



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **FUND RAISING EXEMPTIONS**

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To assist in future fund-raising for the Company, I offer the following “non legal” guidance on the principal Corporations Act exemptions from requiring a prospectus.

Chapter 6D of the Act covers fund-raising (new issues and transfers) by any company within Australia (i.e., including that undertaken by foreign companies). In most cases, other than the following, a prospectus (or other disclosure document) must be lodged with ASIC before offering shares for sale – sec706.

The main exemptions are set out in Section 708 of the Act, in summary as follows:

TYPE	CONDITIONS	SECTION
Small Scale Offerings	An aggregate maximum \$2,000,000 can be raised from up to 20 investors in any 12 month period as a result of a “personal offer”.  Note that the 12 month period relates to/from the date when the shares are actually ‘issued’ (i.e., allotted) – see also sec. 761E(2) for definition.	708(1)
	A “personal offer”: can only be accepted by the investor to whom it is made; and such investor must be likely to be interested in the offer because of: <ul style="list-style-type: none"><li>• previous contact between the directors/officers of the company and that investor; or</li><li>• professional or business connections between the company and that investor; or</li><li>• that investor has indicated by statements or actions that he would like to receive an offer.</li></ul>	708(2)
Sophisticated Investors	Any amount can be raised from investors who meet one of the following criteria: <ul style="list-style-type: none"><li>• an investor who invests at least \$500,000 in the company (ie, in aggregate - including any previous investments); or</li><li>• an investor who provides a certificate from a</li></ul>	708(8) Reg 6D.2.03



	<p>qualified accountant that he has net assets of at least \$2.5m or a gross income for the last 2 years of at least \$250,000 pa. Note, such certificate must be provided by the potential investor [no more than 6 months] before the offer is actually made – sec. 708(8)(c).</p>	
Financial Services Licensee	<p>An offer through an ASIC licensed investment dealer who confirms in writing that he is satisfied that the investor has previous experience in assessing the merits of such investment offers</p>	708(10)
Professional Investors	<p>Any amount can be raised from professional investors which include:</p> <ul style="list-style-type: none"> <li>• licensed investment dealer</li> <li>• regulated financial institution or insurance company</li> <li>• approved superannuation fund with net assets of at least \$10m</li> <li>• entity that controls securities investments of at least \$10m</li> <li>• stock exchange listed company (or subsidiary thereof)</li> <li>• government instrumentality or public authority</li> <li>• specialist investment company or share underwriter.</li> </ul>	708(11)
Associated Persons	<p>Investments of any amount can be accepted from certain investors “associated” with the company:</p> <ul style="list-style-type: none"> <li>• director</li> <li>• company secretary</li> <li>• senior manager (ie, a person who makes decisions that affect the company’s business and/or financial standing)</li> <li>• close relatives of any above (ie, spouse, sibling, parent or child)</li> <li>• company controlled by any associated investor;</li> </ul> <p>provided (because the Company is public) - in the case of directors, their close relatives or controlled company - shares are offered on no more favourable terms than “the public” (in which case those terms must be lodged with ASIC for consideration and be approved by the shareholders).</p>	708(12) CO 04/899
Business	<p>An offer made through a business introduction service</p>	CO 02/273



Introduction Service	in accordance with the class order exemption (from certain fund-raising provisions) – issued by ASIC under sec.741(1)(a) – for up to \$5,000,000 for small businesses (with up to 250 employees).	RG 129
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**Note:**

- that these classes of exemptions are mutually exclusive, so funds could be raised from each type concurrently – sec. 708(5)(a)
- any share applications resulting from offers made and received outside Australia are exempted from the Chapter 6D fundraising provisions and therefore are not encompassed in any of these categories – sec.708(5)(b)
- also that certain restrictions may apply to some of the above on-selling their shares within 12 months
- obviously, it could be in Directors' best interests to obtain formal legal advice if these guidance notes are to be relied on.

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**DISCLAIMER**

*The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.*