



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 160

Time-sharing schemes

June 2012

About this guide

This guide is for operators, promoters and responsible entities of time-sharing schemes.

It sets out our approach to regulating time-sharing schemes under the *Corporations Act 2001* (Corporations Act) and discusses:

- our general approach to regulating registered time-sharing schemes under the Corporations Act;
- substantive relief we give for certain types of time-sharing schemes from the managed investment and licensing provisions of the Corporations Act; and
- our approach to non-accommodation based time-sharing schemes.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This guide was issued in June 2012 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 160, issued 14 February 2008
- Superseded Policy Statement 160, issued 20 April 2000, reissued 7 February 2007, rebadged as a regulatory guide 5 July 2007

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

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A Overview

Key points

ASIC regulates time-sharing schemes as financial products under the *Corporations Act 2001* (Corporations Act), as these schemes are a type of managed investment scheme.

This means that an operator, promoter or responsible entity of a time-sharing scheme may need an Australian financial services (AFS) licence to carry on a financial services business relating to the issue or sale of interests in time-sharing schemes, whether in Australia or elsewhere.

We will not generally give substantive relief from the managed investment, licensing and product disclosure provisions or the hawking prohibitions of the Corporations Act, except in certain circumstances. If you are the operator, promoter or responsible entity of a time-sharing scheme, you can use this guide to determine whether you are entitled to apply for specific relief from these provisions and prohibitions.

Time-sharing schemes

- RG 160.1 A time-sharing scheme is defined as a scheme, undertaking or enterprise, whether in Australia or elsewhere, that operates for a period of three years or more and in which participants are, or may become, entitled to use, occupy or possess the property for two or more periods.
- RG 160.2 Time-sharing schemes are a type of managed investment scheme for the purposes of Ch 5C of the Corporations Act. This is because, as part of a time-sharing scheme:
- (a) members contribute money to acquire an interest in the benefits produced by the scheme (such as interests in property);
 - (b) the contributions of members of the scheme are pooled, or used in common enterprise, to produce benefits (such as interests in property) for the members who hold interests in the time-sharing scheme; and
 - (c) the members of the time-sharing scheme do not have day-to-day operation of the scheme.
- RG 160.3 Interests in time-sharing schemes are regulated by ASIC as financial products under the Corporations Act.
- RG 160.4 A time-sharing scheme must be registered with ASIC as a managed investment scheme before the scheme can operate. To register as a managed investment scheme, the responsible entity of a time-sharing scheme is required to hold an AFS licence authorising the responsible entity to issue or

sell interests in the scheme, or otherwise must obtain a licensing exemption from ASIC.

- RG 160.5 As an AFS licensee, the responsible entity will also need to ensure the registered time-sharing scheme meets the requirements of the Corporations Act and the *Australian Securities and Investments Act 2001* (ASIC Act) on an ongoing basis. In addition to the managed investment and licensing provisions, the requirements include obligations under the product disclosure provisions in Pt 7.9 and the hawking prohibitions in Div 8, Pt 7.8 of the Corporations Act.

Purpose of this guide

- RG 160.6 The purpose of this guide is to outline our general approach to regulating time-sharing schemes as financial products under the Corporations Act. While we do not generally grant substantive relief from the managed investment, licensing and product disclosure provisions and the hawking prohibitions, we will consider giving technical and specific relief to certain types of investment schemes.
- RG 160.7 If you are an operator, promoter or responsible entity of a time-sharing scheme, you can use this guide to determine whether you are entitled to apply to ASIC for relief. This guide also explains the factors that we will take into account when determining whether or not relief should be granted.

Our general approach

- RG 160.8 We will apply specific licensing conditions to cooling-off periods, fees and charges, and deposits as part of the AFS licensing process.
- RG 160.9 We will generally not give substantive relief from the managed investment, licensing, and product disclosure provisions or the hawking prohibitions in the Corporations Act that apply to registered time-sharing schemes, except in certain circumstances.
- RG 160.10 We will give technical relief from these provisions for:
- (a) disclosure of prices for the purchase of time-sharing interests;
 - (b) financial requirements for responsible entities;
 - (c) valuation of scheme property;
 - (d) acquisition and holding of forfeited time-sharing interests; and
 - (e) rental pools.

- RG 160.11 See Section B for more information on our general approach to providing relief for registered time-sharing schemes.

Managed investment and licensing provisions relief

- RG 160.12 It may not be appropriate for the managed investment and licensing provisions in Ch 5C and Pt 7.6 of the Corporations Act to apply to certain closed or member-run time-sharing schemes, such as:
- (a) fixed term prescribed interest schemes;
 - (b) time-sharing schemes exempt under state law;
 - (c) exempt title-based time-sharing schemes; and
 - (d) member-controlled clubs.
- RG 160.13 We will therefore give specific relief from the managed investment and licensing provisions if is requested by the responsible entity of the scheme. See Section C for more information.

Non-accommodation based time-sharing schemes

- RG 160.14 Where there are time-sharing schemes that do not involve accommodation, we recognise that relief from the managed investment, licensing and conduct provisions may be appropriate. This is because compliance with these provisions may be disproportionately burdensome, particularly where the time-sharing operator has limited duties, and the likelihood and extent of potential consumer detriment may be minimal.
- RG 160.15 In general, we will not give relief from disclosure provisions or hawking prohibitions in the Corporations Act, because we consider they are important mechanisms to prevent pressure selling of time-sharing interests, and to empower consumers to make better informed decisions about whether to inquire an interest in a time-sharing scheme. See Section D for more information on when we will give relief to non-accommodation based time-sharing schemes.

How to apply for relief

- RG 160.16 See Section E for information on how to apply for relief.

B Our general approach

Key points

The managed investment scheme, licensing, and disclosure provisions and the hawking prohibitions of the Corporations Act apply to registered time-sharing schemes. ASIC will give technical relief from these provisions in certain circumstances.

This section explains how we will continue to apply certain licensing conditions as part of the licensing process: see RG 160.17–RG 160.33.

This section also explains our general approach to:

- disclosure of prices for the purchase of time-sharing interests (see RG 160.36–RG 160.42);
- financial requirements for responsible entities (see RG 160.44–RG 160.48);
- valuation of scheme property (see RG 160.49–RG 160.98);
- acquisition and holding of forfeited time-sharing interests (see RG 160.51–RG 160.53); and
- rental pools (see RG 160.54–RG 160.59).

Licensing conditions

- RG 160.17 We will regulate time-sharing schemes in a way that is consistent with the Parliamentary intention to regulate time-sharing schemes as financial products. 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.
- RG 160.18 Generally, a person who deals in time-sharing interests or operates a time-sharing scheme will be required to hold an AFS licence to conduct those activities.
- RG 160.19 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. We will continue to apply licensing conditions to:
- (a) cooling-off periods;
 - (b) fees and charges; and
 - (c) deposits.

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 160.20 An AFS 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 (PDS) or application form for the offer;
 - (b) prominently disclose in any PDS and application form issued the consumer's right to withdraw during a cooling-off period that is:
 - (i) not less than seven days, if the operator is a member of the Australian Timeshare and Holiday Ownership Council (ATHOC) and has not been notified in writing by ASIC that it cannot continue to give a cooling-off period of seven calendar days; or
 - (ii) not less than 14 days in all other cases;
 - (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 money they have given, including any administration or other fees.
- RG 160.21 We consider 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 160.22 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 160.23 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 cooling-off statement.

Length of cooling-off period

- RG 160.24 We expect that if the licensee is an 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 seven calendar days, the cooling-off statement will give a consumer seven calendar days to exercise their cooling-off rights.
- RG 160.25 This has been proposed because member of ATHOC are bound by the ATHOC Code of Practice, which specifically deals with marketing and selling related issues. In our view, compliance with the ATHOC Code of Practice would reduce the risk of pressure selling so that a shorter cooling-off period of seven calendar days is warranted.

- RG 160.26 However, it may be inappropriate for a member of ATHOC to continue to rely on the shorter cooling-off period where there is evidence of:
- (a) inadequate compliance procedures;
 - (b) non-compliance with the ATHOC 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 the shorter cooling-off period and it must give a cooling-off period of 14 calendar days.

- RG 160.27 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.

Fees and charges

- RG 160.28 An AFS 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 160.29 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 160.30 Having licensees pay levies on unsold interests in a time-sharing scheme simplifies the calculation of the purchase price for an interest in the time-sharing scheme.

Deposits

- RG 160.31 An AFS 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 authorised deposit-taking institution (ADI) not later than the first business day after they receive it and is not used for any other purpose until both:
 - (i) a registrable 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 PDS, repay the deposit and any income earned on the deposit, minus any fees and disbursements properly chargeable against the income.
- RG 160.32 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 160.33 We consider 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.

Technical relief

- RG 160.34 Apart from the relief listed in Section C, we will generally not give substantive relief from the managed investment, licensing, and product disclosure provisions and the hawking prohibitions that apply to registered time-sharing schemes.
- RG 160.35 However, we will give some technical relief from these provisions and prohibitions, given the unique nature of time-sharing schemes. This relief will be for:
- (a) disclosure of prices for the purchase of time-sharing interests;
 - (b) financial requirements for responsible entities;
 - (c) valuation of scheme property;
 - (d) acquisition and holding of forfeited time-sharing interests; and
 - (e) rental pools.

Disclosure of prices

- RG 160.36 We consider 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 160.37 We do not consider that relief is required from the product disclosure provisions to use a price list to inform consumers of the price of purchasing a time-sharing interest.
- RG 160.38 We consider that there are two methods that allow the use of a price list:
- (a) a PDS that is made up of two separate documents that comply with s1013L of the Corporations Act can be given. We think that the two

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 PDS that includes a supplementary PDS. We think that a supplementary PDS can be used to update the prices of time-sharing interests.

RG 160.39 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 160.40 We think that it would be disproportionately burdensome for the responsible entity to set out the purchase price of an interest in the time-sharing scheme in the constitution. This is because it may not be quick and easy to update the price to purchase an interest in a time-sharing scheme in the constitution. We also recognise that having to continuously update the constitution may impede the prices being negotiable and variable.

RG 160.41 As a result we have granted relief from this requirement in Class Order [CO 02/315] *Time-sharing schemes—use of loose-leaf price list*.

RG 160.42 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.

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

Shorter PDS regime

RG 160.43 Issuers of simple managed investments schemes must comply with shorter, simpler PDS disclosure (shorter PDS regime) from 22 June 2012: see Sch 10A and Sch 10E of the Corporations Regulations 2001 (Corporations Regulations). However, a time-sharing scheme does not satisfy the liquidity requirements within the definition of a ‘simple managed investment scheme’ under reg 1.0.02(1) of the Corporations Regulations. Accordingly, we do not consider that the shorter PDS regime will generally apply to time-sharing interests or time-sharing schemes.

Financial requirements

RG 160.44 A responsible entity must meet certain financial requirements to hold an AFS 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 160.45 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; and
 - (c) have sufficient financial resources to cover their liabilities for at least the next three months.
- RG 160.46 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 160.47 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 160.48 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 160.49 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.
- RG 160.50 Therefore, we have granted conditional class order relief from the requirement that scheme property of time-sharing schemes be periodically valued in 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. For more information on the conditions that apply to this relief, see [CO 00/2460].

Forfeited interests

- RG 160.51 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 Class Order [CO 03/104] *Relief facilitating the acquisition and sale of forfeited interests in registered time-sharing schemes*.
- RG 160.52 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 160.53 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.

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

Rental pools

- RG 160.54 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 160.55 We have given relief in Class Order [CO 02/237] *Time-sharing schemes—operation of rental pool* for rentals pools:
- (a) that form part of a new time-sharing scheme; and
 - (b) formed after interests in a time-sharing scheme have been issued.
- RG 160.56 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 160.57 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.

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

RG 160.58 [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 160.59 Where the rental pool forms part of a new time-sharing scheme to be offered to retail clients we expect the relevant PDS 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.

C Managed investment and licensing provisions relief

Key points

We will give relief from the managed investment and licensing provisions in Ch 5C and Pt 7.6 of the Corporations Act for certain types of time-sharing schemes if it is requested.

This section explains our policy on giving specific relief for:

- fixed term prescribed interest schemes (see RG 160.63–RG 160.71);
- time-sharing schemes exempt under state law (see RG 160.72–RG 160.74);
- exempt title-based time-sharing schemes (see RG 160.75–RG 160.79); and
- member-controlled clubs (see RG 160.80–RG 160.85).

Relief from the managed investment provisions

Our approach to relief

RG 160.60 It may not be appropriate for the managed investment provisions to apply for certain closed or member-run time-sharing schemes.

RG 160.61 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;
- (b) time-sharing schemes exempt under state law;
- (c) exempt title-based time-sharing schemes; and
- (d) member-controlled clubs.

RG 160.62 Generally, we will give substantive relief from the licensing provisions for the resale of time-sharing interests if the circumstances are the same as when we would give relief from the managed investment provisions under RG 160.61(b)–RG 160.61(d): see RG 160.86–RG 160.91. 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.

Fixed-term schemes

RG 160.63 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* (PS 66).

RG 160.64 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 160.66); and
- (b) give a letter from the approved trustee of the scheme in support of the application (see RG 160.68).

RG 160.65 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 criteria listed in RG 160.66–RG 160.68, indicating that they have accepted their responsibilities to ensure that the property is properly managed.

RG 160.66 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 160.67 After notification, if either 50 holders or 10% of members by value object to the extension we will generally not extend the transition period.

RG 160.68 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 160.69 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 160.70 We think a time-sharing scheme will be closed if there are no new issues of interests after 31 May 2000.

RG 160.71 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 160.72 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 160.73 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 160.74 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 (IDR) arrangements that meet s912A(2)(a) of the Corporations Act.

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

Exempt title-based schemes

RG 160.75 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 160.76 We consider it 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 160.77 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 IDR arrangements that meet s912A(2)(a) of the Corporations Act.

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

RG 160.78 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 160.79 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 160.80 A member-controlled club is one where the members of the time-sharing scheme control the management of the scheme's property.

RG 160.81 We consider 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 Div 3 of Pt 7.9 of the Corporations Act.

- RG 160.82 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 Pro Forma 206 *Time-sharing schemes—Chapter 5C relief* (PF 206).
- RG 160.83 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 PDS 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) Pt 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 (without triggering any additional payment) in at least one 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;
- (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) not less than seven calendar days, if the operator is a member of the ATHOC and has not been notified in writing by ASIC that it cannot continue to give a shorter cooling-off period; or
 - (ii) not less than 14 days in all other cases;
 - (j) the club complies with s1017D of the Corporations Act as if the time-sharing scheme was registered; and
 - (k) the club has IDR arrangements that meet s912A(2)(a) of the Corporations Act.

Note: For more information on the shorter PDS regime as it applies to time-sharing schemes, see RG 160.43.

RG 160.84 We will give more limited relief when all the requirements other than those in RG 160.83(f) are satisfied. Under this relief, the responsible entity will be excluded from managing the property to which the time-sharing scheme relates.

RG 160.85 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.

Relief from licensing provisions

Our approach to relief

RG 160.86 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) an exempt title-based time-sharing scheme; or
- (c) a member-controlled club.

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

RG 160.87 We will impose conditions on the resale relief that will:

- (a) ensure resales 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 money; 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.

Resale of time-sharing interests

RG 160.88 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 resold in one 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) not less than seven days, if the operator is a member of ATHOC and has not been notified in writing by ASIC that it cannot continue to give a shorter cooling-off period; or
 - (ii) not less than 14 days in all other cases;

- (f) the cooling-off period begins 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;
- (g) all money from a consumer (including administration and other fees) is returned if the consumer decides not to proceed with the purchase of the interest in the time-sharing scheme;
- (h) 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; and
- (i) the operator of the time-sharing scheme belongs to an ASIC-approved external dispute resolution (EDR) scheme.

RG 160.89 The relief only applies when resales are a small proportion of the activity associated with the time-sharing scheme.

RG 160.90 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 160.91 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.

D Non-accommodation based time-sharing schemes

Key points

Non-accommodation based time-sharing schemes may be entitled to relief from the managed investment, licensing and product disclosure provisions and the hawking prohibitions of the Corporations Act, if special circumstances exist to justify the relief.

This section explains our approach to giving relief to non-accommodation based time-sharing schemes.

Our approach to relief

RG 160.92 Some time-sharing schemes that do not involve accommodation may have special features that are a basis for relief. Relief may be 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 160.93 We will not generally give relief from the hawking prohibitions because we consider they are important mechanisms to prevent pressure selling of interests in time-sharing schemes.

RG 160.94 Also, we will not generally give relief from the product 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.

Note: For more information on how the shorter PDS regime applies to time-sharing schemes, see RG 160.43.

RG 160.95 However, if the application for relief demonstrates there are special circumstances that justify this relief being given, we may grant relief from the product disclosure provisions or hawking prohibitions.

RG 160.96 We may impose conditions on any relief we give for a time-sharing scheme that does not involve accommodation.

What we consider when deciding to grant relief

- RG 160.97 Generally, we will not give relief from the requirements to give a PDS 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 160.98 When considering these applications for relief we will take into account factors such as:
- (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 (e.g. 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 160.99 The list of factors in RG 160.98 will guide you when you apply for relief for a non-accommodation based time-sharing scheme.
- RG 160.100 We will consider applications for relief case-by-case for non-accommodation based time-sharing schemes under the factors in RG 160.98 and:
- (a) our general exemption and modification powers in Ch 5C of the Corporations Act;
 - (b) our general exemption and modification powers in Ch 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).

E How to apply for relief

Key points

Applications for relief from the managed investment, licensing, and product disclosure provisions or the hawking prohibitions should be in writing and address the issues in this guide.

- RG 160.101 Our general policy on applying for relief is set out in RG 51.
- RG 160.102 We will only be able to determine applications for relief that are complete and in sufficient detail.
- RG 160.103 All applications for relief should be made in writing, and should be appropriately signed. You must make sure the application:
- (a) addresses all the issues in this regulatory guide;
 - (b) complies with the requirements in RG 51; and
 - (c) is accompanied by the prescribed fee.
- RG 160.104 The application should be emailed to applications@asic.gov.au and a paper copy with a cheque for the fee attached should be mailed to:
- Manager—Applications
Australian Securities & Investments Commission
GPO Box 9827 in your capital city
- RG 160.105 You can also contact ASIC on 1300 300 630 for information and assistance.

Key terms

Term	Meaning in this document
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
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carried out a financial services business to provide financial services Note: this is a definition contained in s761A of the Corporations Act.
AFS licensee	A person who holds an Australian financial services licence issued under s913B of the Corporations Act Note: This is a definition contained in s761A of the Corporations Act
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ASIC-approved EDR scheme	An external dispute resolution scheme approved by ASIC under RG 139
ATHOC	Australian Timeshare and Holiday Ownership Council
base level financial requirements	Those applicable requirements set out in RG 166
[CO 02/237] (for example)	An ASIC class order (in this example, numbered 02/237)
conduct provisions	The provisions set out in Pt 7.7 and Pt 7.8, excluding Div 8 of Pt 7.8, of the Corporations Act
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
deal	As defined under s766C of the Corporations Act
financial product	A financial product as defined under s763A.
hawking prohibitions	The prohibitions set out in Div 8 of Pt 7.8 of the Corporations Act and the Corporations Regulations
IDR arrangements	Internal dispute resolution procedures/processes that meet the requirements and approved standards of ASIC under RG 165

Term	Meaning in this document
licensing provisions	The provisions set out in Pt 7.6 of the Corporations Act and the Corporations Regulations
managed investment provisions	The provisions set out in Ch 5C of the Corporations Act and the Corporations 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 provisions	The provisions set out in Part 7.9 of the Corporations Act and the Corporations Regulations
Product Disclosure Statement (PDS)	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 Note: See s761A for the exact definition.
responsible entity	Operator of a registered time-sharing scheme
retail client	A client as defined in s761G of the Corporations Act and Ch 7, Pt 7.1, Div 2 of the Corporations Regulations
shorter PDS	A PDS that is required to comply with the shorter PDS regime
shorter PDS regime	The requirements set out in Div 3A of Pt. 7.9 of the Corporations Act as modified by Subdivs 4.2 to 4.2C and Sch B, C, D, and E of the Corporations Regulations, which prescribe the content and length of the PDS for margin loans, superannuation products and simple managed investment schemes
supplementary PDS	A document that must be given to a retail client in relation to the offer or issue of a financial product under Div 2 of Pt 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: <ul style="list-style-type: none"> • participants in which are, of may become, entitled to use, occupy or possess, for two 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 • that is to operate for a period of not less than three years

Related information

Headnotes

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

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*

Regulatory guides

RG 51 *Applications for relief*

RG 136 *Managed investments: Discretionary powers and closely related schemes*

RG 166 *Licensing: Financial requirements*

RG 167 *Licensing: Discretionary powers*

Legislation

Corporations Act, Ch 5C and 7, Pt 7.6–7.10, s9, 601ED, 761A, 761G, 764A, 766A, 766B, 766C, 911A, 912A, 914A, 992A, 1012A, 1012B, 1012C, 1013L, 1014A, 1017D; Corporations Regulations, Sch 10A and 10E, reg 1.0.02(1)

Old Corporations Law (now repealed)

Media and other releases

IR 06/16 ASIC consults on timeshare schemes

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