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- regulations and class orders; and
- ASIC regulatory guides.

About the Authors

Written by two leading experts in the field, R.P. Austin, Senior Legal Consultant, Minter Ellison and Challis Lecturer in Corporate Law, The University of Sydney; and A.J. Black, Partner, Mallesons Stephen Jaques.

Recently cited in:

- Morley & Ors v Australian Securities and Investments Commission [2010] NSWCA 331 at [903]-[904]
- Cass v Kingston Capital Ltd [2010] FMCA 762 at [40]

Important features

- Now containing over 800 annotations and still growing
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- Defined terms are clarified
- Pinpoint cross-references to further discussion in LexisNexis publications, such as:
 - Ford's Principles of Corporations Law;
 - Halsbury's Laws of Australia;
 - Australian Corporation Law Principles & Practice; and
 - key LexisNexis books and journals.

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Austin & Black's Annotations to the Corporations Act

1. [7.1012D] Situations in which Product Disclosure Statement is not required — Annotations to section 1012D

2. Key principles

Section 1012D sets out several situations when a PDS is not required to be given to a retail client, including where the client has already received an up-to-date PDS or has access to up-to-date information. A PDS is also not required in certain circumstances involving distribution reinvestment plans and switching; where a recommendation, issue or sale involves the issue or sale of interests in a registered scheme (other than options) for no consideration; where options to acquire shares or debentures by way of transfer are offered as part of a consideration in a takeover bid and that offer is accompanied by a bidder's statement prepared in accordance with Ch 6; where a recommendation, issue or sale relates to interests in unregistered managed investment schemes operated by exempt bodies; where a recommendation, issue or sales involves an interim contract of insurance; or where a recommendation, issue or sale situation relates to interests in a registered scheme and the relevant client is a person associated with that scheme: ss 1012D(3)–(9B).

History and explanatory materials

This section was introduced by the FSRA 2001 and broadly corresponds to s 708 which provides exemptions from giving a disclosure statement for an offer of securities under Ch 6D; see EM to the FSR Bill [14.39]–[14.52]. The exemption from the requirement to issue a PDS in respect of takeovers in s 1012D(7) is modelled on s 708(17). Sections 1012D(9A)–(9B) correspond to s 708(12) which applies to securities as defined for the purposes of Ch 6D. A PDS is not required to be given in cases where no consideration is to be paid for the issue or sale of the managed investment product, but is required to be given for other financial products issued or sold notwithstanding that no consideration is paid, because there may be an opportunity cost to a person in taking up a free product in respect of other products (EM to the FSR Bill [14.47]).

3. Instruments and class orders

Regulation 7.9.07D modifies s 1012D in respect of offers of bundled contracts of insurance. Regulation 7.9.07E inserts ss 1012D(9J)–(9K) into the CA so that a PDS is not required to be given for an offer to issue or sell a financial product if the client refuses that offer at the time it is made, and no issue or sale results from the offer. Regulation 7.9.07F provides that a PDS is not required in specified circumstances where a client cannot be contacted. Regulation 7.9.07FA modifies s 1012D to provide that a PDS is not required for a basic deposit product, a facility for making non-cash payments that is related to a basic deposit product or travellers cheques, if the regulated person informs the client of any costs associated with the product and whether there are any amounts that will or may be payable after acquisition of the product, asks the client if they would like further information on those amounts, and provides that information if requested. Regulation 7.9.07FB modifies s 1012D to provide that a PDS does not need to be given to a client in a recommendation situation, an issue situation or a sale situation if the client is not in the jurisdiction.

4. Texts and literature

ACLPP [7.9.0055]; *Halsbury's* [120-16625]–[120-16632]; Baxt, Black and Hanrahan, *Securities and Financial Services Law*, 7th ed, [6.22] ff; D Kingsford Smith, "Is 'due diligence' dead? Financial services and products disclosure under the Corporations Act" (2004) 22 *C&SLJ* 128; ASIC RG 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)*; RG 169 *Disclosure: Discretionary powers*.

Each annotation follows a consistent structure, distilling the complex legislation into its key elements, allowing users to easily locate the section of the annotation that is of relevance, saving valuable research time.

1. Easy navigation and browsing

Paragraph numbers for annotations follow an easy formula – the chapter of the Corporations Act, or abbreviated name of other legislation, followed by the section or rule number.

2. Structured annotations

- Key principles explain the elements of the section and refer to key relevant cases
- Quotes from judgments are included with pinpoint paragraph references
- History of the provision is given, with pinpoint references to explanatory memoranda to aid in statutory interpretation

3. The section in practice

Modifications to the section in practice made by regulations and class orders are clearly listed.

4. Specific cross references

Pinpoint cross references are included to LexisNexis corporate law works, relevant texts, journal articles and ASIC regulatory documents.

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