



ASIC

Australian Securities & Investments Commission

## [RG 160]

# Regulatory Guide 160 Time-sharing schemes

Related instruments [PF 205], [PF 206], [PF 207]

Chapter 5C – Managed investment schemes

Chapter 7 – Financial services and markets

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*Editor's note: From 5 July 2007, this document may be referred to as Regulatory Guide 160 (RG 160) or Policy Statement 160 (PS 160). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 160.1) or their policy statement number (e.g. PS 160.1).*

## What this guide is about

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[RG 160.1] This guide sets out our approach to regulating time-sharing schemes under the *Corporations Act 2001*.

Note: For a definition of time-sharing scheme see key terms

[RG 160.2] It discusses:

A our general approach to regulating registered time-sharing schemes

*see [RG 160.3]–[RG 160.46]*

- B** substantive relief we give for certain types of time-sharing schemes  
*see [RG 160.47]–[ RG 160.77]*
- C** our approach to non-accommodation based time-sharing schemes  
*see [RG 160.78]–[ RG 160.86]*

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## A Our general approach

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### Our policy

[RG 160.3] Apart from relief listed in Part B of this policy statement, we will generally not give substantive relief from the managed investment, licensing, disclosure and hawking provisions that apply to registered time-sharing schemes.

[RG 160.4] However, we will give technical relief from these provisions on:

- (a) disclosure of prices for the purchase of time-sharing interests, see [RG 160.24]–[RG 160.30];
- (b) financial requirements for responsible entities, see [RG 160.31]–[RG 160.35];
- (c) valuation of scheme property, see [RG 160.36]–[RG 160.37];
- (d) acquisition and holding of forfeited time-sharing interests, see [RG 160.38]–[RG 160.40]; and
- (e) rental pools, see [RG 160.41]–[RG 160.46].

[RG 160.5] As part of the licensing process we will continue to apply licensing conditions on:

- (a) cooling-off periods, see [RG 160.14]–[RG 160.17];
- (b) fees and charges, see [RG 160.18]–[RG 160.20]; and
- (c) deposits, see [RG 160.21]–[RG 160.23].

### Underlying principles

[RG 160.6] We will regulate time-sharing schemes in a way that is consistent with the Parliamentary intention to regulate time-sharing schemes as financial products.

[RG 160.7] We have given some technical relief for time-sharing schemes having regard to their unique nature.

[RG 160.8] We will impose conditions on the licence of a person that deals in a time-sharing interest or operates a time-sharing scheme

when we think it will ensure the honest, efficient and fair operation of the scheme.

## Explanations

### *Licensing*

[RG 160.9] Generally, a person that deals in time-sharing interests or operates a time-sharing scheme will be required to hold a licence to conduct those activities.

[RG 160.10] As part of our standard licence conditions there are certain requirements on a person dealing in time-sharing interests or operating a time-sharing scheme as a responsible entity. Specific licence conditions apply regarding cooling-off periods, fees and charges and deposits. We will continue to apply these licence conditions.

Note: For more information on the licence conditions that may apply to you see Pro Forma 209 Australian financial services licence conditions [PF 209]

### *Cooling-off period*

[RG 160.11] A licensee that facilitates or is a party to an offer of an interest in a time-sharing scheme must:

- (a) give a separate cooling-off statement in a form approved by us to a consumer immediately by providing a product disclosure statement or application form in relation to the offer;
- (b) ensure that the right to withdraw during a cooling-off period of:
  - (i) if the operator is a member of ATHOC and has not been notified in writing by ASIC that it cannot continue to give a cooling-off period of 7 calendar days—not less than 7 days; or
  - (ii) otherwise—not less than 14 days,is prominently disclosed in any product disclosure statement and application form they issue,
- (c) keep a record of all consumers to whom cooling-off statements have been issued. This record must contain particulars of the date each statement was issued and the consumer's signed acknowledgement that they have received the statement; and
- (d) if the consumer decides not to proceed with the purchase, return all consideration they have given, including any administration or other fees.

[RG 160.12] We think that cooling-off rights are an important mechanism to protect consumers from the effects of pressure selling and marketing of interests in time-sharing schemes.

[RG 160.13] We consider that the cooling-off period generally begins on the day when all required documents (including the cooling-off statement) are given to the consumer and they have acknowledged in writing that they have received them.

[RG 160.14] We expect that a cooling-off statement will give a consumer 7 calendar days if the licensee is a operator is a member of ATHOC and has not been notified in writing by ASIC that it cannot continue to give a cooling-off period of 7 calendar days or 14 calendar days to exercise their cooling-off rights. This has been proposed in light of the existence of a Code of Practice binding members of ATHOC that specifically deals with marketing and selling related issues. In our view, compliance with this Code of Practice could reduce the risk of pressure selling so that a lesser cooling-off period of 7 calendar days is warranted.

[RG 160.15] However, it may be inappropriate for a member of ATHOC to continue to rely on a lesser cooling-off period of 7 calendar days where there is evidence of:

- (a) inadequate compliance procedures;
- (b) non-compliance with the Code of Practice and/or compliance procedures; or
- (c) a history of inadequate compliance.

Where these factors exist we may notify the member that it is no longer appropriate for it to rely on a lesser cooling-off period of 7 calendar days and it must give a cooling-off period of 14 calendar days.

[RG 160.16] As with any exercise of administrative power, we are under an obligation to have a reasonable belief that we have reasonable grounds for exercising its power.

[RG 160.17] We also expect that a signed application form will be of no effect unless the consumer also signs an acknowledgment that they have received the statement.

### *Fees and charges*

[RG 160.18] A licensee must pay the same continuing charges (such as maintenance levies and special levies) for any unsold time-sharing interests as members would be required to pay for the same interest in the scheme. The licensee must give time-sharing owners full details of the composition and calculation of continuing charges and levies to be imposed on members, including provision for maintenance and refurbishment. These details must be given at least annually.

[RG 160.19] We require statements to be given at least annually because it is important for owners to understand their liability for charges and levies and any changes in those charges and levies.

[RG 160.20] Having licensees pay levies on unsold interests in a time-sharing scheme simplifies the consideration of the purchase price for an interest in the time-sharing scheme.

### *Deposits*

[RG 160.21] A licensee that facilitates or is a party to an offer of an interest in a time-sharing scheme must:

- (a) ensure any money paid by the consumer is deposited in a trust account with an Australian ADI not later than the first business day after they receive it and is not used for any other purpose until both:
  - (i) a registerable dealing conferring title to any real property that the consumer is to acquire is lodged with the relevant authority; and
  - (ii) the construction of the property to which the interests being acquired by the consumer relates, and any improvements necessary to permit normal use of that property are substantially completed;
- (b) if the development of property is not substantially completed by the date specified in the product disclosure statement, repay the deposit and any income earned on the deposit less any fees and disbursements properly chargeable against the income.

[RG 160.22] Any deposit for the purchase or issue of an interest in a time-sharing scheme must be less than 30% in value of the total purchase or issue price.

[RG 160.23] We think that imposing restrictions on how a deposit for the purchase of an interest in a time-sharing scheme can be used protects consumers from taking on the development risk associated with the building of the property.

### ***Disclosure of prices***

[RG 160.24] We think that a price list for time-sharing interests is an effective way of advising consumers of the price to purchase an interest. We also believe that these price lists should be able to be accessed quickly and easy to update.

[RG 160.25] We do not think that relief is required from the disclosure provisions to use a price list to inform consumers of the price of purchasing a time-sharing interest.

[RG 160.26] We consider that there are 2 methods that allow the use of a price list:

- (a) a product disclosure statement that is made up of 2 separate documents that comply with s1013L of the Corporations Act can be given. We think that the 2 separate documents could comprise a core document containing all of the information about the time-sharing scheme and a separate document that is the price list that can be updated; or
- (b) a product disclosure statement that includes a supplementary product disclosure statement. We think that a supplementary product disclosure statement can be used to update the prices of time-sharing interests.

[RG 160.27] In order to use a price list, we consider that there is a need for relief from the requirement to specify the price to purchase an interest in a time-sharing scheme in the constitution of time-sharing scheme.

[RG 160.28] We think that it would be disproportionately burdensome for the responsible entity to set out the acquisition price of an interest in the time-sharing scheme in the constitution. This is because the price to purchase an interest in a time-sharing scheme in the constitution might not be easily and quickly updated. We also recognise that having to continuously update the constitution may impede the prices being negotiable and variable.

[RG 160.29] As a result we have granted relief from this requirement in ASIC class order [CO 02/315] *Time-sharing schemes — use of loose-leaf price list*.

Note: For more information on the conditions that apply to this relief see [CO 02/315].

[RG 160.30] We have imposed conditions on this relief that is intended to:

- (a) protect consumers from the effects of pressure selling tactics; and
- (b) help consumers make an informed decision about the costs associated with the purchase of a time-sharing interest.

### ***Financial requirements***

[RG 160.31] A responsible entity must meet certain financial requirements to hold a licence, including being able to meet base level financial requirements and have a certain level of net tangible assets. The financial requirements that apply to each responsible entity may vary depending on the business of that responsible entity.

[RG 160.32] We consider that to satisfy the base level financial requirements a responsible entity of a time-sharing scheme must:

- (a) be able to pay its debts as and when they become due and payable;
- (b) have total assets that exceed total liabilities, or adjusted assets that exceed adjusted liabilities, as shown in their most recent statement of financial position lodged with us;
- (c) have sufficient financial resources to cover their liabilities for at least the next 3 months.

[RG 160.33] Generally, we consider that a responsible entity of a time-sharing scheme must have minimum net tangible assets of 0.5% of the value of the scheme property and other assets, subject to a minimum of \$50,000 and a maximum of \$5 million. We allow a responsible entity of a time-sharing scheme with this level of net tangible assets to hold the following scheme property:

- (a) levies of a time-sharing scheme that are held in a trust account that is audited twice annually by a registered auditor and a report from the auditor is provided to the responsible entity; and
- (b) land or other real property to which the time-sharing scheme relates.

[RG 160.34] We would not generally allow responsible entities of other types of registered managed investment schemes to hold this type of scheme property without holding net tangible assets of \$5 million.

Note: For more information on the financial requirements that may apply to you see Regulatory Guide 166 *Licensing: financial requirements* [RG 166].

[RG 160.35] Given the nature of the schemes and the property held, we think that there is a low risk of loss misappropriation of real property or levies for time-sharing schemes due to custodial failure.

### **Valuation**

[RG 160.36] We have granted conditional class order relief from the requirement that scheme property of time-sharing schemes is periodically valued in ASIC class order [CO 00/2460] *Time-sharing schemes – property valuations*. The relief is conditional on the responsible entity having scheme property valued when it has reasonable grounds to believe a valuation is in the best interests of members.

Note: For more information on the conditions that apply to this relief see [CO 00/2460].

[RG 160.37] Taking into account the nature of a time-sharing scheme, we think it may be disproportionately burdensome to require a responsible entity to regularly revalue scheme property. This is because the regular valuation of the scheme property is not generally relevant to the needs of members or the management of the time-sharing scheme.

### **Forfeited interests**

[RG 160.38] We have granted conditional class order relief to enable responsible entities of registered time-sharing schemes to acquire, hold and dispose of forfeited interests in the time-sharing scheme. The relief is in ASIC class order [CO 03/104] *Relief facilitating the acquisition and sale of forfeited interests in registered time-sharing schemes*.

Note: For more information on the conditions that apply to this relief see [CO 03/104].

[RG 160.39] We consider that allowing the responsible entity to acquire, hold and dispose of a forfeited interest in a time-sharing scheme helps in the effective management of the time-sharing scheme for the benefit of all members.

[RG 160.40] The conditions that apply to this relief are designed to:

- (a) protect a member from unfair methods of acquiring interests in a time-sharing scheme through forfeiture; and

- (b) ensure that the forfeited interest in the time-sharing scheme is sold at a fair and reasonable price.

### ***Rental pools***

[RG 160.41] A rental pool involves the pooling of members' unused time-sharing entitlements for the purpose of renting those entitlements to other persons. The proceeds of the rental pool (after related expenses are deducted) are then distributed among members of the rental pool. A rental pool allows the member to receive an income if they do not choose to use their allocated time during any particular year. The income is used primarily to offset the scheme levies imposed on members. The return for members is generally a small amount.

[RG 160.42] We have given relief in ASIC class order [CO 02/237] *Time-sharing schemes – operation of rental pool* for:

- (a) a rental pool that forms part of a new time-sharing scheme; and
- (b) a rental pool formed after interests in a time-sharing scheme have been issued.

Note: For more information on the conditions that apply to this relief see [CO 02/237].

[RG 160.43] We have given this relief because:

- (a) of the small amounts involved compared to the costs of obtaining an AFS licence; and
- (b) the rental pool is generally an incidental part of the business associated with the time-sharing scheme.

[RG 160.44] We have imposed conditions on the relief that will:

- (a) help a consumer make an informed decision about the costs associated with the rental pool;
- (b) help a member understand their investment in the rental pool; and
- (c) protect a member from loss or misappropriation of the proceeds of the rental pool.

[RG 160.45] [CO 02/237] also grants relief from the licensing provisions for persons (other than the operator of the rental pool) that provide financial services for the interests in the rental pool. This relief is only available when the operator of the rental pool complies with the conditions imposed on them.

[RG 160.46] Where the rental pool forms part of a new time-sharing scheme to be offered to retail clients we expect the relevant product disclosure statement for the scheme will generally contain sufficient information about the rental pool to enable members to make an informed decision about whether to participate in it.

## **B Managed investments and licensing relief**

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### **Our policy**

[RG 160.47] We will generally give individual relief from the managed investment provisions for certain types of time-sharing schemes if it is requested. The types of time-sharing schemes for which we will generally give relief are:

- (a) fixed term prescribed interest schemes, see [RG 160.50]–[RG 160.58];
- (b) time-sharing schemes exempt under state law, see [RG 160.59]–[RG 160.61];
- (c) exempt title-based time-sharing schemes, see [RG 160.62]–[RG 160.66]; and
- (d) member-controlled clubs, see [RG 160.67]–[RG 160.72].

[RG 160.48] We will generally give substantive relief from the licensing provisions for the resale of time-sharing interests in circumstances when we have given relief from the managed investment provisions under paragraphs (b), (c) and (d) of [RG 160.47], see [RG 160.73]–[RG 160.77]. We will impose conditions on the resale relief that will:

- (a) ensure re-sales remain a small proportion of the business of the person;
- (b) protect consumers from the effects of pressure marketing and selling tactics;
- (c) protect consumers from loss or misappropriation of their monies; and
- (d) provide ongoing protection to members in the event of a dispute associated with the purchase of an interest in a time-sharing scheme.

## Underlying principles

[RG 160.49] It may not be appropriate for the managed investment provisions to apply for certain closed or member-run time-sharing schemes.

## Explanations

### ***Fixed term schemes***

[RGS 160.50] We have previously given some time-sharing schemes regulated under the prescribed interest provisions of the Old Corporations Law (now repealed) an extension of time to become regulated under the managed investment provisions of the Corporations Act.

Note: For these time-sharing schemes governed under the old law we will also have regard to our policy in superseded Policy Statement 66: *Time-sharing schemes*.

[RG 160.51] We may give a further extension of the transition period for a fixed term time-sharing scheme if it is appropriate that the prescribed interest provisions continue to apply on an ongoing basis. To qualify for a further extension of the transition period, a time-sharing operator must submit its application before its initial relief expires and it must:

- (a) give a written certificate from the time-sharing operator, see [RG 160.53]; and
- (b) give a letter from the approved trustee of the scheme in support of the application, see [RG 160.55].

[RG 160.52] We will not generally give a further extension of the transition period if the time-sharing operator and approved trustee are unable to verify each of the following criteria indicating that they have accepted their responsibilities to ensure that the property is properly managed.

[RG 160.53] The time-sharing operator must certify that:

- (a) the time-sharing scheme is closed, is a fixed-term scheme and the approved deed for the scheme provides that the scheme is to be wound up at a time reflecting the underlying cycle of the business and is passively managed;
- (b) the time-sharing scheme is viable on an ongoing basis, all payments have been made to members in accordance with the

- approved deed, and there is no increase in the size or scope of the scheme since the first extension was given;
- (c) an unqualified audit report has been obtained for the time-sharing scheme;
  - (d) it is solvent;
  - (e) there have been no material breaches of the approved deed;
  - (f) it and the trustee has complied with the terms and conditions of the existing relief; and
  - (g) all members of the time-sharing scheme have been notified in writing of the application to further extend the transition.

[RG 160.54] If after notification either 50 holders or 10 per cent of members by value have objected to the extension we will generally not extend the transition period.

[RG 160.55] The letter from the approved trustee of the scheme must certify that:

- (a) it reasonably believes the further extension of the transition would be in the best interests of the prescribed interest holders, and is not contrary to the interests of the prescribed interest holders;
- (b) the scheme satisfies the criteria for an extension of the transitional period; and
- (c) the scheme or undertaking is solvent.

Note: See Information Release 03/5 *ASIC grants further extension of interim relief for non-transitioning managed investment schemes.*

[RG 160.56] We will not grant a further extension of the transition period if it is not clear that the time-sharing operator and approved trustee accept their responsibilities to ensure that the property is properly managed.

[RG 160.57] We think a time-sharing scheme will be closed if there are no new issues of interests after 31 May 2000.

[RG 160.58] We consider that a time-sharing scheme will be passively managed for the purposes of granting a further extension once its interests have been substantially sold and the property has been substantially developed.

### ***Exempt under state law***

[RG 160.59] We have given relief from the managed investment provisions for time-sharing schemes that were not required to comply with the prescribed interest regime because of state legislation.

[RG 160.60] We think it is unlikely that we will now receive any new applications for relief for a time-sharing scheme that was exempt under state law.

Note: For more information on the conditions that apply to this relief see Pro Forma 205 *Time-sharing schemes formerly exempt under State laws* [PF 205].

[RG 160.61] If we were to receive any new applications for relief for a time-sharing scheme that is exempt under state law, this relief would be subject to conditions including that the time-sharing operator complies with s1017D of the Corporations Act as if the time-sharing scheme was registered and that the time-sharing scheme have internal dispute resolution arrangements that meet s912A(2)(a) of the Corporations Act.

Note: We will also require existing schemes with this relief to have internal dispute resolution arrangements that comply with s912A(2)(a) from 30 September 2007.

### ***Exempt title-based schemes***

[RG 160.62] We have given relief from the managed investment provisions for title-based time-sharing schemes that are substantially sold. Generally, in a title-based time-sharing scheme a member becomes a tenant in common with a right to a share of the real property. Ownership is commonly evidenced by a certificate of title and accompanied by a share in, or membership of, a club. The club leases the real property and holds the management rights for time-sharing scheme.

[RG 160.63] We think it is unlikely that we will now receive any new applications for relief for a title-based time-sharing scheme.

Note: For more information on the conditions that apply to this relief see Pro Forma 207 *Titled-based time-sharing schemes* [PF 207].

[RG 160.64] If we were to receive any new applications for relief for a title-based time-sharing scheme, this relief would be subject to a condition that the time-sharing scheme have internal dispute resolution arrangements that meet s912A(2)(a) of the Corporations Act.

Note: We will also require existing schemes with this relief to have internal dispute resolution arrangements that comply with s912A(2)(a) from 30 September 2007.

[RG 160.65] We will apply our policy for member-controlled clubs for any new application for relief we receive when members essentially control the time-sharing scheme.

[RG 160.66] We have imposed conditions on the relief that will:

- (a) ensure the time-sharing scheme remains substantially closed;
- (b) protect members from loss or misappropriation of scheme property; and
- (c) protect consumers from the effects of pressure marketing and selling tactics.

### ***Member-controlled club***

[RG 160.67] A member-controlled club is one where the members of the time-sharing scheme control the management of the scheme's property.

[RG 160.68] We think that:

- (a) when the interests in a time-sharing scheme are substantially sold and its members are in a position to control the entity that runs the time-sharing scheme there is less risk to members; and
- (b) it would be unreasonably costly for the time-sharing scheme to comply with the managed investment and licensing provisions and Division 3 of Part 7.9 of the Corporations Act.

[RG 160.69] We may give relief from the managed investment provisions for time-sharing schemes that are member-controlled clubs. We will consider any application for relief for a member-controlled club on a case-by-case basis. Relief is based on our Pro-forma 206 *Time-sharing schemes – Chapter 5C relief* [PF 206].

[RG 160.70] Relief for member-controlled clubs will generally apply when:

- (a) a club has taken over management of the scheme property from the responsible entity;
- (b) the club makes, or has a veto over, all decisions that materially affect the best interests of members. To benefit from our relief the club must only spend money under a budget that is notified at least annually to club members and approved by the club;
- (c) the club is a public company;

- (d) the property is held on trust for the members or members hold title to the scheme property and have received:
  - (i) their certificates of title to the real property in the time-sharing scheme; or
  - (ii) copies certified by a justice of the peace or lawyer when the club has acknowledged that it is holding the member's certificate in safe custody for the member and various other matters; and
  - (iii) the share or membership certificates in the club;
- (e) any buildings that that the product disclosure statement said would be built have been substantially completed;
- (f) at least 90% of the time-sharing interests have been issued and are held by a person other than the time-sharing developer, manager or promoter or an associate of any of them. If there is any further issue or sale of new interests in the time-sharing scheme by any time-sharing developer, manager, promoter or operator that person must operate as if the time-sharing scheme was a registered time-sharing scheme as well as ensure that:
  - (i) Part 7.9 of the Corporations Act is complied with as far as practicable;
  - (ii) they hold a licence with conditions on sales of interests in time-sharing schemes; and
  - (iii) they comply with the conditions of the licence.
- (g) the club, or a person or entity engaged by the club for management, maintains a trust account audited twice yearly by a registered company auditor;
- (h) any agreement between the club and a person to supply management services to the time-sharing scheme must include a provision for dismissing the manager in at least 1 of the following cases:
  - (i) 50% of all members vote for dismissal;
  - (ii) members holding 50% by value of the interests in the time-sharing scheme vote for dismissal;
  - (iii) 75% of members voting whether in person or by proxy vote for dismissal when at least 25% of members eligible to vote do so; or
  - (iv) members holding 75% by value of the interests in the time-sharing that are held by members that vote, vote for dismissal whether in person or by proxy where members

holding at least 25% by value of the interests eligible to vote do so.

Any such dismissal must not trigger any additional payment;

- (i) no manager, including the club, may facilitate the sale of an interest in the time-sharing scheme unless the sale is subject to a cooling-off period of :
  - (i) if the operator is a member of ATHOC and has not been notified in writing by ASIC that it cannot continue to give a cooling-off period of 7 calendar days—not less than 7 days; or
  - (iii) otherwise—not less than 14 days,
- (j) the club complies with s1017D of the Corporations Act as if the time-sharing scheme was registered; and
- (k) the club has internal dispute resolution arrangements that meet s912A(2)(a) of the Corporations Act.

[RG 160.71] We will give more limited relief when all the requirements other than those in paragraph (f) are satisfied. Under this relief, the responsible entity will be excluded from managing the property to which the time-sharing scheme relates.

[RG 160.72] The conditions of relief will:

- (a) preserve members' control over the day-to-day operation of the time-sharing scheme;
- (b) protect members from loss or misappropriation of scheme property;
- (c) ensure the time-sharing scheme remains substantially closed;
- (d) ensure the marketing and sale of new interests in the time-sharing scheme is conducted in an honest, efficient and fair manner;
- (e) protect consumers from the effects of pressure selling tactics; and
- (f) help members understand their investment in the time-sharing scheme.

### ***Resales of time-sharing interests***

[RG 160.73] We may give relief from the licensing provisions for a member-controlled club, time-sharing promoter or operator that resells interests in a time-sharing scheme when relief from the managed

investment provisions has been given, or is being considered, because the scheme is:

- (a) exempt under state law;
- (b) exempt title-based time-sharing schemes; or
- (c) member controlled clubs.

Note: If you wish to resell timeshare interests and you do not have relevant ASIC relief then generally you will be required to hold a licence.

[RG 160.74] We give this relief on a case-by-case basis when the following conditions are met:

- (a) no more than 5% of the interests in the time-sharing scheme are re-sold in 1 calendar year;
- (b) cooling-off rights apply to the resale;
- (c) there is a separate cooling-off statement in a form approved by us and purchasers are given a copy of this statement to keep;
- (d) records are kept of:
  - (i) all persons to whom cooling-off statements have been given; and
  - (ii) the date on which each cooling-off statement was given and the consumer's signed acknowledgment of receipt;
- (e) the cooling-off period is:
  - (i) if the operator is a member of ATHOC and has not been notified in writing by ASIC that it cannot continue to give a cooling-off period of 7 calendar days—not less than 7 days; or
  - (iv) otherwise—not less than 14 days, andbegins when all required documents (including the cooling-off statement) are given to the consumer and they have acknowledged in writing that they have received them;
- (f) all money from a consumer is returned if the consumer decides not to proceed with the purchase of the interest in the time-sharing scheme. No administration or other fees must be kept;
- (g) all money received for the re-sold time-sharing interests is:
  - (i) paid into an account that is held with an Australian ADI;

- (ii) paid into an account that only has money paid into it that is money received from consumers of re-sold interests in the time-sharing scheme and interest on that amount;
  - (iii) paid into the account on the day it is received or the next business day; and
  - (iv) held in trust for the benefit of the consumer who paid the money until any cooling-off period has expired;
- (h) the operator of the time-sharing scheme belongs to an approved external dispute resolution scheme.

[RG 160.75] The relief only applies when re-sales are a small proportion of the activity associated with the time-sharing scheme.

[RG 160.76] In these cases, we think that the initial and ongoing costs of complying with the licensing provisions are likely to be disproportionate to any risks to consumers from these schemes.

[RG 160.77] Conditions on the relief will protect consumers:

- (a) from the effects of pressure marketing and selling;
- (b) from loss or misappropriation of their monies; and
- (c) in the event of a dispute associated with the purchase of a time-sharing interest.

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### How to apply for relief

- Lodge your application:
  - by email to:  
  
applications.manager@asic.gov.au and addressed to the Manager – Applications; or
  - in writing addressed to:  
  
Manager – Applications  
Australian Securities & Investments Commission  
GPO Box 9827  
SYDNEY NSW 2001
- Make sure the application

- addresses all the considerations in Section B of this policy statement;
  - complies with Regulatory Guide 51 *Applications for relief* [RG 51]; and
  - is accompanied by the prescribed fee.
- Make sure the application is appropriately signed.

You can also contact ASIC Infoline on 1300 300 630 for information and assistance.

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## C Non-accommodation based time-sharing schemes

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### Our policy

[RG 160.78] Some time-sharing schemes that do not involve accommodation may have special features that are a basis for relief.

[RG 160.79] Generally, we will not give relief from the requirement to give a product disclosure statement or hawking relief for non-accommodation based time-sharing schemes, unless the application demonstrates there are special circumstances that justify this relief being given.

[RG 160.80] When considering these applications for relief we will take into account factors including:

- (a) whether the member in the time-sharing scheme enjoys exclusive possession of a portion of the property at the relevant time;
- (b) whether the interest in the time-sharing scheme is transferable;
- (c) the value of the subscription required to obtain a time-sharing interest;
- (d) the degree of management necessary to run the time-sharing scheme;
- (e) the complexity of the time-sharing scheme;
- (f) whether the governing body of the time-sharing scheme is elected by the members;
- (g) whether the time-sharing scheme is incidental to other rights, eg real estate;
- (h) how the time-sharing scheme is promoted; and
- (i) whether there is a cash return on the purchase price or enjoyment in kind.

[RG 160.81] We may impose conditions on any relief we give for a time-sharing scheme that does not involve accommodation.

## Underlying principles

[RG 160.82] We will consider applications for relief case-by-case for non-accommodation based time-sharing schemes under the factors in [RG 160.80] and:

- (a) our general exemption and modification powers in Chapter 5C of the Corporations Act;
- (b) our general exemption and modification powers in Chapter 7 of the Corporations Act;
- (c) our general policy on giving relief:
  - (i) in Regulatory Guide 51 *Applications for relief* [RG 51];
  - (ii) from the managed investment provisions as set out in Regulatory Guide 136 *Managed investments discretionary powers and closely related schemes* [RG 136]; and
  - (iii) from the licensing provisions as set out in Regulatory Guide 167 *Licensing: Discretionary powers* [RG 167].

## Explanations

[RG 160.83] We recognise that for some types of non-accommodation based time-sharing schemes relief is appropriate because:

- (a) compliance with the managed investments, licensing and conduct provisions may be disproportionately burdensome, particularly where the time-sharing operator has limited duties; and
- (b) the likelihood and extent of potential consumer detriment may be minimal.

[RG 160.84] We have identified a non-exhaustive list of factors that we may take into account when considering whether to give relief. These factors will guide you when you apply for relief for a non-accommodation based time-sharing scheme, (see [RG 160.80]).

[RG 160.85] We will not generally give relief from the hawking provisions because we consider they are important mechanisms to prevent pressure selling of interests in time-sharing schemes.

[RG 160.86] We will not generally give relief from the disclosure provisions because we consider it is important consumers are given

sufficient information to make an informed decision about whether to acquire an interest in the time-sharing scheme.

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### How to apply for relief

- Lodge your application:
  - by email to: [applications.manager@asic.gov.au](mailto:applications.manager@asic.gov.au) and addressed to the Manager – Applications; or
  - in writing addressed to:  
  
Manager – Applications  
Australian Securities & Investments Commission  
GPO Box 9827  
SYDNEY NSW 2001
- Make sure the application
  - addresses all the considerations in Section B of this policy statement;
  - complies with Regulatory Guide 51 *Applications for relief* [RG 51]; and
  - is accompanied by the prescribed fee.
- Make sure the application is appropriately signed.

You can also contact ASIC Infoline on 1300 300 630 for information and assistance.

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## Key terms

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[RG 160.87] In this policy statement, the following terms have the following meanings:

**approved trustee** A trustee or representative approved by ASIC under s1067(4) of the Old Corporations Law (now repealed)

**Australian ADI** Australian authorised deposit-taking institution

**ASIC** Australian Securities and Investments Commission

**ATHOC** Australian Timeshare & Holiday Ownership Council Limited ACN 065 260 095

**base level financial requirements** means those applicable requirements set out in Policy Statement 166: *Licensing financial requirements* [RG 166]

**[CO 02/237] (for example)** An ASIC class order (in this example numbered 02/237)

**conduct provisions** The provisions set out in Part 7.7 and Part 7.8, excluding Division 8 of part 7.8, of the Corporations Act

**Corporations Act** The *Corporations Act 2001* and includes regulations made for the purposes of the Corporations Act

**deal** has the meaning as defined under s766C

**disclosure provisions** The provisions set out in Part 7.9 and related regulations

**financial product** A financial product as defined under s763A

**hawking provisions** The provisions set out in Division 8 of Part 7.8 and related regulations

**licence** An Australian financial services licence issued under s913B

**licensee** A financial services licensee defined under s761A

**licensing provisions** The provisions set out in Part 7.6 and related regulations

**managed investment provisions** The provisions set out in Chapter 5C and related regulations

**Old Corporations Law(now repealed)** The Corporations Law, as in force on 30 June 1998, and includes regulations made for the purposes of the Corporations Law

**prescribed interest provisions** The provisions in the Old Corporations Law (now repealed) governing time-share schemes that applied prior to the managed investment provisions

**product disclosure statement** A document that must be given to a retail client in relation to the offer or issue of a financial product under Division 2 of Part 7.9 of the Corporations Act

**retail client** A client defined under s761G

**supplementary product disclosure statement** A document that must be given to a retail client in relation to the offer or issue of a financial product under Division 2 of Part 7.9 of the Corporations Act

**time-sharing interest** An interest issued in a time-sharing scheme

**time-sharing scheme** A scheme, undertaking or enterprise, whether in Australia or elsewhere:

- (a) participants in which are, or may become, entitled to use, occupy or possess, for 2 or more periods during the period for which the scheme, undertaking or enterprise is to operate, property to which the scheme, undertaking or enterprise relates; and
- (b) that is to operate for a period of not less than 3 years.

## Related information

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[RG 160.88]

### Headnotes

Managed investment scheme, time-sharing scheme, licensing conditions, managed investment and licensing provision relief, rental pools, fixed term time-sharing scheme, exempt under state law, titled-based time-sharing scheme, member-controlled club, resales.

### Class orders and pro formas

[CO 00/2460] *Time-sharing schemes – property valuations*

[CO 02/237] *Time-sharing schemes – operation of rental pool*

[CO 02/315] *Time-sharing schemes — use of loose-leaf price list.*

[CO 03/104] *Relief facilitating the acquisition and sale of forfeited interests in registered time-sharing schemes.*

[PF 205] *Time-sharing schemes formerly exempt under State laws*

[PF 206] *Time-sharing schemes – Chapter 5C relief.*

[PF 207] *Titled-based time-sharing schemes*

[PF 209] *Australian financial services licence conditions*

### Policy statements and practice notes

Regulatory Guide 51 *Applications for relief* [RG 51]

Regulatory Guide 66 *Time-sharing schemes* [RG 66]

Regulatory Guide 136 *Managed investments discretionary powers and closely related schemes* [RG 136]

Regulatory Guide 164 *Licensing: Organisational capacities* [RG 164]

Regulatory Guide 165 *Licensing: Internal and external dispute resolution* [RG 165]

Regulatory Guide 166 *Licensing: Financial requirements* [RG 166]

Regulatory Guide 167 *Licensing: Discretionary powers* [RG 167]

Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* [RG 168]

Regulatory Guide 169 *Disclosure: Discretionary powers and transition* [RG 169]

### **Guides**

AFS Licensing Kit

Applying for and varying an AFS Licence

Meeting the financial requirements for your AFS Licence:  
Compliance with Policy Statement 166

Guide to organisational competency obligations: responsible officers

The hawking prohibitions – an ASIC Guide

Breach Reporting for AFS licensees

### **Legislation**

Corporations Act, Chapters 5C and 7, Parts 7.6 – 7.10, s9, 601ED, 761A, 761G, 764A, 766A, 766B, 766C, 911A, 912A, 914A, 992A, 1012A, 1012B, 1012C, 1013L, 1014A, 1017D

Old Corporations Law(now repealed) s1084

### **Consultation papers**

**Review of RG 160 – Time-sharing schemes (May 2006)**

### **Discussion papers and reports**

Parliamentary Joint Committee on Corporations and Financial Services *Timeshare: The Price of Leisure* (September 2005)

### **Media and information releases**

Information Release 06/16 *ASIC consults on timeshare schemes*

Information Release 03/5 *ASIC grants further extension of interim relief for non-transitioning managed investment schemes*