

Guidelines: Supplementary or Replacement Investment Documents

ASSOB Pty Ltd ACN 114 772 020 (ASSOB) relies upon best practice principles as prescribed by the Australian Securities & Investment Commission (ASIC) at **Regulatory Guide 23 (RG23) Updating and correcting investment documents and application forms**, in relation to updating and correcting investment documents which are, or have become, deficient during the offer period.

ASSOB has extracted the most relevant parts of **RG23** to simplify a Sponsor and/or Issuer's understanding of when and how to use either a Supplementary or Replacement investment document, as it relates to the investment offer promoted through the Australian Small Scale Offerings Board (**Board**).

Essentially, a Supplementary or Replacement investment document is to be used whenever an Issuer wants to do any of the following things:

- (a) to correct a deficiency in the original investment document. This means any sort of deficiency; eg a material omission, a material statement which is false or misleading, or some error which is not material;
- (b) to update the original investment document by providing information about something which has happened since the investment document was prepared. This is the case whether or not the information is material. For example, they can be used to tell investors that there has been a change in the issuer's directors or the address of its registered office;
- (c) to provide additional information, whether or not the information is new or material.
- (d) to offer additional securities in the same class as those offered by the original investment document. However, this will often make it necessary to update other information in the investment document, such as:
 - (i) the type and number of securities which have already been issued under the original offer;
 - (ii) the effect of the increased subscriptions on the issuer's gearing and cash position; and
 - (iii) how the issuer intends to use the money from the increased subscriptions.

For the benefit of investors and Issuer's alike, ASSOB requires that a Replacement or Supplementary investment document be lodged if, during the offer period, the issuer becomes aware that the investment document is deficient or outdated in that:

- (a) the investment document contains a material statement that is false or misleading;
- (b) there is a material omission from the investment document;
- (c) there has been a significant change affecting information in the investment document;
- (d) a significant new matter has arisen, and this matter would have been included in the investment document if the matter had arisen when the investment document was being prepared; or
- (e) it may affect the rights of investors who accepted the offer before getting notice of the variation (for example: reducing the minimum subscription level of the offer).



Replacement Investment Documents

In effect, a Replacement investment document is merely an integrated version of a Supplementary and an Original investment document.

A replacement investment document must have the same wording as the original investment document, except for:

- (a) the provision of new or additional information; and
- (b) the correction of deficiencies in the original investment document.

Each page of the replacement investment document must contain a clear statement in bold type saying that the document is a replacement investment document which replaces the original investment document.

For example, the statement could read:

“This is a replacement investment document dated [*insert date*]. It replaces an investment document dated [*insert date*], relating to shares of [*insert name of issuer*].”

Although not strictly required by the Law, investors would also benefit from a replacement investment document drawing attention to the differences between it and the original investment document. This could be done by highlighting or summarising those differences, or marking-up the deletion of the relevant outdated or incorrect information.

Supplementary Investment Documents

A Supplementary investment document accompanies an original investment document.

Each page of a supplementary investment document must contain a clear statement in bold type stating that the document is a supplementary investment document to be read in conjunction with the original investment document and any other supplementary investment document already issued.

For example, the statement could read:

“This is a supplementary investment document intended to be read with the investment document dated [*insert date*] and supplementary investment documents dated [*insert date*] and [*insert date*], relating to shares of [*insert name of issuer*].”

Investor Considerations

Before an Issuer varies the terms of its offer in a material way using a supplementary or replacement investment document, it should carefully consider what potential liability may arise.

For example, it may become liable if it issues securities to investors who subscribed *after* the offer was varied but without having seen the supplementary or replacement investment document or it may become liable from investors whose application forms were received by the issuer *before* the issue of the supplementary or replacement investment document.

For material changes, in an attempt to limit liability from disgruntled investors, best practice steps include:

1. Advise ASSOBS of your intention to issue a Supplementary or Replacement investment document. Upon notification, ASSOBS will remove your current offer document from the Issuer Page to cease promotion of the outdated or deficient investment document;
2. Advise your Trust Account Operator and/or Share Registrar to hold any share applications received during the period prior to releasing the Supplementary or Replacement investment document;
3. Inform incoming investors of the pending Supplementary or Replacement investment document and to confirm their investment once the document has been finalised, noting that their applications will be held until written confirmation is received;
4. Offer investors who applied under the original investment document the opportunity of reconsidering their investment.

This involves contacting the relevant investor and sending investors a notice:

- (i) explaining that the original investment document has been updated or corrected; and
- (ii) explaining how and by when investors may withdraw their applications for securities.

This notice should be sent with a copy of the supplementary or replacement investment document which clearly outlines the relevant changes.

5. Obtain written approval from original investors confirming that they have accepted the changes as detailed in the relevant Supplementary or Replacement investment document; and
6. For investors who advise the Issuer that they want to withdraw their applications, the Issuer should repay their application money as soon as possible.