requirements in s713, see Section E of this consultation paper.
- 3 The prospectus disclosure regime is focused on the needs of retail investors and their professional advisers. If an offer is not made to retail investors, a prospectus would not generally be required: s708(8), (10) and (11). The policy reason underlying the Ch 6D disclosure regime is that it would be difficult for retail investors to obtain the information they need without mandatory disclosure.
- 4 Prospectuses are also used by sophisticated and professional investors and they are an important basis for the trading of securities on Australia’s financial markets. Any material information that is given to sophisticated and professional investors should also be included in the prospectus.

Our proposed guidance

- 5 We propose to give guidance on how to word and present prospectuses and other documents in a ‘clear, concise and effective’ manner: s715A. We also propose to give guidance on how to prepare prospectuses that satisfy the content requirement in s710. For this purpose, we have prepared a draft regulatory guide: see the Attachment to this consultation paper.
- 6 The draft regulatory guide explains the type of disclosure that will generally be required for a prospectus. However, ASIC does not prescribe the content that is required under s710 or how to comply with the ‘clear, concise and effective’ requirement in s715A. The onus is on issuers to satisfy the disclosure requirements in Ch 6D. Issuers should critically analyse how our guidance applies to their offer and individual circumstances.
- 7 Our guidance applies to issuers across all industries. For this reason, it is broad and we have not devised benchmarks. Issuers are not expected to disclose against our guidance on an ‘if not, why not’ basis.
- 8 The aim of our proposed guidance is to assist issuers and their advisers to produce prospectuses that help retail investors make informed investment decisions. Issuers can do this by:
 - (a) wording and presenting information in a ‘clear, concise and effective’ manner; and
 - (b) highlighting key information about the offer.
- 9 Our proposed guidance is also relevant to other types of documents—for example, a bidder’s statement under Ch 6 of the Corporations Act where securities are being offered as consideration under a takeover offer: see s636(1)(g).
- 10 This consultation paper asks questions about specific aspects of the proposed guidance. We are also interested in any comments you may have on the other guidance we are proposing. Any final guidance that we give will take into account your comments.

Our observations

- 11 Over the last 12 months, we have conducted a project to identify the difficulties that issuers have when preparing prospectuses and the difficulties that retail investors face when reading prospectuses. This project has involved:
 - (a) considering the disclosure concerns we have identified when reviewing prospectuses from 2006 to the present;
 - (b) reviewing complaints about prospectus disclosure received from 2006 to the present;

- (c) reviewing legal commentary about the s710 disclosure test and the meaning of ‘clear, concise and effective’;
- (d) analysing various consumer research reports to understand the difficulties that consumers face when reading prospectuses;
- (e) engaging in preliminary consultation with industry bodies and consumer groups about what this guidance should cover; and
- (f) revisiting the draft ASIC policy statement ‘Better Prospectus Disclosure’ published in 2006 (2006 draft policy statement) and reviewing the submissions received in response to that draft.

12 The concerns we have identified with s710 prospectuses are:

- (a) front sections that are dominated by marketing statements and photographs and do not include key information about the offer;
- (b) risk disclosure that is often too generalised and that, in the front sections, does not adequately balance the benefits;
- (c) the disclosure of descriptive information with little or no analysis about its relevance to or impact on the offer and the issuer;
- (d) the unnecessary length of some prospectuses (due to repetition and the inclusion of arguably irrelevant information);
- (e) the inclusion of complex information that is not properly explained and the use of too much jargon; and
- (f) in the case of some smaller offerings, non-compliance with parts of Ch 6D (e.g. the disclosure is deficient and misleading).

13 Our project and preliminary consultation also identified other disclosure issues that are outside the scope of our proposed guidance. These are discussed in Section E of this consultation paper. Based on submissions received, we will consider whether further work by ASIC is required on these issues.

B ‘Clear, concise and effective’

Key points

We propose to give guidance on how issuers can word and present prospectuses and other documents in a ‘clear, concise and effective’ manner to help retail investors assess the offer and make informed investment decisions.

‘Clear, concise and effective’ disclosure

Proposal

- B1** We propose to give guidance that a prospectus will generally be ‘clear, concise and effective’ if it helps retail investors assess the offer and make informed decisions because it:
- highlights key information (e.g. through an investment overview);
 - uses plain language;
 - is as short as possible;
 - explains complex information, including any technical terms; and
 - is logically organised and easy to navigate.

See the attached draft regulatory guide at RG 000.21.

Your feedback

B1Q1 Do you agree with our explanation of the term ‘clear, concise and effective’ and our guidance on when a prospectus will generally be ‘clear, concise and effective’? If not, please explain why.

- B2** We propose to give guidance on communication tools that can help issuers to word and present the information in a prospectus so that it is ‘clear, concise and effective’. The tools we have suggested are not mandatory and we encourage issuers to analyse how best to word and present their information. See Table 3 and Table 4 in the attached draft regulatory guide.

Your feedback

- B2Q1** Do you agree with our suggested tools in Table 3 for how to word a prospectus so that it is ‘clear, concise and effective’? Are these tools, the explanations and examples given useful? Are there other tools that should be included?
- B2Q2** Do you agree with our suggested tools in Table 4 for how to present a prospectus so that it is ‘clear, concise and effective’? Are these tools and the explanations given useful? Are there other tools that should be included?

- B3** We propose to give guidance that photographs (other than on the front cover) should only be included after the investment overview. We propose to give guidance that photographs should only be included if they are relevant to the issuer's business and should not be used if they are likely to misrepresent the nature, stage or scale of the issuer's business. See Table 4 in the attached draft regulatory guide.

Your feedback

- B3Q1 Do you agree with our proposed guidance that photographs (other than on the front cover) should only be included after the investment overview? Please explain your answer.
- B3Q2 What other suggestions do you have to ensure that retail investors are given clear information about the issuer and the offer at the front of the prospectus and are not distracted by marketing images?
- B3Q3 Do you agree with our proposed guidance that photographs should only be included where they are relevant to the issuer's business and should not be included where they are likely to misrepresent the nature, stage or scale of the issuer's business? If not, please explain why.
- B3Q4 Should there be a restriction on the use of photographs of celebrities in prospectuses?
- B3Q5 If photographs of celebrities are included in a prospectus, should the prospectus also be required to include any interests or benefits paid to those celebrities (in money, equity or other value) in connection with the offer or as a consequence of their image being included in the prospectus?
- B3Q6 Does our proposed guidance strike the appropriate balance between disclosure and marketing in prospectuses?

Rationale

- 14 Prospectuses must be worded and presented in a 'clear, concise and effective' manner: s715A. This requirement is intended to help retail investors assess the offer and make informed investment decisions. ASIC may issue a stop order if this requirement is contravened: s739.
- 15 During our preliminary consultation, consumer groups expressed concern that prospectuses are difficult documents for retail investors to read. Industry bodies also expressed confusion about the meaning of s715A and asked for guidance on how to comply with the requirement.
- 16 Our proposed guidance sets out the main elements of a 'clear, concise and effective' prospectus. We also suggest some practical tools to help issuers word and present their prospectus in a 'clear, concise and effective' manner.

Photographs

- 17 Some prospectuses contain numerous photographs. We recognise that photographs can make a document more user-friendly but they should not distract investors from important substantive information.
- 18 We consider that photographs in the front sections of a prospectus are problematic. Consumer research indicates that retail investors tend to read the first few pages of a disclosure document more thoroughly than the rest of the document. We are therefore concerned that retail investors may form impressions about the issuer and the offer based on the prospectus' photographs, rather than making informed investment decisions based on key information (including financial information) about the issuer and offer. This can occur particularly where images of a celebrity are used because retail investors may get the impression that the celebrity endorses the offer.
- 19 We think issuers will strike the appropriate balance if they only include relevant and clearly-labelled photographs that are not misleading. We also consider that photographs (other than those on the front cover) should only appear after the investment overview.

Prospectuses should be as short as possible

Proposal

- B4** We propose to give guidance that prospectuses should be as short as possible while still satisfying the disclosure requirements. Our guidance suggests ways for reducing length (e.g. omitting extraneous information such as repetitive summary sections). See the attached draft regulatory guide at RG 000.29–RG 000.30.

Your feedback

- B4Q1 Do you agree with our suggestions for making prospectuses as short as possible? If not, please explain why. Do you have any other suggestions for how prospectuses can be as short as possible?
- B5** We propose to give guidance that issuers should consider incorporating by reference information that is not key to a retail investor's assessment of the offer (e.g. contracts, trust deeds, detailed corporate governance policies and secondary specialist expert reports). For an international offering, the foreign offer document could be incorporated by reference. See the attached draft regulatory guide at RG 000.32.

Your feedback

- B5Q1 Do you agree with our proposed guidance that issuers should consider incorporating by reference contracts, trust deeds, detailed corporate governance policies, secondary specialist expert reports and foreign offer documents? If not, please explain why. Are there practical difficulties in incorporating by reference the suggested documents?
- B5Q2 Are there other documents that can be usefully incorporated by reference?
- B5Q3 If reliance on s712 is problematic, do you think information that would otherwise be incorporated should be set out in an appendix to the prospectus with a cross-reference at the front of the prospectus? This would help to ensure the first sections of the prospectus are more concise, but there should be no concern that the information is not formally included in the prospectus.
- B5Q4 Do you think we should encourage issuers to include on their website any documents incorporated by reference (as well as lodging that information with ASIC)?

- B6** We propose to give guidance that if issuers are uncertain about whether the information is relevant to professional investors or whether the test in s712(2)(b) is more appropriate, the prudent course of action is to comply with the test in s712(2)(b) and provide more information in the prospectus. See the attached draft regulatory guide at RG 000.36.

Your feedback

- B6Q1 Do you agree with our proposed guidance on the prudent course of action in these circumstances? Is this guidance useful? Are there any concerns or practical difficulties with this guidance?

- B7** We propose to give general guidance on what constitutes 'sufficient information' for the purposes of the test in s712(2)(b). We also give guidance on what would comply with s712(2)(b) when incorporating trust deeds and secondary specialist expert reports by reference. See the attached draft regulatory guide at RG 000.37–RG 000.39.

Your feedback

- B7Q1 Do you agree with our proposed guidance on what constitutes 'sufficient information' for the purposes of s712(2)(b)?
- B7Q2 Do you agree with our proposed guidance on what constitutes 'sufficient information' when incorporating trust deeds and secondary specialist expert reports by reference? Is this guidance helpful? Are there practical difficulties with following this guidance? Do you have other suggestions for what constitutes 'sufficient information'?

- B8** We propose to give guidance that incorporated documents must comply with other provisions of the Corporations Act, including the prohibitions

in Ch 6D on misleading and deceptive provisions and the consent requirement in s716(2). We propose to give guidance that documents that are prepared for the purposes of incorporating information into the prospectus should be ‘clear, concise and effective’: s715A. See the attached draft regulatory guide at RG 000.40.

Your feedback

B8Q1 Do you agree that documents incorporated by reference should comply with these other requirements of the Corporations Act? If not, please explain why. Are there practical difficulties with following this guidance?

B8Q2 Do you agree the documents incorporated by reference should comply with s715A? If not, please explain why? Are there any practical difficulties with following this guidance?

Rationale

Omitting extraneous information

20 To be ‘clear, concise and effective’, a prospectus does not have to be short. However, consumer research indicates that length and complexity are the main obstacles to retail investors reading and understanding prospectuses.

21 Our proposed guidance suggests ways to reduce unnecessary length, including leaving out extraneous information and using incorporation by reference. We also consider that an investment overview which explains key information for retail investors will help them deal with a long document: see Section C of this consultation paper.

Incorporation by reference

22 Parliament amended the provision on incorporation by reference (now s712) to facilitate shorter prospectuses and to help issuers cater for the differing needs of retail investors and professional investors or advisers. This is one of the main devices through which Parliament sought to achieve shorter prospectuses.

23 As envisaged by the Corporate Law Economic Reform Package (CLERP):
‘...fundraisers should be able to issue substantially shorter prospectuses for retail investors. Issuers should have the flexibility to omit information provided that it is made available on request and investors are provided with a fair indication of its character.’ (*CLERP Paper No. 2: Proposals for Reform—Fundraising*, p. 16)

24 However, there has been limited use of incorporation by reference since the reforms were enacted. We understand this is partly because issuers and their advisers are concerned that they may fail to comply with certain aspects of s712, meaning the document is not validly incorporated and the information

is omitted from the prospectus. This, in turn, risks non-compliance with the disclosure tests in Ch 6D.

- 25 Our guidance attempts to alleviate these concerns and facilitate use of s712.
- 26 For example, it has been claimed that the need to make a decision on whether the information is primarily of interest to professional investors or retail investors deters use of s712. However, we consider that it is open to an issuer to provide ‘sufficient information’ about the incorporated document (i.e. rely on s712(2)(b)) if there is any doubt about the primary audience. We think it is highly unlikely that a court would decide that a document has not been validly incorporated because it is primarily of interest to professional investors and therefore the prospectus provides more information than may have been strictly necessary. If this approach is followed, we do not consider that any formal modification of s712(2) is required. ASIC has previously refused to modify s712(2) on the basis that such relief is unnecessary (i.e. the issuer can choose to comply with s712(2)(b)).
- 27 Similarly, Parliament tried to make the incorporation test easier by introducing the current tests in s712(2), rather than the ‘summary’ that was previously required. We think it is unlikely that a court would decide a document has not been validly incorporated where the issuer has made a good attempt to give investors a ‘fair indication’ of the document’s character, including highlighting any significant negative information and explaining the document’s relevance to the offer and the investor’s investment decision.
- 28 In our experience, the types of documents that are incorporated by reference in practice are foreign prospectuses, contracts and detailed corporate governance policies. We also received submissions to our 2006 draft policy statement asking for guidance on the incorporation of trust deeds. In our proposed guidance, as requested in submissions, we seek to assist issuers by giving examples of what might constitute ‘sufficient information’ in these instances.
- 29 We are also seeking to make incorporated information more easily accessible for retail investors if they decide they would like to obtain it (e.g. including it on the issuer’s website).

C Investment overview

Key points

We propose to give guidance that a prospectus should include an investment overview that highlights key information to help retail investors make informed assessment decisions.

The investment overview should be a balanced, meaningful summary with cross-references to more detail.

Need for an investment overview

Proposal

- C1** We propose to give guidance that a prospectus should include an investment overview at the front that highlights information that is key to a retail investor's investment decision. See the attached draft regulatory guide at RG 000.42–RG 000.44.

Your feedback

- C1Q1** Is an investment overview an effective way to help retail investors to identify and understand the information that is key to their investment decision? If not, what would you suggest as an alternative?
- C1Q2** Is an investment overview a meaningful replacement for the multiple levels of summaries currently included in many prospectuses (e.g. 'Investment highlights' and 'Frequently asked questions' sections)?
- C1Q3** As an alternative to an investment overview, should ASIC encourage a two-part prospectus with one part aimed at retail investors and the other aimed at professional and sophisticated investors? What practical difficulties may arise with this approach?

Rationale

- 30 Through our guidance, we are aiming to change market practice so that issuers provide retail investors with one, useful balanced summary rather than multiple summary sections. We have termed this summary 'an investment overview'.
- 31 An investment overview is an important way to ensure a prospectus caters for retail investors, while also providing more detailed information for sophisticated and professional investors. The investment overview should be the first substantive section of the prospectus.

- 32 Consumer research indicates that retail investors have difficulty assessing long, complex documents like a prospectus. An investment overview will help retail investors focus on important information and locate more detailed information.
- 33 When we review prospectuses, we look at the front sections very closely because we consider this is the key part of the document for retail investors. As already noted, consumer research indicates that retail investors read the first few pages of a document like a prospectus more thoroughly than the rest of the document.
- 34 It is common market practice for prospectuses to contain summary sections but often they:
- (a) lack key information about the offer and are dominated by general marketing statements and numerous photographs;
 - (b) are repetitive—this often occurs with multiple summaries (e.g. ‘Investment highlights’ followed by ‘Frequently asked questions’);
 - (c) are unbalanced with too much emphasis on the benefits and inadequate discussion of the key risks; and
 - (d) do not function as a guide to the rest of the document.
- 35 Some other international jurisdictions also require issuers to include a summary at the front of prospectuses.

Note: For example, see IOSCO, *Principles on Point of Sale Disclosure*, Report of the Technical Committee of IOSCO (www.iosco.org/library/pubdocs/pdf/IOSCOPD343.pdf), 11 February 2011 (pp. 19 and 26–27).

Content of the investment overview

Proposal

- c2 We propose to set out some categories of key information that should generally be explained in the investment overview. These are:
- (a) the key features of the issuer’s business model (i.e. how the issuer proposes to make money and generate income or capital growth for investors or otherwise meet its objectives);
 - (b) the key risks to the issuer’s business model, as well as the key risks associated with the security or the offer;
 - (c) the key financial information and key financial ratios (see proposal C3);
 - (d) if the issuer’s securities have not traded previously or the issuer is an investment company or has a limited operating history—key information on the experience and background of directors and key managers;

- (e) any significant interests and benefits payable to directors and other persons connected with the offer and any significant related party arrangements; and
- (f) the proposed use of funds and the key terms and conditions of the offer.

See Table 5 in the attached draft regulatory guide.

Your feedback

C2Q1 Do you agree with the key categories of information we have suggested should generally be included in the investment overview? If not, please explain why. What other categories of information do you think should usually be included in an overview?

- c3** We propose to give guidance that issuers should include key financial information and key financial ratios in the investment overview. This would generally include net profit after tax (NPAT), an earnings per share (EPS) ratio, a gearing ratio and a discussion of the issuer's financial position and any commitments, events or uncertainties that may materially affect the issuer's liquidity. An issuer should also consider whether it is appropriate to include an interest cover ratio and working capital ratio. We propose to give guidance on how the gearing ratio, interest cover ratio and working capital ratio should be calculated. See Table 5 in the attached draft regulatory guide and the appendix.

Your feedback

C3Q1 Do you agree that key financial information and key financial ratios should be included in the investment overview? Are there any practical difficulties or concerns with an issuer doing this?

C3Q2 Are the proposed key financial information and financial ratios appropriate? If not, what would you suggest?

C3Q3 Do you agree with our proposed methods for calculating these financial ratios?

- c4** Our proposed guidance encourages issuers to consider whether any other information should be included in the investment overview given their individual circumstances. See the attached draft regulatory guide at RG 000.46.

Your feedback

C4Q1 Do you agree that ASIC should give guidance but that the onus is on the issuer to identify key information that needs to be included in the investment overview? Or do you think that ASIC should be prescriptive about the contents of an investment overview. Please give reasons.

- c5** We propose to give guidance that the discussion of key benefits and risks in the investment overview should be balanced, with a balanced level of detail about both. See the attached draft regulatory guide at RG 000.47.

Your feedback

C5Q1 Is our proposed guidance on the concept of balanced disclosure useful and easy to apply in practice? Please explain your answer.

- c6** If the investment is speculative or the achievement of objectives is high risk, we propose that this should be highlighted in the investment overview. See the attached draft regulatory guide at RG 000.48.

Your feedback

C6Q1 Do you agree that the investment overview should indicate if the investment is speculative or if the achievement of objectives is high risk?

Rationale

- 36 Based on consumer research and our experience of reviewing prospectuses, we have identified categories of information that are generally key to a retail investor's assessment of the offer.
- 37 We have not given detailed, prescriptive guidance on the content of the investment overview because this content will differ depending on the issuer and the offer. We consider the issuer is best placed to determine what information requires highlighting in the investment overview.
- 38 While our guidance about the detail in the investment overview is not prescriptive, we state that the content should be balanced. This is not a simplistic concept—for example, balanced disclosure does not mean that the number of risks and benefits need to be the same.

Presentation of the investment overview**Proposal**

- c7** We encourage issuers to ensure their investment overview is 'clear, concise and effective'. In particular, we propose to give guidance that:
- (a) issuers use clear communication tools—in particular, clear cross-references, questions as headings and a table format; and
 - (b) the presentation of the overview should be balanced with benefits and risks being given similar prominence (e.g. by using similar layout and fonts).

See the attached draft regulatory guide at RG 000.50–RG 000.51.

Your feedback

C7Q1 Do you have any further suggestions for how an investment overview should be worded and presented?

C7Q2 Is our guidance on presenting benefits and risks in a balanced way useful and easy to apply in practice? Please explain your answer.

- C8** We propose to give guidance that the investment overview should be a summary of issues that are key to assessing the offer, rather than a summary of the prospectus as a whole. We do not propose to give prescriptive guidance on the word limit or length of the overview. See the attached draft regulatory guide at RG 000.52.

Your feedback

C8Q1 Do you agree that ASIC should not be prescriptive about the length of the investment overview? Alternatively, is there an ideal length for an investment overview?

Rationale

- 39 First impressions count. For this reason, it is essential that the investment overview is ‘clear, concise and effective’. Otherwise, there is a risk that retail investors will dismiss the prospectus as irrelevant or too difficult and base their decision on less reliable information.
- 40 The presentation of the investment overview must also be balanced, giving the benefits and risks similar prominence. For example, risks and benefits should be placed next to each other and should be presented in a similar font, style and colour. This helps make the prospectus ‘clear, concise and effective’.
- 41 We consider that the appropriate length of the investment overview will depend on the circumstances of the issuer and the offer. Issuers should focus on providing a succinct explanation of key issues with cross-references to more detail (rather than providing all necessary information about key issues in the investment overview itself).

D Specific content guidance

Key points

We propose to give detailed guidance on some specific content issues that should generally be included in a prospectus under s710.

Our aim is to help issuers disclose this information in a way that helps retail investors assess the offer and make informed investment decisions.

Specific content issues

Proposal

D1 We propose to give detailed guidance on some specific content issues. These are:

- (a) the issuer's business model;
- (b) risks;
- (c) financial information;
- (d) directors and key managers, interests, benefits and related party transactions; and
- (e) the effect of the offer and the terms and conditions of the offer.

This is information that we consider issuers should include in their prospectus to meet the disclosure tests in s710 and 711. See Sections D–H of the attached draft regulatory guide.

Your feedback

D1Q1 Is it useful for ASIC to give detailed guidance on some specific content issues?

D1Q2 Do you agree that s710 generally requires disclosure of the issues we have given guidance on? Are there any other key matters that should also generally be disclosed in a s710 prospectus?

Rationale

42 Based on our experience of reviewing prospectuses, we consider that the categories of information listed above will generally be required in a s710 prospectus. Our guidance on content is not prescriptive and issuers should not include the information if it is not relevant to them. It is also not exhaustive. Issuers should consider what other information is required.

43 Our proposed guidance contains detailed guidance on more topics than our 2006 draft policy statement. This is in response to submissions received on that guidance and requests from participants in our preliminary consultation for us to give more detailed, practical guidance.

Business models

Proposal

- D2** We propose to give guidance that a prospectus should explain an issuer's business model to retail investors (i.e. how the issuer proposes to make money and generate income or capital growth for investors). If an issuer does not intend to make money and generate income or capital growth for investors in the short term, the issuer should explain its short-term objectives and how it proposes to meet those objectives. See the attached draft regulatory guide at RG 000.53–RG 000.54.

Your feedback

- D2Q1** Do you agree that a prospectus should explain the issuer's business model—that is:
- (a) how the issuer plans to make money and generate income or capital growth for investors; or
 - (b) if the issuer does not intend to make money in the short term, their short term objectives and how they propose to meet those objectives?
- D2Q2** Are there any practical difficulties involved with an issuer explaining its business model?
- D2Q3** Are there any other potential consequences of requiring an issuer to disclose this information? For example, might some issuers exit the market, change their business model or exclude retail investors from offers?

- D3** We propose to give guidance that explaining an issuer's business model will involve explaining the key components of the business model, how the components relate to each other and any assumptions underlying the model (such as 'interest rates remain steady'). See the attached draft regulatory guide at RG 000.55–RG 000.57. We have given some common examples of the components of a business model, including finance arrangements, competition, strategy, dividend policy and significant dependencies like key suppliers, essential assets, important contracts and intellectual property. See Table 6 in the attached draft regulatory guide.

Your feedback

- D3Q1** Do you agree that we have identified the components that will be relevant to most business models? Should any be removed from or added to our proposed guidance?
- D3Q2** Is the guidance that we have given on each component adequate and useful? If not, please explain why, giving examples.
- D3Q3** For the dividend policy, if an issuer intends to pay dividends other than out of profits, do you agree that this should be stated in the prospectus together with any associated risks? Are there any practical difficulties in doing this?

D3Q4 Do you agree that a prospectus should include an explanation of how the components of a business model relate to each other and to the business model as a whole, rather than simply describing the components?

Rationale

- 44 We consider that retail investors need to understand the issuer's business model, the key assumptions underlying the model and the key risks involved. Explaining the issuer's business model will usually involve explaining the components of the model and how they relate to each other.
- 45 Information on the components of the issuer's business model would generally already be included in a prospectus (e.g. strategy and plans, finance arrangements, and important contracts). Our proposed guidance seeks to change market practice so that issuers give investors an analysis of these components and explain how the components interact with each other. Professional investors are likely to understand how an issuer's business model works from descriptive information throughout the prospectus and their own industry knowledge, but we consider that retail investors need an explanation that brings the components together.
- 46 There is no confidentiality exemption from the prospectus requirements. We consider that if confidential information would deter investors from investing in the company if it were known, investors would reasonably expect to see that information disclosed in the prospectus.

Risks

Proposal

- D4 We propose to give guidance that a prospectus should explain the risks to the issuer's business model, as well as the risks associated with the security and the offer. The prospectus should help retail investors work out which of the relevant risks are the key risks. We have said the key risks will usually be the type of events that have a reasonable likelihood of occurring and would have a very significant effect on the issuer's financial position and the value of shareholders' investment. See the attached draft regulatory guide at RG 000.74–RG 000.78.

Your feedback

- D4Q1 Do you agree with our proposed guidance that a prospectus should help retail investors work out which risks are the key risks associated with the issuer's business model, the security and the offer?
- D4Q2 Do you agree with our explanation of what the key risks are likely to be?
- D4Q3 Are there any practical difficulties with following our guidance on key risks?

- D5** We propose to give some examples of risks that may need to be included in a prospectus. See Table 7 in the attached draft regulatory guide.

Your feedback

- D5Q1 Do you agree with the proposed examples of risks?
- D5Q2 Do you think that it is useful for ASIC to include examples in our guidance? If not, please explain why.
- D5Q3 Are there other common risks that you think should be included?

- D6** We propose to give guidance that risk disclosure should be more specific by:
- explaining how a risk might affect the issuer's business model, the security or the offer; and
 - giving some indication about the likelihood of the risk occurring.

See the attached draft regulatory guide at RG 000.79–RG 000.80.

Your feedback

- D6Q1 Do you agree that a prospectus should explain the likelihood of a risk occurring and the consequences if it did occur? If not, please explain why.
- D6Q2 Do you think that a sensitivity analysis is sometimes appropriate? Are there any practical difficulties in doing this?

- D7** We propose to give guidance on how to provide risk disclosure that is 'clear, concise and effective'. We consider this includes:
- organising risks logically—for example, in categories such as risks specific to the issuer (including its business model), risks specific to the industry, risks specific to the offer, risks specific to the security, and any relevant general risks;
 - giving more prominence to key risks;
 - disclosing risks that relate to a potential benefit with disclosure on the benefit; and
 - ensuring risk disclosure is consistent throughout the prospectus.

See the attached draft regulatory guide at RG 000.81–RG 000.84.

Your feedback

- D7Q1 Does our proposed guidance help issuers to make their risk disclosure more 'clear, concise and effective'?
- D7Q2 Are there any practical difficulties with following this guidance on 'clear, concise and effective' risk disclosure?
- D7Q3 Do you have any other suggestions for how to make risk disclosure 'clear, concise and effective'?

Rationale

47 Risk disclosure is a key consideration for retail investors. Clear and meaningful risk disclosure will help retail investors assess the potential risks and returns of an offer and make informed investment decisions.

48 Often the risk disclosure in prospectuses is too general and does not explain to investors how the risk is relevant. Our guidance seeks to discourage generic risk disclosure and encourage issuers to explain how each risk might affect the issuer's business or the offer.

49 Our guidance also encourages issuers to help retail investors work out which of the risks are the key risks. In some cases, prominence is given to general risks but key risks may not be disclosed at all—for example, a mining prospectus that does not disclose the risk of not accessing essential equipment within a certain timeframe, or a bio-tech company that does not disclose the risk of not obtaining the relevant patent protection.

50 The following statement by the UK Financial Reporting Review Panel suggests questions that may be helpful for issuers to ask themselves when preparing risk disclosure:

The Panel encourages boards of directors to consider their disclosure of the principal risks and uncertainties facing their businesses by considering the following questions:

1. Do the disclosures state clearly which are the principal risks and uncertainties facing the business?
2. Are those risks and uncertainties described as principal the main risks and uncertainties that currently face the business? For example, have the risks and uncertainties listed as principal been the subject of recent discussions at board or audit committee meetings? Are there risks which have been the subject of such discussions which should be considered as principal?
3. Is the description of each principal risk and uncertainty sufficient for shareholders to understand the nature of that risk or uncertainty and how it might affect the company?
4. Are the principal risks and uncertainties described in a manner consistent with the way in which they are discussed within the company?
5. Are the principal risks and uncertainties shown consistent with the rest of the report and accounts? Are there risks and uncertainties on the list which are not referred to elsewhere or are there significant risks and uncertainties discussed elsewhere which do not appear on the list?
6. Is there a description, in the directors' report, or elsewhere in the report and accounts and explicitly cross-referenced from the directors' report, of how the company manages each of the principal risks and uncertainties?

Note: See UK Financial Reporting Council FRRP PN 130 'The Financial Reporting Review Panel highlights challenges in the reporting of principal risks and uncertainties', 1 February 2011, www.frc.org.uk/frfp/press/pub2503.html.

Financial information

Proposal

- D8** We propose to give guidance that issuers with an operating history should consider including, for the three most recent financial years, a summary of the historical audited annual financial statements and most recent audited or reviewed half-year financial statement (if applicable). See the attached draft regulatory guide at RG 000.86–RG 000.88.

Your feedback

- D8Q1 Do you agree with our proposed guidance for issuers with an operating history? If not, please explain why.

- D9** We propose to give guidance that issuers with no operating history should include a current balance sheet in their prospectus. See the attached draft regulatory guide at RG 000.89.

Your feedback

- D9Q1 Do you agree with our proposed guidance for issuers with no operating history? If not, please explain why.

- D9Q2 Is there other financial information that these issuers should include in their prospectus?

Rationale

- 51 Financial information about the issuer is a key consideration for investors when assessing the risks and returns associated with an investment. However, there is a wide divergence in practice about the scope and level of detail of financial information that is included in prospectuses.
- 52 Our guidance is aimed at helping issuers to include an appropriate level of financial information in their prospectus and to present that information in a way that helps retail investors to make informed investment decisions. Not all retail investors will be able to understand financial information, so key information should be highlighted in the investment overview and all terms used should be adequately defined and explained in the prospectus.
- 53 Retail investors need to understand the financial position of the issuer at the time of the offer. For issuers with an operating history, a summary of the previous three years' historical financial information is generally appropriate because it will enable investors to identify any trends.
- 54 Pro forma financial information may be useful and is sometimes necessary to satisfy the disclosure requirements of the Corporations Act. If pro forma financial information is included, there should be adequate disclosure about the basis of its preparation.

Note: For our proposed guidance on disclosure of pro forma financial information, see Consultation Paper 150 *Disclosing information other than in accordance with accounting standards* (CP 150) and the corresponding draft regulatory guide at www.asic.gov.au/cp.

Directors and key managers, interests, benefits and related party transactions

Proposal

- D10** We propose to give guidance that a prospectus should include details of the issuer's directors and key managers. This includes:
- (a) details of the role they will perform and their expertise relevant to that role;
 - (b) information about their independence or otherwise (e.g. if they are a nominee director for a substantial shareholder);
 - (c) details of any criminal convictions, declarations under s1317E of the Corporations Act, personal bankruptcies, disqualifications or disciplinary action within Australia or other jurisdictions that are less than 10 years old and are relevant to the role to be undertaken and the investment decision; and
 - (d) if the person has been an officer of a company that entered into a form of external administration because of insolvency and this occurred during the time the person was an officer or within a 12 month period afterwards.

See Table 8 in the attached draft regulatory guide.

Your feedback

D10Q1 Do you agree with our proposed guidance on the information about directors and key managers that should be included in a prospectus? If not, please explain why.

D10Q2 Do you agree that details of any convictions, declarations under s1317E of the Corporations Act, personal bankruptcies, disqualifications or disciplinary action within Australia or other jurisdictions as described in proposal D10(c) should be included in the prospectus? If not, please explain why. Are there any practical difficulties with including this information?

D10Q3 Do you agree that a prospectus should disclose if a director or key manager has previously been an officer of a company that has gone into external administration because of insolvency? If not, please explain why. Are there any practical difficulties with including this information?

D10Q4 Do you think that a prospectus should only have to disclose relatively recent insolvencies that a director or key manager has been involved with? For example, should the disclosure only be required for insolvencies that have occurred over the previous seven years?

- D11** We propose to give guidance that if an issuer is seeking listing on a market that requires disclosure against a corporate governance framework, certain information should be included in the prospectus (e.g. a brief description of the framework and departures from the

framework). We propose that issuers should consider incorporating detailed corporate governance policies by reference. See the attached draft regulatory guide at RG 000.100.

Your feedback

D11Q1 Do you agree with our proposed guidance on the information about corporate governance that should be included in a prospectus? Are there practical difficulties with including this information?

D11Q2 Do you agree that issuers should consider incorporating detailed policies by reference?

D12 We propose to give guidance on the requirement that a prospectus must disclose the interests of, and benefits paid to, persons involved in the offer. See the attached draft regulatory guide at RG 000.103–RG 000.110 and Table 9.

Your feedback

D12Q1 Do you agree with this proposed guidance? Do you agree with our examples of indirect interests or benefits that should be disclosed?

D12Q2 Do you agree with our broad approach to the meaning of a ‘promoter’?

Rationale

Management’s experience and expertise

55 An investment in a company is often considered to be an investment in the skill of its directors and key managers. A prospectus will usually need to explain these officers’ experience and expertise that is relevant to the role they will perform.

56 We consider that a person’s previous management of a company that has gone into external administration due to insolvency is an important aspect of their experience. It is usually relevant to an investor’s assessment of the person’s management expertise and governance. The fact that a person’s management of insolvent companies may be relevant to their future suitability to manage companies is demonstrated by the court’s disqualification power under s206D.

Corporate governance

57 Information about the issuer’s corporate governance framework is useful in helping a retail investor understand how an issuer will be managed. If an issuer is seeking listing on a market that requires disclosure against a corporate governance framework, we suggest that they include a brief description of the framework and highlight any departures from this framework.

- 58 We consider that it is more useful for a prospectus to explain departures from the framework rather than reproducing the text of the policies. We encourage to issuers to consider incorporating detailed corporate governance policies by reference (if they require inclusion in the prospectus). We also recommend issuers place their current corporate governance policies on their website so that investors can easily access them.

Interests and benefits

- 59 A prospectus must include interests or benefits given to, for example, directors, promoters and underwriters: s711(2)–(4). We have given guidance on the type of disclosure required. In particular, we have explained that ‘promoter’ has a broad meaning and that indirect interests have to be disclosed.

Effect and terms and conditions of the offer

Proposal

- D13** We propose to give guidance on disclosure of the effect of the offer. The following information should generally be included:
- (a) proposed use of the funds (see: RG 000.121);
 - (b) current balance sheet position and an adjusted pro forma statement of financial position;
 - (c) capital structure (including the number of securities on issue and any substantial shareholders before and after the issue);
 - (d) any control implications of the offer (if there are existing substantial shareholders or underwriters); and
 - (e) the potential effect of the fundraising on the future of the company.
- See the attached draft regulatory guide at RG 000.119–RG 000.121.

Your feedback

D13Q1 Do you agree with our proposed guidance on the effect of the offer, including use of funds? Are there any practical difficulties in following our proposed guidance? Are there any other matters that you would like guidance on?

- D14** We propose to give guidance on disclosure of the terms and conditions of the offer including the type of security being offered, the rights and liabilities attached to the security being offered, the consideration payable, the offer period, whether the offer is for the issue of new securities or the sale of existing securities, any minimum or maximum subscription amounts, the allocation policy, any indication of listing, any underwriting arrangements, any escrow arrangements, whether ASIC relief or ASX waivers have been obtained and any taxation implications. See the attached draft regulatory guide at RG 000.123–RG 000.143.

Your feedback

D14Q1 Do you agree with our proposed guidance on the terms and conditions of the offer? Are there any practical difficulties in following our proposed guidance? Are there any other matters that you would like guidance on?

D14Q2 Our proposed guidance requires disclosure about any process to set the final offer price for the securities (e.g. a book build process). Do you agree there should be disclosure about such a process and if so, what information is relevant for retail investors about the process?

D14Q3 If the offer price will not be finalised until after the deadline for acceptances, do you agree that the prospectus should warn that the final price may not accurately reflect the market value of the securities and may differ significantly from the market price when the securities are quoted (especially where retail investors are involved in the price-setting process)?

Rationale

- 60 The effect of the offer, particularly the proposed use of proceeds, is an important consideration for investors because it is relevant to the issuer's plans and prospects. During our preliminary consultation, we had feedback from professional and sophisticated investors on the importance of 'use of funds' disclosure.
- 61 A prospectus must disclose the terms and conditions of the offer: s711. Most of this disclosure is likely to be straightforward. Disclosure about book builds may be more complex. We consider that the prospectus should provide adequate transparency on the book build process, especially where retail investors are permitted to participate in the process.

E Disclosure issues not covered

Key points

In the course of our prospectus project, a number of disclosure issues and concerns that are outside the scope of our current work have been raised with us.

We seek further feedback on these issues. This will help us determine whether further ASIC work or guidance may be required in the future.

Transaction-specific prospectuses

Proposal

- E1** Our policy on transaction-specific prospectuses that comply with the disclosure requirements in s713 and guidance on the content of these prospectuses is set out in Regulatory Guide 66 *Transaction-specific disclosure* (RG 66). RG 66.46 makes clear that in some circumstances, the disclosure in a s713 prospectus may need to be similar to that prescribed by s710 (e.g. where the aim of the fundraising is to finance the purchase of a new asset that involves a major change in the issuer's business or finances). In these circumstances, we consider that the guidance in our draft regulatory guide is relevant: see Table 2 of the attached draft regulatory guide.
- E2** Parts of our draft regulatory guide are also relevant to a s713 prospectus (even if there is no major change to the issuer's business)—for example, Section B ('Clear, concise and effective'), Section E (Risks), Section G (Interests and benefits) and Section H (Effect and terms and conditions of the offer). See Table 2 in the attached draft regulatory guide.

Your feedback

- E2Q1** Do you agree that our proposed guidance is relevant to s713 prospectuses as described in proposals E1 and E2?
- E2Q2** Do you think that RG 66 together with our draft regulatory guide give adequate guidance on these prospectuses (including content)? If not, please explain why. What further guidance would you like from ASIC on s713 prospectuses?

Rationale

- 62 Some industry groups we consulted during our preliminary consultation asked what information must be included in a s713 prospectus. We were also asked the extent to which an issuer can rely on information contained in continuous disclosure announcements. Our policy on this question is set out

in RG 66.43–RG 66.48. Parts of our proposed draft guidance will also be relevant to s713 prospectuses.

- 63 A s713 prospectus must include relevant ‘excluded information’ and explain the effect of the offer: s713(5). An issuer may need to conduct a review process involving senior management to ensure they identify this ‘excluded information’ and accurately explain the effect of the offer. The rationale underlying s713 is that a full s710 prospectus is not required because investors will have access to sufficient information through the issuer’s continuous disclosure.
- 64 For this reason, when reviewing a s713 prospectus, we will also review continuous disclosure announcements made during the 12 months before the offer, and information available on the issuer’s website and advertisements, to ensure consistency and that the information is not misleading or deceptive.

‘Low doc’ rights issues

Proposal

- E3 Our policy on rights issues conducted without Ch 6D disclosure under s708AA and guidance on cleansing statements under s708AA(2)(f) is set out in Regulatory Guide 189 *Disclosure relief for rights issues* (RG 189). RG 189 does not include guidance on the content of ‘offer documents’. We consider that our proposed guidance in Section B of the attached draft regulatory guide is relevant to ‘offer documents’. We do not currently propose to give more detailed guidance on the content of ‘offer documents’. See Table 2 in the attached draft regulatory guide.

Your feedback

- E3Q1 Do you agree that our proposed guidance is relevant to ‘offer documents’ in the way described above?
- E3Q2 Do you think that ASIC should give guidance on the content of ‘offer documents’? If so, please explain in detail what you would like that guidance to cover.
- E3Q3 Would it be useful for ASIC to give guidance that an ‘offer document’ should contain an investment overview as described in Section C of the attached draft regulatory guide with cross-references to where more detailed information can be found (either in the offer document or in continuous disclosure announcements)?

Rationale

- 65 A prospectus is not required for certain pro-rata offers to existing shareholders on the basis that these shareholders have access to other reliable information through the issuer’s continuous disclosure. The ‘low doc’

regime in s708AA is intended to facilitate a form of fundraising that retail investors can participate in.

- 66 Issuers relying on s708AA often send shareholders a document that sets out the terms of the offer, gives some information specific to the offer, and attaches relevant investor presentations and other continuous disclosure announcements. In this consultation paper, we refer to these documents as ‘offer documents’. A diverse practice has developed in the way these ‘offer documents’ are prepared and presented: they vary in length from a few pages to almost 100 pages.
- 67 During our preliminary consultation, we were asked about the scope and level of information that should be included in ‘offer documents’. ‘Offer documents’ are not lodged with ASIC and to date, we have not issued guidance on their content.
- 68 An issuer that relies on s708AA must provide a cleansing statement that contains any relevant ‘excluded information’ and states the potential impact the rights issue will have on control: s708AA(7). An issuer may need a review process involving senior management to ensure it complies with this important disclosure requirement.
- 69 We also consider that issuers have a general duty to make their communications with retail investors ‘clear, concise and effective’ even if there is no specific statutory requirement analogous to s715A: see the attached draft regulatory guide at RG 000.12. In our view, this general duty to communicate clearly extends to ‘offer documents’. We also note that the general misleading and deceptive provisions (s1041H) apply to low doc ‘offer documents’.

Electronic prospectuses and other technological developments

Proposal

- E4 We have given relief on the preparation and use of electronic prospectuses: see Class Order [CO 00/44] *Electronic disclosure documents, electronic application forms and dealer personalised applications*. We have also issued guidance on the preparation and use of electronic prospectuses: see Regulatory Guide 107 *Electronic prospectuses* (RG 107). We do not currently propose to give further guidance on electronic prospectuses.

Your feedback

- E4Q1 Are there barriers to issuers using electronic prospectuses in the way they would like to? Do you consider any ASIC relief is required (either similar to [CO 00/44] or otherwise)?
- E4Q2 Is there a need for ASIC guidance on electronic prospectuses? If so, please explain in detail what this guidance should cover.

E4Q3 Are there any other prospectus issues that have arisen as a result of other technological developments? Is ASIC relief or guidance required? If yes, please explain the nature of the relief or guidance required and why it is appropriate.

Rationale

- 70 We understand there is a strong level of interest among issuers and their advisers about ASIC's views on electronic prospectuses, including delivering prospectuses electronically and preparing interactive prospectuses.
- 71 ASIC recently released some regulatory guidance on electronic Product Disclosure Statements (PDSs) and a class order to facilitate the electronic distribution of PDSs: see Regulatory Guide 221 *Facilitating online financial services disclosures* (RG 221) and Class Order [CO 10/1219] *Facilitating online delivery of PDSs, FSGs and SOAs*.
- 72 Subject to submissions received in response to this consultation paper, we do not propose to issue similar relief and guidance on the electronic distribution of prospectuses. This is because the legal requirements for prospectuses do not present the same barriers to the use of electronic documents as they do for PDSs. Similarly, we have not received any requests for Ch 6D relief to facilitate electronic distribution.
- 73 Under existing law, prospectuses can be distributed electronically on condition that they may only differ from the print versions in limited and prescribed ways under [CO 00/44]. Permitted differences include hyperlinks within the electronic version of the prospectus: see condition 5(g) of [CO 00/44].

Other prospectus or disclosure issues

Proposal

E5 The guidance we propose to give on prospectus disclosure is set out in the draft regulatory guide.

Your feedback

- E5Q1 Are there any other prospectus and/or disclosure issues that you would like guidance on? If so, please give a detailed explanation of the nature of the guidance sought and why it is necessary.
- E5Q2 Other than the matters covered in the draft regulatory guide, what are the issues that issuers encounter when preparing a prospectus?
- E5Q3 Other than the matters covered in the draft regulatory guide, what are the issues that retail investors encounter when reading a prospectus?

E5Q4 Other than the matters covered in the draft regulatory guide, what information do you think retail investors focus on in a prospectus or otherwise look for when making an investment decision?

F Regulatory and financial impact

- 74 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between facilitating efficient offers of securities and investor protection concerns.
- 75 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:
- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
 - (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
 - (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).
- 76 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.
- 77 To ensure that we are in a position to properly complete any required RIS, we ask you to provide us with as much information as you can about our proposals or any alternative approaches:
- (a) the likely compliance costs;
 - (b) the likely effect on competition; and
 - (c) other impacts, costs and benefits.
- See 'The consultation process' p. 4.



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 000

Prospectus disclosure: Improving disclosure for retail investors

April 2011

About this guide

This guide is for issuers and advisers on how to word and present prospectuses and other documents in a 'clear, concise and effective' manner.

This guide also sets out our guidance about how to prepare prospectuses that satisfy the content requirement in s710 of the *Corporations Act 2001* (Corporations Act).

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

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

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This draft regulatory guide was issued on 12 April 2011 and is based on legislation and regulations as at 12 April 2011.

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

This regulatory guide sets out our guidance on how to word and present prospectuses and other documents in a ‘clear, concise and effective’ manner.

This guide also sets out our guidance to issuers and their advisers on how to satisfy the content requirement for prospectuses.

Our guidance is not prescriptive because the Corporations Act places responsibility on issuers to comply with the disclosure requirements.

Disclosure requirements for prospectuses

RG 000.1 Chapter 6D of the *Corporations Act 2001* (Corporations Act) regulates when an offer of securities in Australia requires a disclosure document. Most offers of securities to retail investors in Australia require a disclosure document. The purpose of a disclosure document is to help retail investors assess the risks and returns associated with an offer and make informed investment decisions.

RG 000.2 The most common type of disclosure document is a prospectus. When you prepare a prospectus, you must:

- (a) word and present it in a ‘clear, concise and effective’ manner: s715A;
- (b) include the information required by the general disclosure test: s710;
- (c) make specific disclosures, including disclosure about interests and benefits of persons involved in the offer: s711; and
- (d) ensure it is not misleading or deceptive: s728(1).

Note: For offers of continuously quoted securities or options over continuously quoted securities, you may be able to comply with the reduced disclosure requirements in s713.

RG 000.3 The prospectus disclosure regime is focused on the needs of retail investors and their professional advisers. If an offer is not made to retail investors, a prospectus is generally not required: s708(8), (10) and (11). The policy underlying the Ch 6D disclosure regime is that it would be difficult for retail investors to obtain the information they need without mandatory disclosure.

RG 000.4 Prospectuses are also used by sophisticated and professional investors and they are an important basis for trading securities on Australia’s financial markets. Any significant information that is given to sophisticated and professional investors should also be included in the prospectus.

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Purpose of this guide

- RG 000.5 This guide aims to assist you, as an issuer, and your advisers to produce s710 prospectuses that help retail investors assess the offer and make informed investment decisions.
- RG 000.6 The guide explains:
- (a) how you can word and present your prospectus so it is ‘clear, concise and effective’ (see Section B); and
 - (b) how you can use an investment overview to highlight key information about the offer for retail investors (see Section C); and
 - (c) the information retail investors generally require and expect to find in the body of a prospectus. This is the information that is required under the general disclosure test in s710 and the specific disclosures required by s711 (see Sections D–H).
- RG 000.7 Our guidance is general rather than prescriptive because the Corporations Act places responsibility on you to comply with the disclosure requirements. You therefore need to critically analyse how our general guidance applies to your offer and individual circumstances.

Table 1: Summary of our guidance on prospectus disclosure

Topic	What our guidance covers	Where to find it
'Clear, concise and effective'	Your prospectus must be worded and presented in a 'clear, concise and effective' manner. You should consider incorporating information by reference that is not key to a retail investor's assessment of the offer.	Section B
Investment overview	The first substantive section of a prospectus should contain an investment overview for retail investors that: <ul style="list-style-type: none"> • highlights key information about the issuer and offer in a balanced way; and • gives cross-references to more detailed information. 	Section C
Specific content guidance: Business model	Your prospectus should explain your business model—that is, how you propose to make money and generate income or capital growth for investors (or otherwise achieve your objectives).	Section D
Specific content guidance: Risks	Your prospectus should explain the risks associated with: <ul style="list-style-type: none"> • you as the issuer, including the risks to your business model; • the security; and • the offer. 	Section E

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Topic	What our guidance covers	Where to find it
Specific content guidance: Financial information	Your prospectus must explain your financial position, performance and prospects.	Section F See also RG 170 <i>Prospective financial information</i> (RG 170)
Specific content guidance: Directors and key managers, benefits, interests and related party transactions	Your prospectus should set out the experience and background of directors and key managers. Your prospectus must also contain information on interests and benefits that persons connected with the issuer or offer will receive, as well as any related party arrangements.	Section G See also Regulatory Guide 76 <i>Related party transactions</i> (RG 76)
Specific content guidance: Effect and terms and conditions of the offer	Your prospectus should clearly set out the effect of the offer on the issuer (including the proposed use of funds). Your prospectus must also set out the terms and conditions of the offer.	Section H
ASIC's role: How we monitor and assess prospectuses	When we review a prospectus, we will consider this guide and any other disclosure guide that is relevant to the offer or the issuer.	Section I

Other guidance you may need to consider

- RG 000.8 This guide focuses on the general disclosure test in s710 and other disclosures required in a s710 prospectus.
- RG 000.9 You may also need to consider guidance that we have published on specific aspects of Ch 6D disclosure and for particular sectors—for example, Regulatory Guide 69 *Debentures: Improving disclosure for retail investors* (RG 69) and Regulatory Guide 213 *Facilitating debt raising* (RG 213). These are referred to throughout this guide, where relevant, and are also listed in the 'Related information' section.
- RG 000.10 We have also published guidance that mainly relates to disclosure in Product Disclosure Statements (PDSs) under Pt 7.9 for registered managed investment schemes that operate in particular sectors—for example, Regulatory Guide 45 *Mortgage schemes: Improving disclosure for retail investors* (RG 45). For companies operating in these sectors that are preparing a prospectus, the more specific PDS guidance may also give a useful explanation of the type of information we consider to be relevant and important to investors in these sectors.

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Broader application of this guide

RG 000.11 This guide is also relevant to other types of documents, as set out in Table 2.

RG 000.12 Our guidance on ‘clear, concise and effective’ disclosure is relevant to a broad range of corporate communications that you provide to retail investors. Some of these documents are not subject to a statutory requirement to be ‘clear, concise and effective’ but we consider similar duties arise under the general law (e.g. directors’ duty to inform members and prohibitions on misleading or deceptive conduct).

Note: See Santow J (in the context of an expert’s report in a scheme) in *Re Australian Cooperative Foods Ltd* (2001) 38 ACSR 71 at 77: ‘This is so those members can make an informed decision with the benefit of a report that is as simple, clear and useful as possible’. See also the Takeover Panel’s decision in *Northern Energy Corporation Limited* [2011] ATP 2 at paragraphs 111–112.

Table 2: Application of this guide to other documents

Document type	Which sections of this guide apply and other relevant guidance
A bidder’s statement under Ch 6 where securities are being offered as consideration under a takeover offer: see s636(1)(g)	Sections B–H See also Regulatory Guide 159 <i>Takeovers, compulsory acquisitions and substantial holding notices</i> (RG 159)
An explanatory statement under Pt 5.1 where securities are being offered as consideration under a scheme of arrangement	Sections B–H See also Regulatory Guide 60 <i>Schemes of arrangement</i> (RG 60)
A Ch 6 takeover document or a Pt 5.1 scheme of arrangement (other than those described above)	Section B
A transaction-specific prospectus under s713 where the aim of the offer is to finance a transaction that involves a major change in the nature or scale of the entity’s business or finances	Sections B–I See also Regulatory Guide 66 <i>Transaction-specific disclosure</i> (RG 66) including at RG 66.46
A transaction-specific prospectus under s713 (other than those described above)	Sections B, E, G and H See also RG 66
An offer information statement under s715	Sections B–I
A combined prospectus and Product Disclosure Statement for an offer of stapled securities	Sections B–I See also Regulatory Guide 168 <i>Disclosure: Product Disclosure Statements (and other disclosure obligations)</i> (RG 168)
An ‘offer document’ for a rights issue under s708AA	Section B

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Document type	Which sections of this guide apply and other relevant guidance
A notice of meeting under s249L	Section B
Independent expert reports	Section B See also Regulatory Guide 111 <i>Content of expert reports</i> (RG 111) at RG 111.84–RG 111.86

Industry guidance

- RG 000.13 Industry guidelines, standards and codes have a useful role to play in determining how to comply with the content requirements for disclosure documents in the Corporations Act. This is because investors will generally expect you to comply with accepted industry guidelines.
- RG 000.14 Two important industry codes are the JORC Code and the Valmin Code. The JORC Code covers the reporting of exploration results, mineral resources and ore reserves. The Valmin Code covers technical assessments and valuation reports. If you are a mining company, your prospectus should comply with these codes. Information that complies with these codes is considered to be information that investors require and expect to see in a prospectus. Failure to provide information in a manner that complies with the JORC Code or the Valmin Code may make your prospectus misleading. However, complying with the JORC Code or the Valmin Code does not necessarily mean that your prospectus will comply with the disclosure requirements in the Corporations Act. You must still ensure that your prospectus complies with these requirements.
- Note: Australian Securities Exchange (ASX) Listing Rule 5.6 requires reports by mining companies to comply with the JORC Code.
- RG 000.15 There are also other widely accepted industry guidelines that relate to specific types of issuers or disclosure topics, such as hedging arrangements, prudential requirements or accounting treatment. If your prospectus diverges materially from these guidelines, you should prominently explain the reason for the divergence.

B ‘Clear, concise and effective’: Does your prospectus help retail investors make informed investment decisions?

Key points

Your prospectus must be worded and presented in a ‘clear, concise and effective’ manner. We suggest various communication tools to help you comply with this requirement.

Helping retail investors assess your offer

- RG 000.16 Section 715A provides that information in a disclosure document must be worded and presented in a ‘clear, concise and effective’ manner. This requirement applies to both the wording (i.e. choice of language) of information and the presentation (i.e. choice of communication tools). We may issue a stop order if this section is contravened: s739.
- RG 000.17 The requirement for ‘clear, concise and effective’ disclosure is intended to help retail investors make informed investment decisions. The Explanatory Memorandum for the *Corporate Law Economic Reform Program (Audit and Corporate Disclosure) Bill 2003* (Explanatory Memorandum) explains the reasons for including s715A in the Corporations Act. The Explanatory Memorandum states that ‘a disclosure document’s main aim is to inform unsophisticated investors of relevant information’ and that s715A is intended to:
- (a) ‘ensure it effectively conveys the required information to the investing public’; and
 - (b) ‘improve the comprehensibility and readability of disclosure documents’.
- Note: See paragraphs 4.190 and 5.513 of the Explanatory Memorandum.
- RG 000.18 Your prospectus should therefore focus on communicating with retail investors while also catering to the needs of professional advisers and other sophisticated investors. RG 000.22–RG 000.41 suggests ways you can cater to these different audiences.

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What is ‘clear, concise and effective’ disclosure?

RG 000.19 The requirement for ‘clear, concise and effective’ disclosure should be read as a compound phrase so that each word qualifies the other. This means that it is inappropriate to focus on one word in the phrase at the expense of others.

Note: See *Story v National Companies and Securities Commission* (1988) 13 NSWLR 661, where the court considered another compound phrase, ‘effectively, honestly and fairly’, which is now included in s912A(1).

RG 000.20 For example, complex information should not be omitted to make your prospectus more clear and concise because then your prospectus may not be effective. See paragraph 5.514 of the Explanatory Memorandum, which states that s715A is not intended to limit information or result in oversimplification.

RG 000.21 We consider that your prospectus will generally be ‘clear, concise and effective’ if it:

- (a) highlights key information (e.g. through the investment overview explained in Section C);
- (b) uses plain language;
- (c) is as short as possible (see RG 000.27–RG 000.41);
- (d) explains complex information, including any technical terms; and
- (e) is logically ordered and easy to navigate.

How can you achieve ‘clear, concise and effective’ disclosure?

RG 000.22 Table 3 and Table 4 set out some widely accepted methods and tools for creating ‘clear, concise and effective’ documents. These tools are not mandatory and will not always be appropriate. You should analyse how best to word and present your information.

RG 000.23 You should also consider using other tools to help you create ‘clear, concise and effective’ documents, including reviewing research on the communication needs of retail investors.

RG 000.24 We encourage you to critically evaluate your draft prospectus before finalising it. Some questions for you to consider are set out below.

- (a) Is the key information prominent (see Section C)?
- (b) Is the disclosure on benefits and risks balanced?
- (c) Does the document flow logically?
- (d) Does the document convey clear messages? Does it explain concepts and terms? Would it be confusing to someone not familiar with the offer or the issuer?

- (e) Does the document contain unnecessary repetition? Can some of the information that is repeated be summarised or referenced to more detailed information?
- (f) Is every piece of information essential to a retail investor’s assessment of the offer? Can any information be deleted, further summarised or incorporated by reference (see RG 000.27–RG 000.41)?

Wording information so it is ‘clear, concise and effective’

RG 000.25 Table 3 sets out some suggested methods for ‘clear, concise and effective’ wording of information.

Table 3: Communication tools for ‘clear, concise and effective’ wording

Tool	Explanation	Examples
Use the active voice	Avoid using the passive voice, where possible, as it can hide details such as who is responsible for actions. In many cases, the passive voice also requires more words and is less engaging.	<i>‘Applicants should call the Offer Information Line’</i> can be rewritten as, <i>‘You should call the Offer Information Line’</i> .
Use direct language (personal pronouns)	It is more engaging to refer to an ‘applicant’ as ‘you’ and the ‘company’ as ‘we’. It can also be more concise. You should ensure there is no confusion about who ‘you’ and ‘we’ are.	<i>‘Applicants should consider obtaining legal advice’</i> can be rewritten as, <i>‘You should consider obtaining legal advice’</i> .
Use the positive and avoid double negatives	It is generally easier to understand sentences that are phrased positively rather than negatively.	<i>‘It is not unlikely that the company will have trouble paying its debts if the offer is not successful’</i> can be written as, <i>‘It is likely that the company will have trouble paying its debts if the offer is not successful’</i> .
Use verbs rather than nouns, where possible	Verbs and the present tense are usually simpler, more direct and concise.	<i>‘Payment should be made by cheque’</i> can be rewritten as, <i>‘Please pay by cheque’</i> .
Avoid overusing definitions	<p>Definitions are very useful in providing clarity of meaning, but should not be overused.</p> <p>Use one definition that is specific rather than a definition that will lead readers to other definitions, where possible.</p> <p>Avoid defining commonly understood terms.</p> <p>If a term is only repeated two or three times, it may not need to be defined (depending on the length of the definition).</p>	<i>‘Applicant’</i> is a commonly understood term and may not require a definition.

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Tool	Explanation	Examples
Choose simple words for definitions	<p>The defined terms should be short. Select a defined term that has meaning and facilitates easy reading of sentences that include the defined term.</p> <p>Avoid using a defined term that has a common meaning that is contrary to or not compatible with the meaning given in the definition.</p>	<i>'Eligible investor'</i> and <i>'Takeover event'</i> are meaningful labels.
Avoid including additional content in definitions and using the defined term within the definition	<p>You should avoid including important information about the offer in a definition. You should also avoid including important qualifications in a definition. This is because the information may be missed and will not be given appropriate prominence.</p> <p>The definition should make sense each time it is used. You should avoid using the defined term within its own definition as this can be circular and confusing.</p>	<i>'Closing date'</i> , defined as, <i>'The date on which the offer closes, being 1 June 2011'</i> is preferable to the definition, <i>'The date on which the offer closes. Applicants should ensure their application is submitted by the closing date'</i> .
Avoid jargon, where possible	If technical terms are necessary, they should be explained the first time they are used or in a glossary, or both.	Terms such as <i>'pari passu'</i> , <i>'swaps'</i> , <i>'passive portfolio management'</i> and <i>'leveraged'</i> should be defined or explained.
Use short sentences	Long sentences prevent readers from understanding information easily. Each idea should be presented in a separate sentence. You should also remove any surplus words.	<i>'Shortening the length of a prospectus'</i> can be rewritten as, <i>'Shortening a prospectus'</i> .
Use industry accepted terms	You should use terminology that is consistent with widely accepted industry guidelines, and use it in the same sense that it is used in the guidelines.	<i>'Reserve'</i> is defined in the JORC Code. Its definition in the glossary should refer readers to the JORC Code.
Disclaimers	<p>A disclaimer will be more effective if it is prominent. A disclaimer should generally be able to be seen and understood by those who might otherwise be misled.</p> <p>Note: Any disclaimer must not be inconsistent with the liability regime in Pt 6D.3.</p>	A disclaimer that the underwriter accepts no liability in connection with the prospectus is inconsistent with Pt 6D.3.
Tailor boilerplate text; omit it where possible	Boilerplate text should be reviewed for relevance to each offer and should be tailored to reflect the offer.	

Presenting information so it is 'clear, concise and effective'

RG 000.26 Table 4 sets out suggested methods for 'clear, concise and effective' presentation of information. They are aimed at allowing retail investors to quickly access key information and identify where more detail can be found.

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Table 4: Communication tools for ‘clear, concise and effective’ presentation

Tool	Explanation and how to use tool
Overviews and summaries—highlighting key information	<p>Overviews and summaries introduce a reader to a matter and highlight key information.</p> <p>See Section C for our guidance on preparing an investment overview.</p>
Balance and prominence	<p>You should give appropriate prominence to positive and negative or less positive information (e.g. a loss for the previous year, retirement of key personnel, poor weather conditions affecting continued operations, and risks). This is particularly important when highlighting key information in an overview or summary.</p> <p>You should ensure that:</p> <ul style="list-style-type: none"> • positive information is not given undue prominence in a way that is potentially misleading; and • information of equal importance is treated in a balanced way, with equal prominence.
Logical order of information	<p>For information to be accessible to readers, the information in your prospectus should flow logically and related information should be grouped together (if possible).</p> <p>Important information should be given more prominence than less important information. For example, by using an investment overview at the front of your prospectus (see Section C) and emphasising key risks (see RG 000.82).</p>
Layout	<p>A well laid-out document is more accessible to retail investors.</p> <p>White space is important in creating pages that are easy to read. ‘White space’ refers to the amount of space on a page resulting from the use of margins, paragraph breaks and spacing between lines and headings.</p> <p>Different levels of headings, fonts, underlining, italics and colour can help indicate the importance of information.</p>
Navigation aids	<p>Investors will find your prospectus easier to navigate and read if there are good signposts to different sections of the document.</p> <p>For example:</p> <ul style="list-style-type: none"> • page numbers are important; • a table of contents should be sufficiently detailed to enable retail investors to locate key information (e.g. ‘use of funds’ rather than simply ‘the offer’); • headings should be meaningful (e.g. ‘How is my shareholding affected?’)—this will also help produce a useful table of contents; and • cross-references should be meaningful (e.g. unless it is otherwise obvious from the text, say ‘See Table 5 for a list of substantial shareholders’, rather than simply, ‘See Table 5’).

Tool	Explanation and how to use tool
Tables, diagrams, graphs, charts and maps	<p>These tools can help present information in a way that is easy for retail investors to absorb, providing they are not used in a misleading way.</p> <p>You should:</p> <ul style="list-style-type: none"> • present tables, diagrams and other illustrative charts in the simplest way possible, providing clear captions and including key assumptions; • provide keys for more complex diagrams and graphs; and • select scales, time periods and other inputs that fairly represent the information and do not give skewed outputs. Where graphs or maps are used to compare information, the same scale should be used, or the document should explain that the same scale has not been used and the reasons for this.
Photographs	<p>Photographs can break up large sections of text.</p> <p>Photographs (other than those on the front cover) should only be included after the investment overview.</p> <p>Photographs should be meaningfully labelled and only included where they are relevant to the issuer's business or the offer. Photographs should not be used where they are likely to misrepresent the nature, stage or scale of your business. This is the case whether or not the photograph has a disclaimer.</p>
Examples and case studies	<p>Examples present information in a way that retail investors can more easily relate to and understand (e.g. to illustrate how formulae work).</p> <p>Examples should be provided on a consistent basis. They should be accompanied by a clear explanation about the purpose for which they are included and the assumptions on which they are based. If an example is used to show an increase or upward change, an example showing a decrease or downward change should also be included (and vice versa).</p> <p>Case studies can effectively demonstrate various concepts, such as investment strategies.</p>
Glossaries	<p>Glossaries explain the meaning of defined terms in one place. They should be easy to find. If your prospectus includes other reports, the reports should use the same terms as those used throughout your prospectus, where possible.</p>

Is your prospectus as short as possible?

RG 000.27 Your prospectus should be as short as possible, while satisfying the disclosure requirements. This is because excessive length is problematic for retail investors and s715A requires a prospectus to be 'concise' (subject to also being clear and effective).

Note: For an example of research that supports the proposition that excessive length is problematic for retail investors, see Report 230 *Financial literacy and behavioural change* (REP 230) at www.asic.gov.au/reports and Ramsay, Ian, 'Use of prospectuses by investors and professional advisers', (2003) University of Melbourne Legal Studies Research Paper No. 76, <http://cclsr.law.unimelb.edu.au/go/centre-activities/research/research-reports-and-research-papers>.

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RG 000.28 You can achieve a prospectus that is as short as possible by using the tools in Table 3 and Table 4, omitting extraneous information (see RG 000.29–RG 000.30) and using incorporation by reference (see RG 000.31–RG 000.41).

Omitting extraneous information

RG 000.29 Your prospectus should only contain information that investors need to make their decision. Extraneous information in a prospectus undermines the document's compliance with s715A. As noted by Santow J in *Re Australian Co-operative Foods Ltd* (2001) 38 ACSR 71 at 77 in relation to an expert report, 'A plethora of peripheral information is more likely to distract than illuminate'.

RG 000.30 Whether information is relevant for investors will depend on all the circumstances. Examples of extraneous information might include the following:

- (a) repetitive summary sections;
- (b) copies of ASIC relief instruments;
- (c) long, descriptive summaries of contracts or reproducing the terms of an agreement (e.g. copying out the text of standard termination clauses from an underwriting agreement);
- (d) the issuer's constitution in its entirety or detailed extracts from the constitution;
- (e) claims about compliance with provisions of the Corporations Act or the ASX Listing Rules (investors should be able to presume you comply with these requirements);
- (f) general marketing statements that convey very little information;
- (g) photographs (e.g. one photograph of your factory may be sufficient);
and
- (h) industry background of a general nature that is unlikely to affect your business model.

Using incorporation by reference

RG 000.31 Section 712 allows information to be incorporated into a prospectus by reference. Incorporation by reference is designed to help reduce the length of prospectuses. Incorporation by reference can also help cater for the needs of different audiences.

Note: See Corporate Law Economic Reform Program (CLERP) Proposals for Reform: Paper No. 2, pp. 15–18; and Explanatory Memorandum, paragraphs 8.6–8.9. For example: '... fundraisers should be able to issue substantially shorter prospectuses for retail investors. Issuers should have the flexibility to omit information provided that it is made available on request and investors are provided with a fair indication of its character'. (*CLERP Paper No. 2: Proposals for Reform—Fundraising*, p. 16)

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RG 000.32 We recommend you consider using s712 for information that is not key to an investor's assessment of the offer. This might include detailed corporate governance policies, contracts, trust deeds and secondary specialist expert reports (such as an intellectual property report for minor intellectual property). For an international offering, it may be useful to incorporate the foreign offer document by reference.

Lodging incorporated documents with ASIC

RG 000.33 Section 712(1) requires that the information incorporated by reference is contained in a document lodged with ASIC. You can lodge a document with ASIC so that you can use incorporation by reference (even if the Corporations Act does not require the document to be lodged): s712(4).

Including information about incorporated documents in your prospectus

RG 000.34 A reference to an incorporated document in your prospectus must identify the document or part of the document that contains the information and tell investors about their right to obtain a copy under s712(5).

RG 000.35 If the document is primarily of interest to professional analysts or advisers or investors with similar specialist information needs, your prospectus must state this and merely describe its contents: s712(2)(a). In any other case, your prospectus must include sufficient information to allow an investor to decide whether to obtain a copy of the incorporated document or part of it: s712(2)(b).

RG 000.36 We consider that it is prudent for an issuer to provide 'sufficient information' about the incorporated document (i.e. rely on s712(2)(b)) if there is any doubt about the primary audience. We think it is highly unlikely that a court would decide that a document has not been validly incorporated because it is primarily of interest to professional investors and therefore the prospectus provides more information than may have been strictly necessary.

Providing sufficient information: s712(2)(b)

RG 000.37 Providing 'sufficient information' for investors under s712(2)(b) involves your prospectus disclosing the substance of matters that would be likely to take the investor by surprise if they read the incorporated document or part of it. Rather than merely summarising the incorporated document, your prospectus should focus on details that may affect the investor's decision about whether to obtain a copy of the document, including how the information is relevant to the offer and an investor's investment decision. We think it is unlikely that a court would decide a document has not been validly incorporated where the issuer has made a good attempt to give investors a 'fair indication' of the document's character. This would include

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highlighting any significant negative information and explaining the document's relevance to the offer and an investor's investment decision.

Note: Our guidance is based on Superseded Practice Note 63 *Incorporation by reference—s1024F* (SPN 63). Section 712(2)'s reference to 'sufficient information' was enacted to reflect the guidance in SPN 63: CLERP Paper No. 2, p. 17. CLERP Paper No. 2 also said that investors should be given a 'fair indication of the character of the information'.

Examples of 'sufficient information'

- RG 000.38 Providing sufficient information for incorporation of a trust deed may include a discussion of the role of the trustee and investor meetings. It would be unnecessary to list all the obligations of the trustee or describe the actual method of calling meetings. Your prospectus should also refer to any ongoing obligations that investors will have under the trust deed and any consequences of failing to comply.
- RG 000.39 Providing sufficient information about a secondary specialist expert report that is not key to an investor's assessment of the offer (such as an intellectual property report for minor intellectual property) is likely to mean explaining the scope and purpose of the report, the conclusions, methodologies and major assumptions. It would also include the expert's qualifications, any benefit that the expert will receive in connection with the report and any interests of the expert. You could include a concise specialist expert report in the prospectus itself and incorporate the entire report (including the more technical parts of the report) by reference.

Note 1: For guidance on what might be included in and excluded from a concise expert's report, see Table 2 in Regulatory Guide 111 *Content of expert reports* (RG 111).

Note 2: These are examples of what may constitute 'sufficient information' for the purposes of s712(2)(b). They are a guide only.

Incorporated document must comply with other provisions of the Corporations Act

- RG 000.40 A document that is incorporated by reference under s712 is taken to be included in your prospectus: s712(3). This means that the incorporated document is subject to various provisions that apply to prospectuses. For example, the incorporated document is subject to Ch 6D's prohibitions on misleading and deceptive information. Documents that are prepared for the purposes of incorporating information into the prospectus should be 'clear, concise and effective': s715A.

Consent under s716 for incorporation by reference

- RG 000.41 If you incorporate a document written by another person into your prospectus, you will need to obtain their consent under s716(2) for the

information required by s712(2) and the document incorporated by reference. For example, consent will be required if you wish to incorporate a specialist expert's report by reference. The consent requirement allows a person to control whether their document can be incorporated in your prospectus and the way you refer to their document.

Note: See also Regulatory Guide 55 *Disclosure documents and PDS: Consent to quote* (RG 55).

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C Investment overview: Have you highlighted key information for retail investors?

Key points

You should use an investment overview to highlight key information to help retail investors make informed investment decisions.

Why do retail investors need an investment overview?

RG 000.42 Your prospectus should contain an investment overview that helps retail investors make an informed investment decision by highlighting key information. An investment overview will ensure your prospectus is ‘clear, concise and effective’ for retail investors (while the prospectus also provides sufficient information for sophisticated and professional investors).

RG 000.43 The investment overview should:

- (a) be the first substantive section of your prospectus;
- (b) highlight and provide a meaningful summary of information that is key to a retail investor’s investment decision (see Table 5); and
- (c) provide balanced disclosure of the benefits and risks.

RG 000.44 An overview of this type is more useful to a retail investor than:

- (a) up-front sections that lack information about the offer and are dominated by general marketing statements and numerous photographs;
- (b) multiple summaries (such as ‘investment highlights’ followed by ‘frequently asked questions’) that are repetitive and add to the length of the prospectus; or
- (c) unbalanced information that only raises the benefits without explaining the associated risks.

What information should be in your investment overview?

RG 000.45 The investment overview should highlight information that is key to a retail investor’s investment decision. This may involve explaining why the information is important or placing the information in some context. Descriptive information without an explanation is usually not sufficient.

- RG 000.46 We have set out some categories of key information in Table 5 that should generally be explained in the investment overview. You also need to consider whether any other information needs to be included in your investment overview, given your individual circumstances. Broker reports and investor presentations may be a guide to the categories of information you should cover.
- RG 000.47 The investment overview’s discussion of key benefits and risks should be balanced—with a balanced level of detail about both. Often the sections at the front of a prospectus have a lot of information about the benefits but only very cursory information about the risks. This can give retail investors the misleading impression that they do not need to pay much attention to the risks. The number of risks set out in the overview and the amount of detail will depend on the circumstances of the issuer and the offer.
- Note: The need to be balanced applies to all sections at the front of your prospectus, including the chairman’s letter.
- RG 000.48 The investment overview should indicate if the investment is speculative or if the achievement of objectives is high-risk.
- RG 000.49 Photographs (other than those on the front cover) should only be included after the investment overview.

Table 5: Key information that you should generally explain in your investment overview

Topic	What to include
Business model: How will you make money and generate income or capital growth for investors?	<p>Explain the key features of your business model—that is, how you propose to make money and generate income or capital growth for investors, or otherwise achieve your objectives.</p> <p>This will include any key dependencies—that is, factors you rely on in order to make money. For example, if your ability to make money is dependent on an important contract, then the overview should explain this.</p>
Risks: What are the key risks associated with your business model, the security and the offer?	<p>Explain the key risks to your ability to make money and generate income or capital growth for investors, or otherwise meet your objectives (i.e. the risks inherent in your business model) and the key risks associated with the offer and the security.</p> <p>You may also need to explain a risk that specifically relates to a benefit that is included in the overview.</p> <p>It is not usually effective for the overview to list all the risks. Rather, it should focus on giving adequate information on key risks: see RG 000.82.</p> <p>It is not effective to give very brief information with no explanation. For example, it is not sufficient to simply say, ‘Financing risk’.</p>

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Topic	What to include
Financial information: What key financial information do investors need to know about your financial position, performance and prospects?	<p>Give key financial information and key financial ratios that provide information about your financial performance, financial position and prospects.</p> <p>This will generally include net profit after tax (NPAT), the earnings per share (EPS) ratio, a gearing ratio, and a discussion of your financial position and any commitments, events or uncertainties that may materially affect your liquidity. You should also consider whether it is appropriate to include an interest cover ratio and a working capital ratio.</p> <p>See the appendix to this guide for an explanation of a gearing ratio, interest cover ratio and working capital ratio and how these should be calculated. This guidance is based on Appendix 2 of RG 213.</p>
Directors and key managers: Who will be in control and do they have the appropriate expertise?	<p>If you are an investment company, a company that has a limited operating history or your shares have not previously traded on a stock exchange, give details about the expertise of your directors and key managers.</p>
Interests, benefits and related party transactions: Who will benefit?	<p>Explain any significant interests and benefits payable to directors and other persons connected with the issuer or offer and any significant related party transactions.</p>
The offer: What will an investor get, how much will they pay, and what will the offer proceeds be used for?	<p>Briefly explain the effect of the offer, including how you plan to use investors' funds.</p> <p>Describe the key terms and conditions of the offer.</p>

How should you present your investment overview?

- RG 000.50 Retail investors focus on the front sections of a prospectus so it is important that your investment overview is 'clear, concise and effective'. We encourage you to consider all the communication tools set out in Section B, in particular the use of:
- cross-references so that retail investors can easily find further information;
 - questions as headings, which can help explain how the information is relevant to an investor; and
 - a table format, which can be effective for a summary section such as the investment overview (depending on the amount of information included).
- RG 000.51 Presentation of the benefits and risks in the overview should be balanced, with the risks having similar prominence to the benefits. For example, the benefits and risks should be presented in a similar way using similar layout and fonts.
- RG 000.52 Your investment overview should be short compared with your prospectus as a whole, but not so brief as to omit key information. Your investment overview should be a summary of information that is key to the investment

decision, rather than a summary of the prospectus as a whole. We have not given any indication of how long your investment overview should be because this will depend on your circumstances and the circumstances of your offer.

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D Business model: How will you make money and generate income or capital growth for investors?

Key points

Your prospectus should explain your 'business model'—that is, how you propose to make money and generate income or capital growth for investors, or otherwise meet your objectives, so that a retail investor can assess the risks and returns associated with the investment.

What is your business model and how should you explain it?

- RG 000.53 Your prospectus should explain your business model so that retail investors can assess the potential risks and returns associated with an investment in your securities. Your business model is how you propose to make money and generate income or capital growth for investors.
- RG 000.54 If you do not intend to make money or generate income or capital growth (e.g. if you are a not-for-profit organisation), or if you do not intend to generate income or capital growth in the short term, your business model may involve an explanation of your short-term objectives and how you propose to meet those objectives.

Components of your business model

- RG 000.55 Your prospectus should explain the main components of your business model, the key assumptions underlying the model (e.g. 'interest rates do not rise') and the associated risks. Table 6 lists some common components. Each component listed may not be relevant for every issuer and you should consider whether there are other components relevant to your business model.
- RG 000.56 Your prospectus should contain a substantive analysis of your business model's components rather than simply a description. You should also explain how the components relate to each other and your ability to make money and generate income or capital growth for investors, or otherwise meet your objectives.
- RG 000.57 The investment overview of your prospectus should include a summary of the key components, assumptions and risks associated with your business model (with cross-references to more the detailed content provided elsewhere in the prospectus): see Section C. Sophisticated and professional investors may have the expertise to understand your business model, and the

risks to this model, from separate disclosures throughout your prospectus and elsewhere, but retail investors require a clear explanation in the overview.

Forward-looking statements about your business model

RG 000.58 Disclosure of your business model and associated risks may involve you making forward-looking statements. You should only make forward-looking statements if you have reasonable grounds—otherwise, they will be taken to be misleading: see s728(2) and RG 170. If you want to retain flexibility, you should clearly indicate that your strategy and plans are subject to change, and in what circumstances that might occur.

Confidential information about your business model

RG 000.59 Section 710 may require disclosure of confidential information relating to your business model—especially where the information might deter investors from acquiring the securities if that information were generally known. If you do not disclose confidential information in your prospectus, insiders will be prohibited from trading under Div 3 of Pt 7.10, and you may be liable under Pt 6D.3 for omitting required information: see also RG 170.67.

Table 6: Business models—common components

Components	What to include
Significant dependencies	<p>Explain the factors you depend on to make money (or achieve your main objective).</p> <p>Some common examples are:</p> <ul style="list-style-type: none"> • important contracts (see RG 000.66–RG 000.67); • key suppliers or customers and distribution channels; • intellectual property and its legal status (e.g. whether you have a patent or rely on a licence); • income such as dividends from investments (other than wholly owned subsidiaries); • key personnel (see Section G); and • essential assets and whether they are owned or leased.
Nature of your business	<p>Explain what you do and the main function of your business.</p> <p>It may also be relevant to discuss:</p> <ul style="list-style-type: none"> • your stage of development; and • the sector or industry in which your business operates (see RG 000.70–RG 000.71), provided the disclosure is specific and relevant to the investment decision (see RG 000.30(h)).

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Components	What to include
Finance	Explain how you finance your start-up and ongoing operations: see RG 000.64–RG 000.65.
Your strategy and plans	See RG 000.60–RG 000.63.
Competition	Analyse the competition facing your business—this might include discussing the barriers to entry and your key competitors: see RG 000.71.
Corporate structure	Explain the key features of your corporate structure (if it is relevant to investors): see RG 000.68–RG 000.69.
Dividend policy	See RG 000.72–RG 000.73.

Strategy and plans

- RG 000.60 Your prospectus should include a description of your strategy and plans to make money or otherwise achieve your objectives.
- RG 000.61 This might include a description of your high-level business strategy—for example: ‘We plan to expand the business through acquiring an interest in exploration tenements in the X region and by conducting additional drilling on existing tenements’, or ‘Having been in the cardboard industry for 55 years, we plan to vertically integrate by acquiring key supplier X and expanding our market share further’.
- RG 000.62 You should disclose more detailed plans if the information is material and you have a reasonable basis for expecting you will implement the plans.
- RG 000.63 Your prospectus should explain how the funds raised will be used to achieve your strategy and plans: see RG 000.120–RG 000.121 for further discussion about the disclosure of the use of funds.

Finance arrangements

- RG 000.64 Your prospectus should explain your financing arrangements. This may involve an explanation of how you finance your start-up, cash flow and ongoing operations, and the extent to which you depend on equity finance, external or internal debt finance or trade finance.
- RG 000.65 If you rely on debt financing, your prospectus should explain any aspects that are key to the investment decision. This may include:
- your level of debt or ‘gearing’. You should generally include a gearing ratio (see also Table 5);
 - your ability to meet interest payments from earnings or otherwise;
 - any key terms or conditions;

- (d) any current or likely significant breaches of loan covenants or debt obligations (e.g. where you are close to breaching a gearing covenant), and possible consequences of such a breach (e.g. the lender's termination rights) as well as any material breaches that occurred during the previous two years.
- (e) when key financing needs to be renewed—and if any key loans require refinancing within 12 months:
 - (i) comment on the prospects of refinancing or possible alternative actions (such as asset sales or equity fundraising); or
 - (ii) if there are no reasonable grounds for commenting on the prospects for refinancing, state this and explain why (see RG 170.91); and
- (f) the existence of any 'capital market clauses', which mean that the financier can terminate the debt financing or change the terms if your market capitalisation drops below a particular figure or level.

Important contracts

RG 000.66 Your prospectus should explain the key features of your important contracts. These are the contracts that:

- (a) are critical to your ability to make money and generate income or capital growth for investors, or to meet your objectives—for example, a key customer or supply contract, a key licence agreement or a joint venture agreement; or
- (b) contain significant obligations or restrictions on achieving your objectives.

RG 000.67 Your prospectus should discuss:

- (a) how the contract is relevant to your ability to make money or meet your objectives;
- (b) any key terms (e.g. the length and expiry date of the contract, the ability of the parties to terminate, any conditions to the completion of matters in the contract, any conditions for renewal and any other terms that might affect a retail investor's investment decision);
- (c) the status of the arrangement (e.g. whether or not the contract is legally binding);
- (d) when a contract needs to be renewed—and if a contract requires renewal in the next 12 months:
 - (i) comment on the prospects of renewal or possible alternatives and the implications if the contract cannot be renewed; or
 - (ii) if there are no reasonable grounds for commenting on the prospects for renewal, state this and explain why (see RG 170.91);

- (e) for joint venture agreements, the identity of the joint venture parties, and each party's financial and other capacity to carry out their obligations under the joint venture agreement; and
- (f) whether the contract is a related party agreement (see RG 000.115–RG 000.118).

Corporate structure

- RG 000.68 Your prospectus should explain your corporate structure if it is likely to be relevant to the investment decision.
- RG 000.69 This might include explaining:
- (a) the reason for your corporate structure;
 - (b) the nature of income flow within the group structure—for example, if you depend on dividend income or management fees from subsidiaries; and
 - (c) the key assets and liabilities or obligations, explaining whether these are held directly or by another entity in the group.

Explanation of industry

- RG 000.70 Your prospectus should include an explanation of the industry in which you operate but only to the extent that it affects your business model and the investor's investment decision.
- RG 000.71 This might involve providing disclosure on the following factors and explaining how they are relevant to your business model:
- (a) the industry maturity and size;
 - (b) key customers and key suppliers;
 - (c) your market share, key competitors and barriers to entry;
 - (d) the regulatory framework in which you operate—if you operate in a foreign jurisdiction, you should explain the laws and regulatory structures and how they differ from those in Australia to the extent they are relevant to the investment decision;
 - (e) any external threats—for example, a high level of terrorist threat in the country where your key supplier operates; and
 - (f) any external opportunities—for example, a new government initiative that is likely to increase demand for your product.

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Dividend policy

- RG 000.72 Your prospectus should explain your dividend policy (provided that the policy has a reasonable basis). If you do not intend to pay a dividend, this should be clearly stated.
- RG 000.73 If you intend to pay dividends, other than out of profits, this should be stated in your prospectus. In these circumstances, your prospectus should also explain the risks associated with doing this.

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E Risks: What are the risks associated with your business model, the security and the offer?

Key points

Your prospectus should explain the risks associated with your business model and the risks associated with the security and the offer.

Your prospectus should help retail investors to understand the key risks they should focus on.

What risks do you need to disclose?

- RG 000.74 Your prospectus should disclose risks inherent in your business model: see Section D for our guidance on business models. Your prospectus should also disclose the risks associated with the security and the offer. Some examples of common risks are set out in Table 7.
- RG 000.75 In deciding what risks to include in your prospectus, you should consider:
- (a) any existing risk management processes;
 - (b) any risks raised during the due diligence process for the prospectus;
 - (c) your business model in order to identify the risks inherent in that model;
 - (d) the risks included in any expert's report and assess whether the risks should also be included in the prospectus; and
 - (e) any relevant broker reports and investor presentations.
- RG 000.76 Your prospectus will probably need to disclose a range of risks. You should help retail investors to make informed investment decisions by identifying which of these risks are the key risks facing your business (and the offer itself, if these are significant). You should explain to investors why these risks are the key risks.
- RG 000.77 The key risks will generally be the strategic and operational risks that directors and management focus on when they are managing your business. They are usually the type of events that:
- (a) have a reasonable likelihood of occurring; and
 - (b) if they did occur, would have a very significant effect on your financial position and the value of shareholders' investment.
- RG 000.78 Apart from key risks, your prospectus should also generally disclose a risk that would have a significant effect, even if it has a low probability of occurring (i.e. it is a remote risk): see RG 170.48. You do not need to disclose a remote risk that is likely to have a limited impact.

How should you disclose risks?

Specific rather than general disclosure

- RG 000.79 The risk disclosure in your prospectus should be specific and tailored to your circumstances rather than generic. For this reason, it is not sufficient to copy risk disclosure from another company's prospectus, even if your business is subject to similar risks.
- RG 000.80 Risk disclosure can be made specific by explaining the likely consequences if the risk did occur, including how the risk might affect your business model, the security or the offer. For example, it is not helpful to simply state that 'interest rates may rise' without explaining whether this will result in an increase in your finance repayments, and the impact on your financial position. Specific risk disclosure may also involve giving investors some indication about the likelihood of a risk occurring. In some cases, a sensitivity analysis may be appropriate (e.g. to demonstrate the effect of a change in interest rates).

'Clear, concise and effective' risk disclosure

- RG 000.81 You should organise your risk disclosure logically. One example is categorising risks, such as risks specific to the issuer (including your business model), risks specific to the industry, risks specific to the offer, risks specific to the security, and any relevant general risks.
- RG 000.82 Your prospectus should give more prominence to key risks than less important risks. Key risks should be identified in the investment overview and they should also be given more prominence in the risk section of your prospectus. For example, within each of the categories set out in RG 000.81, you should organise risks in descending order of impact and likelihood (subject to s728(2)). It may be misleading to give prominence to less important risks at the expense of key risks. For example, if you are a mining company and your main tenement is about to expire, you should disclose risks associated with this expiry and renewal before disclosure on the risk of a general fall in the share market.
- RG 000.83 Risks that relate directly to a potential benefit should be disclosed, or at least referred to, near information on the benefit. For example, if your company has no current right to use essential infrastructure then you need to point this out where you say that proximity to the infrastructure is a potential advantage. In this example, it would not be effective or logical to discuss proximity to infrastructure in your investment overview and only disclose the risk relating to access in the risk section.

RG 000.84 Your risk disclosure should be consistent throughout the prospectus. You should also review your other disclosures (e.g. your website) to ensure they are consistent with risk disclosure in the prospectus. Section B contains more general guidance on ‘clear, concise and effective’ disclosure.

Examples of common risks that may need to be disclosed

RG 000.85 Table 7 sets out a non-exhaustive list of some common risks that may affect an issuer or the security. This list is not a checklist (i.e. your prospectus should not refer to a risk listed in Table 7 if it is not relevant to you or your offer).

Table 7: Examples of risks that may need to be included in your prospectus

Type of risk	Examples to consider
Risks to the issuer (including your business model)	
Operations or business	Loss from fraud or systems failure
Stage of development	Early stage development mining or bio-tech companies that do not have, or may never have, a product available for sale A company with a mature product that may have reached a market saturation point where sales of their product are flat
Supplier or customer	Losing a major supplier or customer, or not being able to secure new suppliers or customers
Asset or equipment	Loss due to outdated equipment Inability to source essential equipment
Distribution channel	Reliance on one distribution channel, or having distribution channels in politically unstable regions, or the inability to transport product to distribution points
Important contract	Early termination of an important contract
Key personnel	Losing personnel with experience key to the success of the business
Intellectual property	The adverse impact on the company’s ability to compete due to the inability to obtain, maintain and enforce intellectual property protection covering its products
Corporate structure	Loss because subsidiaries that are responsible for major operations or hold key assets are not 100% owned
Finance risks	Being unable to obtain finance
Solvency risk	Being unable to pay its debts as and when they fall due
Counterparty risk	Loss as a result of creditors or counterparties defaulting

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Type of risk	Examples to consider
Risks to the issuer (including your business model)	
Competition	Increased levels of competition or the inability of the company to obtain, maintain or increase market share
Legal or regulatory	<p>Loss or timetable implications due to an inability to obtain regulatory and other approvals</p> <p>Change in taxation laws or other relevant laws, regulations or industry codes that adversely affect the company's financial position or ability to conduct its business</p>
Litigation	<p>An explanation of any material litigation to which you are, or are likely to be a party. Previous litigation should also be disclosed if it is of ongoing relevance to investors.</p> <p>Disclosure on litigation might involve:</p> <ul style="list-style-type: none"> • explaining the nature of the litigation; • estimating when the litigation is likely to be resolved (to the extent there is a reasonable basis for this estimate); and • explaining the likely impact or consequences (e.g. the amount that may be payable by you), to the extent there is a reasonable basis for such estimates.
Foreign regulatory structures and laws	If you are a foreign entity or operate in a foreign jurisdiction, your risk disclosure should explain if laws in that jurisdiction provide fewer rights to investors than equivalent Australian laws to the extent relevant to the investment decision. See also the Note to RG 000.94.
Environmental risk	Being unable to pursue a project due to environmental concerns, regulations or requirements, or costs associated with environmental rehabilitation
Native title risk	The company's tenements or property becoming the subject of a native title claim
Property/tenure risk	The company's lease may not be renewed
Risks to the security offered	
All significant risks specifically associated with the type of security being issued	<p>For <i>options</i>— relevant performance hurdles not being met or trigger events occurring, or the options being out of the money</p> <p>For <i>convertible notes</i>— the lack of priority on winding up if the notes are unsecured, interest rates increasing above any fixed rate applicable to the notes, or the company redeeming the notes before the maturity date</p>
Liquidity risk	An investor being unable to exit or realise their investment because the market for the securities is illiquid
Market risk	Your securities trading at lower than the offer price or below the net asset value per security
Dilution risk	A member's interest being diluted if they do not participate in the fundraising or due to future fundraisings

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F Financial information: What is your financial position, performance and prospects?

Key points

Your prospectus should explain your financial position, performance and prospects: s710.

Information about your financial position, performance and prospects is often the most important consideration for investors.

What to disclose if you have an operating history

RG 000.86 If you have, or a business or entity you propose to acquire has, an operating history, you should:

- (a) consider including in your prospectus the following financial information for at least the three most recent financial years. Less than three years of financial information may be appropriate if the entity has changed so significantly that the historical financial information for the periods prior to the change is not relevant:
 - (i) a summary of the historical audited annual financial statements: see RG 000.87;
 - (ii) other information that is material from the notes to the financial statements and other documents attached to the financial report. Examples of other information will depend on the specific circumstances and may include matters such as details of material exposures through financial instruments and contingent liabilities and details of any related party transactions or unusual transactions; and
 - (iii) any modified opinion by the auditor (e.g. a going concern emphasis of matter or other qualification);
- (b) include in your prospectus all material events that have had a material effect on the company since the date of the most recent financial statements; and
- (c) include in your prospectus a warning that past performance is not a guide to future performance.

RG 000.87 A summary of audited annual financial statements referred to at RG 000.86(a)(i) includes:

- (a) a consolidated balance sheet showing the major asset, liability and equity groups;

- (b) a consolidated income statement showing major revenues and expense items, and profit or loss, including earnings before interest and taxes (EBIT), earnings before interest, taxes, depreciation and amortisation (EBITDA) and net profit after tax (NPAT); and
- (c) a consolidated cash flow statement showing major categories of cash flow.

RG 000.88 You should include current financial information in your prospectus (i.e. information that is not older than eight months). Where a company's most recent annual financial statement relates to a financial year end that pre-dates your prospectus by more than eight months, your prospectus should include financial information based on the most recent audited or reviewed half-year financial statements (even if the company was not required to prepare such financial statements under the Corporations Act).

What to disclose if you have no operating history

RG 000.89 If you are a start-up company that does not have an operating history, you should include a current balance sheet in your prospectus.

Pro forma financial information

RG 000.90 Some prospectuses include pro forma financial information and other information that is not prepared in accordance with accounting standards. Pro forma financial information is intended to show the effects of a proposed transaction. Pro forma financial information may be useful and is sometimes necessary to satisfy the disclosure requirements of the Corporations Act. For example, pro forma balance sheets should be used to show the impact of the offer: see RG 000.119. Pro forma profit and loss statements may be important where the offer involves business combinations.

RG 000.91 However, there is also potential for pro forma financial information to be misleading, particularly if there is no disclosure, or inadequate disclosure, about the basis of its preparation, or the differences between this information and corresponding conforming financial information.

RG 000.92 Investors reasonably expect financial information (including pro forma financial information) to be prepared and presented in accordance with Australian accounting standards.

RG 000.93 Consistent with the guidance in RG 170 on prospective financial information, disclosure of pro forma financial information should be accompanied by:

- (a) full details of the assumptions (including the quantum of any assumptions) used to prepare the information;

- (b) the time period covered by the information;
- (c) the risks of any prospective financial information not being achieved; and
- (d) an explanation of how financial information was calculated and the reasons for any departures from accounting standards or industry standards that investors would reasonably expect to be followed.

RG 000.94 If a particular accounting standard is not followed, the nature, reasons and financial effect of this departure should be prominently disclosed to ensure that the information is not misleading.

Note: For our proposed guidance on the use of pro forma financial information and other information in prospectuses and other transaction documents that is not prepared in accordance with accounting standards, see Consultation Paper 150 *Disclosing information other than in accordance with accounting standards* (CP 150) and the draft regulatory guide attached to CP 150. The draft regulatory guide attached to CP 150 also includes our proposed guidance on presenting financial information for overseas entities that is prepared under foreign generally accepted accounting principles (GAAP) and translated into Australian currency.

Prospective financial information

RG 000.95 Prospective financial information can be useful for investors if it has reasonable grounds. You must have reasonable grounds for any prospective financial information and other forward-looking statements included in your prospectus—otherwise, the information will be taken to be misleading: see s728(2) and RG 170. The assumptions underlying forward-looking statements should be explained in your prospectus.

Note: While stated to apply to prospective financial information, the guidance in RG 170 is useful to the inclusion of all forward-looking statements in a prospectus.

RG 000.96 The use of warnings and other cautionary language will not always be sufficient to prevent particular information being misleading and importantly will not, of itself, affect the requirement for there to be reasonable grounds to state the information: see RG 170.89.

Meaning of financial terms

RG 000.97 Prospectuses should define and explain any financial terms that are used. Disclosure of financial information should avoid accounting jargon: see Table 3. Retail investors will often not understand these terms and disclosure should cater for their needs.

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G Directors and key managers, interests, benefits and related party transactions: Do those in control have the appropriate expertise and who will benefit?

Key points

Your prospectus should explain whether directors and key managers have the appropriate expertise.

Your prospectus should explain the interests of people involved in the offer, including any benefits they might receive, and any related party transactions, especially how these might conflict with the interests of the investor.

What should you disclose about directors and key management?

- RG 000.98 An investment in a company is often considered to be an investment in the skill and expertise of its directors and key managers. Your prospectus should give the full name of each director and key manager and the information set out in Table 8.
- RG 000.99 The disclosure about directors and management should be balanced—for example, disclosure about a director’s management of companies that have gone into administration due to insolvency should be given similar prominence to disclosure on the director’s achievements.

Table 8: Directors and key management

Topic	What to include
Role	<p>Describe the role the person will perform (e.g. chairman, executive director, non-executive director). A brief description of their duties and any committees they serve on (e.g. the audit committee) may also be relevant for investors.</p> <p>State the person’s anticipated availability to perform their role and constraints on that availability (e.g. roles in other organisations).</p>
Expertise	<p>Give details of the person’s qualifications, experience and expertise that are relevant to the role they have in your company. You should explain how their qualifications, experience and expertise are relevant to the role (unless this is self-evident).</p> <p>Note: For specific guidance for cash box and investment companies, see Regulatory Guide 70 <i>Prospectuses for cash box and investment companies</i> (RG 70).</p>

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Topic	What to include
Independence or affiliations	<p>Explain whether the person is a nominee or representative of a substantial shareholder.</p> <p>If the person fulfils the role of an independent director, your prospectus should state that either:</p> <ul style="list-style-type: none"> • the person is free from any business or other relationship that could materially interfere with, or reasonably be perceived to interfere with, the independent exercise of the person’s judgement; or • notwithstanding the existence of business or other relationships, the board considers the director to be independent and why. <p>Note: Your prospectus should explain what you consider would materially affect directors’ independence in your circumstances. For guidance on the relationships that might affect independence, see the ASX Corporate Governance Council’s Corporate Governance Principles and Recommendations, Principle 2.</p>
Disciplinary action	<p>Include any criminal convictions, declarations under s1317E of the Corporations Act, personal bankruptcies, disqualifications or disciplinary action within Australia or other jurisdictions that are less than 10 years old and are relevant or material to the role to be undertaken and to the investment decision.</p>
Insolvent companies	<p>Disclose if the person has been an officer of a company that entered into a form of external administration because of insolvency and this occurred during the time the person was an officer or within a 12-month period afterwards.</p> <p>In some cases, it may be appropriate to explain the circumstances of the external administration.</p>

Corporate governance

RG 000.100 Your prospectus should explain how the directors will manage the business. If you are seeking listing on a market that requires disclosure against a corporate governance framework, your prospectus should include information on:

- (a) the framework that you are reporting against;

Note: We encourage you to consider incorporating detailed corporate governance policies by reference (see RG 000.32) and to provide your current policies on your website (see the ASX Corporate Governance Council’s Corporate Governance Principles and Recommendations, page 6).

- (b) any departures or anticipated departures from the recommended framework; and
- (c) why the board believes that each of the departures is reasonable (if relevant).

Note: These are similar to the reporting obligations required by ASX Guidance Notes 9 and 9A on disclosure on corporate governance practices.

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Continuous disclosure

- RG 000.101 Continuous disclosure announcements, as required under the Corporations Act and the ASX Listing Rules, are a key source of information for investors.
- RG 000.102 You should explain in your prospectus how you will comply with your continuous disclosure obligations. In addition to the requirements under the Corporations Act and ASX Listing Rules, we encourage both listed and unlisted entities to make continuous disclosure announcements available on their websites, and for investors to be alerted to those announcements by email.

Note: See Regulatory Guide 198 *Unlisted disclosing entities: Continuous disclosure obligations* (RG 198) for how an unlisted entity can comply with its continuous disclosure obligations through disclosure on its website in certain circumstances. See also the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations, Principle 6.

What should you disclose about interests and benefits?

- RG 000.103 Under the Corporations Act, a prospectus must disclose the interests held and fees or benefits given or agreed to be given in connection with the issuer's formation or promotion or the offer: s711(2)–(4). RG 000.107–RG 000.110 explains the interests that must be disclosed and RG 000.105–RG 000.106 explains whose interests must be disclosed.
- RG 000.104 Further disclosure on interests may be required under the general disclosure test in s710. For example, your prospectus should also explain any interests that may conflict with the interests of investors. Your prospectus should also explain why the board believes these conflicts of interests are acceptable.

Whose interests and benefits must be disclosed?

- RG 000.105 You need to disclose certain interests held and fees or benefits given or agreed to be given to directors, proposed directors, advisers named in the prospectus, promoters and underwriters: s711(4).
- RG 000.106 The meaning of a 'promoter' is broad. It includes persons who take part in the formation or promotion of a company or the offer. One example of a promoter is a person who contributes the initial capital to enable the early development of a venture. However, the term 'promoter' can also extend to 'persons who leave it to others to get up the company upon the understanding that they also will profit from the operation': see *Tracy v Mandalay Pty Ltd* (1953) 88 CLR 215.

What interests and benefits should be disclosed?

- RG 000.107 The interests and benefits you need to disclose under s711(2) and (3) include any interest or benefit that a person might derive from your formation or promotion, including indirect benefits and benefits derived passively: see the consideration of interests in *Tracy v Mandalay Pty Ltd* (1953) 88 CLR 215.
- RG 000.108 Table 9 gives some examples of situations where you should disclose indirect interests or benefits. These examples are neither exhaustive nor representative of the broad spectrum of interests.

Table 9: Examples of when indirect interests or benefits should be disclosed in your prospectus

Situation	What your prospectus should disclose
Audited accounts are incorporated by reference in your prospectus. The auditor has not received any additional fee for consenting to the inclusion of the audit report in your prospectus.	If it is not practical to apportion the audit fee, you should disclose the entire fee with an explanation of what else it includes.
Your directors are also directors of your holding company and only receive fees from your holding company.	You should disclose the fees paid and payable to the directors by your holding company.
Your underwriter or an adviser named in the prospectus receives fees in connection with a contemporaneous placement or related business acquisition.	You should disclose the fees paid and payable in connection with the placement or business acquisition.
Underwriters hold shares in your holding company.	You should disclose any expected increase in the value of the underwriters' shares as a result of the offer.
One of your promoters has an interest in property next to the development to be carried out by you.	You should disclose any expected increase in the value of the property as a result of the development.
One of your directors has an interest in a company that you will transact with upon the completion of your fundraising.	You should disclose the nature of this interest, how the director is connected with the transaction and the significant features of the transaction.

Particulars must be disclosed under s711(3)

- RG 000.109 Your prospectus should disclose the nature of an interest or a fee in enough detail for an investor to evaluate its possible impact on the person's contribution to the entity. It must quantify the interest in terms of a cash amount, number of shares, or other commercial terms. This may involve explaining other transactions. It is not sufficient to say that a person has been paid normal, usual or standard fees: s711(3). It is also not sufficient to aggregate all benefits or fees to be paid.

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RG 000.110 If disclosure needs to be settled before final accounts are rendered, an approximate figure is adequate if it is not misleading.

Relief from s711(3)

RG 000.111 Disclosure that must be made under s711(3) must be made regardless of when the benefits are given or when the agreement to give the benefits was made. This contrasts with the s711(2), which limits the disclosure required to interests held in the last two years.

RG 000.112 We may give case-by-case relief from s711(3) where disclosure would be impractical or unreasonable, or the cost of disclosure would not result in a commensurate benefit to investors.

RG 000.113 We may give relief where records that would support disclosure no longer exist. We will consider whether it is reasonable to require this information to be obtained in light of the date the information was created and, where possible, the significance of the benefit given.

RG 000.114 We will not give relief merely because the information was created more than two years ago. We have provided case-by-case relief for material benefits given more than five years before the offer of securities, and other benefits given more than two years before the offer.

Related party transactions

RG 000.115 Your prospectus should include disclosure on related party arrangements that exist for an entity or within a corporate structure, as this is information that investors reasonably require to make informed decisions about whether to acquire a security.

RG 000.116 Related party transactions may include employment contracts with key directors as well as commercial contracts for the supply of goods or services with persons that are your related parties. They may also comprise larger transactions, such as asset acquisitions or disposals.

RG 000.117 Your prospectus should disclose:

- (a) the value of the financial benefit;
- (b) the nature of the relationship;
- (c) whether the arrangement is on arm's length terms, is reasonable remuneration, some other Ch 2E exception applies or we have granted relief;
- (d) whether member approval for the transaction has been sought and, if so, when;

- (e) the risks associated with the related party arrangement; and
- (f) the existence of any policies and procedures in place for entering into related party transactions.

RG 000.118 You should disclose information about existing related party transactions in disclosure documents except to the extent that:

- (a) such disclosure may confuse investors by dealing with inconsequential matters; or
- (b) investors already have adequate information about the related party transactions as a result of past disclosures so it is not reasonable for the information to be repeated in full.

Note: For guidance on disclosing related party transactions in prospectuses, see Section E of Regulatory Guide 76 *Related party transactions* (RG 76).

H The offer: What are the effect and terms and conditions of your offer?

Key points

Your prospectus should explain the effect of the offer (including the proposed use of funds) and the terms and conditions of the offer.

Your prospectus must also comply with all other legislative requirements.

What is the effect of your offer?

RG 000.119 Your prospectus should disclose the effect of the offer. This would include:

- (a) the proposed use of funds (see RG 000.120–RG 000.121);
- (b) your current balance sheet position and a pro forma statement of financial position that has been adjusted to show the impact of a fully subscribed offer;
- (c) your capital structure, including the number of securities on issue and any substantial shareholders holding more than 5% of your shares (both before and after the issue);
- (d) any control implications of the offer (if there are existing substantial shareholders or underwriters); and
- (e) the potential effect of the fundraising on the future of the company.

Note: It is not sufficient to merely state that the effect of the offer is to raise funds. See also RG 66.47.

How you will use investors' funds

RG 000.120 The proposed use of funds is an important consideration for investors because it is often relevant to your prospects.

RG 000.121 You should include the following type of information when explaining your proposed use of funds:

- (a) any minimum or maximum subscription amounts (see RG 000.131–RG 000.132);
- (b) how you will use the funds raised for the minimum, maximum and oversubscription positions;
- (c) if the funds are to be used for a variety of purposes, a breakdown of how much will be applied to each purpose (both in dollar value and percentage of funds raised);

Note: If a significant portion of the funds will be allocated to working capital, you should explain what constitutes working capital. It is not sufficient to aggregate the costs of the offer.

- (d) the timeframes during which funds will be used (if there is a reasonable basis for predicting this);
- (e) whether the full offer amount and/or the minimum subscription amount is/are sufficient to meet your objectives;
- (f) if the minimum subscription is less than the full amount, or the fundraising is not fully underwritten, your financial position and prospects if the full offer amount is not raised—for example, it might affect your ability to continue as a going concern, or materially alter your debt levels; and
- (g) unless the offer is underwritten, how you will use the funds if less than the full offer amount is raised—for example, your prospectus should state:
 - (i) whether some or all of the stated activities will be scaled back, and how this will be done. It is not helpful to investors if you merely state that the activities will be scaled back, for example, ‘as appropriate’ or ‘as the directors determine’; and
 - (ii) whether the funds will be allocated to stated activities in any particular priority until each activity is fully funded, or whether they will be allocated pro rata, or a combination of these approaches.

What are the terms and conditions of your offer?

RG 000.122 Section 711(1) requires your prospectus to set out the terms and conditions of the offer. This will include:

- (a) the type of security being offered;
- (b) the rights and liabilities attached to the security being offered (see RG 000.123–RG 000.126);
- (c) the consideration payable for each security (see RG 000.127–RG 000.130);
- (d) the offer period (including the date of your prospectus, any exposure period, and the expiry date);
- (e) whether the offer is for the issue of new securities or the sale of existing securities;
- (f) any minimum or maximum subscription amounts (see RG 000.131–RG 000.132);
- (g) your allocation policy (see RG 000.133–RG 000.134);
- (h) whether the securities will be listed (see RG 000.135–RG 000.139);

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- (i) any underwriting arrangements (see RG 000.140–RG 000.141);
- (j) any escrow arrangements (see RG 000.142);
- (k) whether any ASIC relief or ASX waivers have been obtained or are being relied on; and
- (l) any significant taxation implications (see RG 000.143).

Rights and liabilities attached to the security being offered

- RG 000.123 Section 710(1) requires your prospectus to contain all information that investors and their professional advisers would reasonably require to make an informed assessment of the rights and liabilities attaching to the securities offered.
- RG 000.124 To meet this requirement, your prospectus must include at least a summary of the rights and liabilities attaching to the securities, as detailed in your constitution, including information such as voting rights, dividend rights and how different classes of shares rank against each other. If the offer involves options, you should disclose any restrictions on issuing shares on exercise of the options.
- RG 000.125 If your prospectus relates to debt securities such as debentures or unsecured notes, you will need to disclose the material terms of the notes, including how such notes rank against your other debt: see also RG 69.
- RG 000.126 Your prospectus should highlight any unusual features of the securities offered, such as a requirement for the investor to commit to a future financial obligation (e.g. in partly paid securities).

How much investors must pay

- RG 000.127 Your prospectus should set out the consideration payable (i.e. how much investors must pay) because this is a key term of the offer. More detailed disclosure may be required if the offer price is not finalised by the time for acceptances (see RG 000.128) or the consideration is payable in instalments (see RG 000.129–RG 000.130).

Offer price not final at the time for acceptances

- RG 000.128 If retail investors will not know the offer price at the time they are required to submit their acceptance or bid, your prospectus should disclose:
- (a) how the final price will be set;
 - (b) any significant aspects of that process, including any way in which retail and institutional investors are treated differently;

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- (c) that investors will not know what they are paying per share at the time they make their investment decision and (if relevant) may not have an opportunity to withdraw their application once the price is set;
- (d) that, if subscribing for a set dollar value of shares, investors will not know the number of shares they will receive at the time they make their investment decision;
- (e) that the final price may be outside the range indicated (where relevant); and
- (f) that the final price may not accurately reflect the market value of the securities and may differ significantly from the market price when the securities are quoted (especially where retail investors are involved in the price-setting process).

Offer price payable in instalments

- RG 000.129 If the offer price will be payable in instalments, your prospectus should provide clear disclosure on the key repayment terms, including:
- (a) the likely timing of instalments and the amount of each instalment; and
 - (b) your rights if the investor defaults on an instalment.
- RG 000.130 Your prospectus should prominently caution investors to consider their financial capacity to meet instalment liabilities.

Minimum subscription condition

- RG 000.131 Your prospectus should state whether there are any minimum or maximum subscription amounts. This is because the amount to be raised and the use of funds are important considerations for investors.
- RG 000.132 If your prospectus contains a minimum subscription condition, you cannot issue any securities until that condition is satisfied: s723. You will be required to offer withdrawal rights if the condition is not satisfied within four months after the date of your prospectus: s724. This protects investors from being locked into a company that cannot achieve its objectives as a result of insufficient funds.

Allocation policy

- RG 000.133 Your prospectus should disclose your share allocation policy.
- RG 000.134 For example, your prospectus should disclose:
- (a) whether and under what circumstances you will allocate securities to investors at lower prices (under your prospectus offer or any contemporaneous fundraising such as a placement);

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- (b) how priorities between applicants will be determined where the offer is oversubscribed, who will make those decisions and whether any ‘in-principle’ allocations have been made; and
- (c) any allocation of shares to underwriters, directors and officers and their ‘friends and family’.

Indication of listing or quotation

RG 000.135 Your prospectus should state if you will be listed on a financial market and/or your securities may be quoted and trade on such a market (if you have a reasonable basis for such statements). The quotation of securities will generally be fundamental to their future marketability and liquidity. An indication of quotation also suggests to the investor that you will be subject to compliance with the listing rules and to supervision by the financial market.

RG 000.136 If your prospectus states or implies that the securities will be able to be traded on a financial market, your prospectus must state that:

- (a) the securities have been admitted to quotation on that financial market;
- (b) an application for admission of the securities to quotation on that financial market has been made to the operator of that market; or
- (c) an application for admission of the securities to quotation on that financial market will be made to the operator of that market within seven days after the date of your prospectus: s711(5).

RG 000.137 If you cannot include any of these statements without misleading an investor, you cannot give an indication of listing.

RG 000.138 You may be required to refund investors’ application money if your prospectus contains an indication of listing or quotation and:

- (a) an application for quotation is not made within seven days after the date of your prospectus; or
- (b) the securities are not admitted for quotation within three months after the date of your prospectus (see s723(3) and 724).

Note: In s723(3) and 724, the date referred to is the date of the original prospectus.

RG 000.139 The requirements in s711(5), 723(3) and 724 apply broadly to any statements implying listing or quotation. For example, these requirements apply if the prospectus says you may seek admission after some period has lapsed.

Underwriting agreements

RG 000.140 Where underwriting arrangements are in place, your prospectus should describe:

- (a) those underwriting arrangements;
- (b) the identity of the underwriters and any sub-underwriters (if known and, if not known, the method for choosing sub-underwriters);

Note: If the identity of any sub-underwriters is not known as at the date of the prospectus, this should be included in a supplementary prospectus when known, especially where the sub-underwriter is a related party or a substantial holder.

- (c) whether the underwriter or sub-underwriter is a related party or a substantial holder and, if so:
 - (i) whether they intend to accept the offer (if known); and
 - (ii) their capacity to fulfil their obligations under the agreement;
- (d) the underwriting fees payable and, if underwriting fees are payable in securities, the price and total number of securities that will be issued to the underwriter (for more guidance on the disclosure of interests and benefits, see RG 000.103–RG 000.110);
- (e) the potential effects on control of the underwriting arrangements; and

Note: In *Bisalloy Steel Group Limited* [2008] ATP 29, the Takeovers Panel found that a prospectus for a rights issue should include details about the intentions of a person who might become a substantial holder as a result of underwriting the rights issue.

- (f) any significant termination rights.

RG 000.141 If you are listed, or you are a company with more than 50 members and the underwriting arrangements may result in the underwriter breaching the takeover threshold in s606, we will consider our policy in Section R of RG 159, as well as the Takeovers Panel Guidance Note 17 *Rights issues*.

Escrow arrangements

RG 000.142 Your prospectus should disclose the details of any escrow arrangements covering both voluntary escrow agreements and escrow agreements imposed by external parties like the ASX. Your prospectus should disclose:

- (a) shares and shareholders that are subject to escrow agreements;
- (b) the details of the restrictions (including the reason for the restrictions and the events that will trigger their release); and
- (c) the effect on the liquidity of your securities.

Taxation implications

RG 000.143 Your prospectus should explain any significant taxation implications of investing. Any claims about material tax advantages should be accompanied by statements from experts or a tax ruling from the Australian Taxation Office.

Other requirements that apply to your prospectus

RG 000.144 Your prospectus must comply with a number of other technical requirements under the Corporations Act. These are set out in Table 10.

Table 10: Other requirements in the Corporations Act about prospectuses

Topic	Corporations Act requirement
Date	Your prospectus must be dated and this must be the date it is lodged with ASIC: s716(1).
Expiry	Your prospectus must state that no securities will be issued on the basis of your prospectus after the expiry date specified. The expiry date must not be later than 13 months after the date of your prospectus and the expiry date of a replacement prospectus must be the same as that of the original prospectus: s711(6). See also s725.
Lodgement	Your prospectus must state that a copy of your prospectus has been lodged with ASIC and that ASIC takes no responsibility for the content of your prospectus: s711(7). Section 718 requires prospectuses to be lodged with ASIC.
Consents	Your prospectus may only include a statement by a person, or a statement said in the document to be based on a statement by a person, if the person has consented to its inclusion, the document states that this consent has been given and the person has not withdrawn the consent: s716(2).
Application form	Offers of securities for which your prospectus is being used must be made in, or accompanied by, your prospectus: s721(1). The application form should be included in, or accompanied by, your prospectus: see s723(1).

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I ASIC's role: How do we monitor and assess prospectuses?

Key points

Your prospectus must be lodged with ASIC. We may review your prospectus.

When we review a prospectus, we will consider this guide and any other regulatory guide on disclosure that is relevant to the offer or the issuer.

If we have concerns with a prospectus, we may seek corrective disclosure and/or take further action.

Lodging your prospectus with ASIC

RG 000.145 You must lodge your prospectus with ASIC: s718. We may refuse to receive a document for lodgement on a number of grounds, including if we are of the opinion that the document contravenes the Corporations Act: s1274(8).

Our compliance reviews

RG 000.146 We do not generally review or provide advice on draft prospectuses or help you to prepare your prospectus. We do not verify the content of prospectuses.

RG 000.147 We do not always review all prospectuses.

RG 000.148 If a prospectus has an exposure period, we aim to review it during the exposure period but may commence a review at any time: see Section B of Regulatory Guide 152 *Lodgment of disclosure documents* (RG 152). We may also raise concerns at any point if we consider this is necessary to protect retail investors or market integrity.

RG 000.149 We may also conduct a surveillance to assess how the prospectus was prepared. We may ask the issuer to show us the due diligence and verification procedures implemented to ensure the prospectus complies with the Corporations Act. Based on our experience, where a prospectus is defective, it is often the case that the issuer cannot demonstrate appropriate due diligence and verification procedures.

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What does ASIC look for when reviewing a prospectus?

- RG 000.150 When we review a prospectus, we will consider this guide and any other regulatory guide on disclosure that is relevant to the offer or the issuer: see ‘Related information’. Our guidance covers key issues but we may raise issues specific to your offer that are not covered in our guidance.
- RG 000.151 If we review a prospectus, the areas we generally focus on are:
- (a) the sections at the front of the prospectus—to ensure that:
 - (i) the prospectus highlights key information about the offer to help retail investors make informed investment decisions; and
 - (ii) the disclosure of benefits and risks is balanced (see Section C);
 - (b) the risk disclosure—to ensure that the directors have identified key risks and that these are highlighted and clearly explained. We check that the prospectus does not deflect attention from key risks by giving undue prominence to very general risks (see Section E);
 - (c) any significant forward-looking statements, especially those relating to the issuer’s financial prospects—to check these statements have reasonable grounds, otherwise they are taken to be misleading (see s728(3), RG 170 and Section F);

Note: While stated to apply to prospective financial information, the guidance in RG 170 is useful to the inclusion of all forward-looking statements in a prospectus.
 - (d) the wording and presentation to ensure the prospectus is ‘clear, concise and effective’; and
 - (e) any disclaimers—to ensure they are not inconsistent with the liability regime in Pt 6D.3.
- RG 000.152 We do not raise concerns about the same things in all prospectuses because, for example, whether something misleading depends on the content of the statement and all the circumstances surrounding the issuer and the offer.
- RG 000.153 When we review a prospectus, we also review any related advertisements, media articles, broker reports and continuous disclosure announcements.

What does ASIC do when there are disclosure concerns?

- RG 000.154 If we have concerns with a prospectus, we may seek corrective disclosure (see RG 152.12) and extend the exposure period (if relevant): s727(3).
- RG 000.155 If we have concerns and either the extended exposure period has expired or there is no exposure period, we will generally notify the issuer and submit our concerns to an ASIC delegate. The delegate may impose an interim stop order under s739(3).

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- RG 000.156 If our concerns are not resolved, we will usually hold a hearing within 21 days after issuing the interim stop order in accordance with s739(2). After considering any submissions by the issuer, an ASIC delegate may:
- (a) revoke the original interim stop order (if it does not expire that day without a formal revocation);
 - (b) make a further interim stop order under s739(4); or
 - (c) issue a final stop order under s739(1A) on the basis that we are satisfied that information in a prospectus is not worded and presented in a 'clear, concise and effective' manner, or that the prospectus contains a misleading or deceptive statement or omits required information.
- RG 000.157 If the issuer is required to give corrective disclosure under s724(1), we will also ensure the issuer gives investors any withdrawal rights required by s724.
- RG 000.158 The fact that we have not raised any concerns with a prospectus should not be taken as an indicator that we consider that the prospectus complies with the disclosure requirements. It also does not preclude us from starting an investigation.

Appendix: Key financial metrics to be disclosed

Gearing ratio

- 1 A gearing ratio indicates the extent to which an issuer is funded by debt. It gives an indication of the potential risks the issuer faces in terms of its level of borrowings due, for example, to an increase in interest rates. This in turn may affect the issuer's ability to pay dividends.
- 2 The gearing ratio must be calculated using the following formula:

$$\text{Gearing ratio} = \frac{\text{Total liabilities}}{\text{Total equity}}$$

- 3 If the issuer prepares consolidated financial statements, the gearing ratio must be based on the consolidated figures. The gearing ratio must be calculated both with and without the effect of the proposed security issue.
- 4 The gearing ratio provided in the prospectus must be based on the issuer's latest financial statements. The latest financial statements would usually be the latest audited or reviewed financial statements.

Note: If the issuer has material off-balance-sheet financing, the issuer should also disclose a 'look through' gearing ratio that takes into account such financing in order to ensure that investors receive all material information. Otherwise, disclosure of only a gearing ratio based on the liabilities disclosed in the issuer's financial statements may be misleading. Examples of off-balance-sheet financing include borrowings of equity accounted investments.

- 5 Issuers must also explain to investors what the ratio means in practical terms and how investors can use the ratio to determine the level of risk.

Interest cover

- 6 The interest cover gives an indication of an issuer's ability to meet its interest payments from earnings. It therefore provides important information about the issuer's financial sustainability and the risks associated with the issuer's level of borrowing. A low interest cover ratio may indicate that the issuer could face difficulties in servicing its debt if earnings decrease or interest rates increase. This in turn may affect the issuer's ability to pay dividends.
- 7 The interest cover must be calculated using the following formula, where EBITDA = earnings before net interest expense, taxes, depreciation and amortisation:

$$\text{Interest cover} = \frac{\text{EBITDA}}{\text{Net interest expense}}$$

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- 8 If the issuer prepares consolidated financial statements, the interest cover must be based on the consolidated figures. The net interest expense must be calculated both with and without the effect of the proposed security issue. The net interest expense is the interest expense net of interest revenue. Net interest expense calculations must take into account any related hedging arrangements recognised in the profit and loss statements.
- 9 EBITDA and the net interest expense used to calculate the interest cover in the prospectus must be consistent with disclosures in the issuer's latest financial statements. The latest financial statements would usually be the latest audited or reviewed financial statements.
- 10 If the issuer's latest financial statements cover a period of less than 12 months, EBITDA and net interest expense must be calculated over that period.
- 11 Issuers must also explain how investors can use the interest cover to assess the issuer's ability to meet its interest payments.

Working capital ratio

- 12 A working capital ratio indicates whether an issuer has sufficient short-term assets to meet its short-term liabilities. Generally, a higher ratio indicates a greater ability to meet liabilities over the short term (including unexpected liabilities).
- 13 The working capital ratio must be calculated using the following formula:

$$\text{Working capital ratio} = \frac{\text{Current assets}}{\text{Current liabilities}}$$

- 14 If the issuer prepares consolidated financial statements, the working capital ratio must be based on the consolidated figures. The working capital ratio must be calculated both with and without the effect of the proposed security issue.
- 15 The working capital ratio provided in the prospectus must be based on the issuer's latest financial statements. The latest financial statements would usually be the latest audited or reviewed financial statements.
- 16 Issuers must also explain to investors what the ratio means in practical terms and how investors can use the ratio to determine the level of risk.

Key terms

Term	Meaning in this document
2006 draft policy statement	The draft ASIC policy statement 'Better Prospectus Disclosure' published in 2006
ASIC	Australian Securities and Investments Commission
ASX	The exchange market known as ASX, operated by ASX Limited
Ch 3 (for example)	A chapter of the Corporations Act (in this example, numbered 3)
[CO 00/44] (for example)	An ASIC class order (in this example numbered 00/44)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
EBIT	Earnings before interest and taxes
EBITDA	Earnings before interest, taxes, depreciation and amortisation
Explanatory Memorandum	Explanatory Memorandum for the Corporate Law Economic Reform Program (Audit and Corporate Disclosure) Bill 2003
JORC Code	The Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves
NPAT	Net profit after tax
offer document	A document that is sent to investors that sets out the terms of a rights offer conducted without Ch 6D disclosure under s708AA
Pt 5.1 (for example)	A part of the Corporations Act (in this example, numbered 5.1)
RG 69 (for example)	An ASIC regulatory guide (in this example, numbered 69)
s739 (for example)	A section of the Corporations Act (in this example, numbered 739)
s710 prospectus	A prospectus that complies with the disclosure requirements in s710 of the Corporations Act
s713 prospectus or transaction-specific prospectus	A prospectus that complies with the disclosure requirements in s713 of the Corporations Act

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Term	Meaning in this document
Valmin Code	Code for the Technical Assessment and Valuation of Mineral and Petroleum Assets and Securities for Independent Expert Reports
you (or the issuer)	The issuer of securities under a prospectus

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Related information

Headnotes

clear, concise and effective; disclosure; incorporation by reference; prospectus; securities

Regulatory guides

RG 23 *Updating and correcting prospectuses and application forms*

RG 45 *Mortgage schemes: Improving disclosure for retail investors*

RG 55 *Disclosure documents and PDS: Consent to quote*

RG 56 *Prospectuses*

RG 60 *Schemes of arrangement*

RG 66 *Transaction-specific disclosure*

RG 69 *Debentures: Improving disclosure for retail investors*

RG 70 *Prospectuses for cash box and investment companies*

RG 72 *Foreign securities prospectus relief*

RG 76 *Related party transactions*

RG 99 *Quotation of securities offered by prospectus (s1031)*

RG 107 *Electronic prospectuses*

RG 111 *Content of expert reports*

RG 152 *Lodgment of disclosure documents*

RG 155 *Debenture prospectuses*

RG 159 *Takeovers, compulsory acquisitions and substantial holding notices*

RG 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)*

RG 170 *Prospective financial information*

RG 198 *Unlisted disclosing entities: Continuous disclosure obligations*

RG 213 *Facilitating debt raising*

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Legislation

Corporations Act Pt 5.1, Ch 6, Ch 6D, Pt 7.9, Pt 7.10 Div 3

Cases

Bisalloy Steel Group Limited [2008] ATP 29

Northern Energy Corporation Limited [2011] ATP 2

Re Australian Cooperative Foods Ltd (2001) 38 ACSR 71

Tracy v Mandalay Pty Ltd (1953) 88 CLR 215

Consultation papers

CP 150 *Disclosing information other than in accordance with accounting standards*

CP 155 *Prospectus disclosure: Improving disclosure for retail investors*

Media and information releases

06-027 *ASIC releases draft guidance on shorter, better prospectuses*,
8 February 2006

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