

Wholesale Client Definition

The definition of 'Wholesale Client' in section 761G of the Corporations Act is very complex. However, for the purposes of accepting applications into any applicable Pengana fund, set out below are the basic categories of who will be a 'Wholesale Client'.

1. The price for the financial product (interest in the Fund) equals or exceeds \$500,000. Note that the 'price' is the amount paid at the time the person is issued interests in the Fund and does not include any amount paid following the initial issue of interests in the Fund. However, where a number of financial products are provided to the same person by the same product issuer at or about the same time, the price of those products can be aggregated and treated as a single financial product for the purposes of the \$500,000 test. (See section 761G(7)(a) and regulations 7.1.17B and 7.1.18). The person will remain a wholesale client even if their interest subsequently falls below \$500,000 (regulation 7.1.27).
2. The financial product is provided for use in connection with a business. The business must not be a small business. A small business is a business that manufactures goods and employs fewer than 100 people or any other kind of business that employs fewer than 20 people. (See section 761G(7)(b) and (12)). It is unlikely that this test will apply to investors in the Fund.
3. Before the units in the scheme are issued, the person has given a copy of a certificate (that is no more than 2 years old) by a qualified accountant stating that the person has net assets of at least \$2.5 million or has a gross income for each of the last 2 financial years of at least \$250,000. (See section 761G(7)(c) and regulations 7.1.28 and 7.6.02AF). A person who meets this test may acquire the units through a company or trust that they control (regulation 7.6.02AB). In determining the assets or income of a person, you can count the assets or income of a company or trust that they control (regulation 7.6.02AC).
4. The person holds an Australian financial services licence. (See section 761G(7)(d), paragraph (a) of definition of *professional investor* in section 9, definition of *financial services licensee* in section 761A).
5. The person is a body regulated by APRA – a bank, general insurance company, life company, credit union or friendly society. (See section 761G(7)(d) and paragraph (b) of definition of *professional investor* in section 9).
6. The person is a trustee of a superannuation fund, approved deposit fund, pooled superannuation trust or public sector superannuation scheme and the fund, trust or scheme has net assets of at least \$10 million. (See section 761G(7)(d) and paragraph (d) of definition of *professional investor* in section 9).
7. The person is a body registered under the Financial Corporations Act 1974. (See section 761G(7)(d) and paragraph (c) of definition of *professional investor* in section 9).
8. The person controls at least \$10 million (including any amount held by an associate or under a trust that the person manages). (See section 761G(7)(d) and paragraph (e) of definition of *professional investor* in section 9).
9. The person is a listed entity, or a related body corporate of a listed entity. (See section 761G(7)(d) and paragraph (f) of definition of *professional investor* in section 9).
10. The person is an public authority or instrumentality of the Commonwealth, a State or Territory. (See section 761G(7)(d) and paragraph (g) of definition of *professional investor* and definition of *exempt public authority* in section 9).
11. The person is a foreign entity that, if established or incorporated in Australia, would be covered by one of the paragraphs of the definition of 'professional investor'. (See section 761G(7)(d) and paragraph (i) of definition of *professional investor* in section 9).
12. The person is a related body corporate of a company that is a wholesale client under any of the above tests. (See section 761G(4A) inserted by regulation 7.6.02AD).

New Zealand investors

The following New Zealand resident investors may also invest in any applicable Pengana fund: selected New Zealand institutional clients whose business is the investment of money, or persons who, in the course of and for the purpose of their investment, habitually invest money and who are not members of the public for the purpose of the New Zealand Securities Act 1978.