



Commonwealth of Australia



ASIC

Australian Securities &
Investments Commission

Commonwealth of Australia Gazette

No. ASIC 49A/03, Tuesday, 9 December 2003

Published by ASIC

ASIC Gazette

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RIGHTS OF REVIEW

Persons affected by certain decisions made by ASIC under the Corporations Act and the other legislation administered by ASIC may have rights of review. ASIC has published **Practice Note 57 [PN57] Notification of rights of review** and Information Sheet [INFO 1100] **ASIC decisions – your rights** to assist you to determine whether you have a right of review. You can obtain a copy of these documents from the ASIC Digest, the ASIC website at www.asic.gov.au or from the Administrative Law Co-ordinator in the ASIC office with which you have been dealing.

ISSN 1445-6060 (Online version)
ISSN 1445-6079 (CD-ROM version)

Available from www.asic.gov.au
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**Australian Securities and Investments Commission
Corporations Act 2001 — Paragraph 911A(2)(1) — Exemption**

Under paragraph 911A(2)(1) of the *Corporations Act 2001* (the "Act") the Australian Securities and Investments Commission ("ASIC") exempts each person who is a member of an eligible external dispute resolution scheme from the requirement to hold an Australian financial services licence for the provision of the following financial services:

1. financial product advice relating to a mortgage offset account;
2. arranging for another person to apply for, acquire, vary or dispose of a mortgage offset account.

Interpretation

In this instrument:

"eligible external dispute resolution scheme" means an external dispute resolution scheme that:

- (a) is approved by ASIC for the purposes of subparagraph 912A(2)(b)(i) of the Act; and
- (b) may, under its rules, deal with disputes in relation to mortgage offset accounts;

"financial product advice" has the meaning given by section 766B of the Act; and

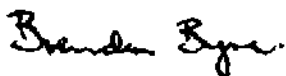
"mortgage offset account" means a deposit product (within the meaning of section 761A of the Act) that is a facility in relation to which either of the following paragraphs is satisfied:

- (a) the amount standing to the credit of the facility from time to time is notionally offset against the balance of a loan entered into by the depositor with the provider of the facility, and interest on the loan is calculated by reference to the notionally-reduced loan balance; or
- (b) interest payable on a loan entered into by the depositor with the provider of the facility is periodically reduced by an amount that would otherwise accrue as interest or other earnings on the amount standing to the credit of the facility from time to time.

Commencement

This instrument commences on gazettal.

Dated this 8th day of December 2003



Signed by Brendan Byrne
as a delegate of the Australian Securities and Investments Commission



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Australian Securities and Investments Commission**Corporations Act 2001 — Paragraphs 601QA(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a)
— Exemption**

1. Under paragraph 601QA(1)(a) of the Corporations Act 2001 (“the Act”), the Australian Securities and Investments Commission (“ASIC”) hereby exempts the persons referred to in Schedule A from section 601ED of the Act in the case referred to in Schedule B on the conditions set out in Schedule C.
2. Under paragraphs 911A(2)(l), 992B(1)(a) and 1020F(1)(a) of the Act, ASIC hereby exempts the persons referred to in Schedule A in the case referred to in Schedule B on the conditions set out in Schedule C from:
 - (a) sections 992A, 992AA and 1017F of the Act; and
 - (b) the requirement to hold an Australian financial services licence for the provision of financial services by that person in relation to dealing in interests in a managed investment scheme of the kind and offered on the basis referred to in Schedule B.
3. Under paragraph 992B(1)(a) of the Act, ASIC hereby exempts a person (other than a person referred to in Schedule A) in the case of an offer to sell an interest in a managed investment scheme referred to in Schedule B and offered on a basis that appears to comply with Schedule C, from sections 992A and 992AA of the Act.

SCHEDULE A — WHO IS EXEMPT

Any person who operates the scheme specified in Schedule B (scheme) including Pindan Realty Pty Ltd ABN 009 372 847 and any other person offering an interest in that scheme for issue, other than a person who is aware that any disclosure statement required to be given to a person under this instrument or any Product Disclosure Statement required to be given to a person under the Act in relation to the scheme, was not given or was given but did not comply with this instrument or the Act as the case may be.

SCHEDULE B — SCHEMES EXEMPTED

Operating a managed investment scheme which involves an owner (investor) of real property (strata unit), in the investor's discretion, making their strata unit available for use by a person (operator) as part of a serviced apartment, hotel, motel or resort complex located at Lot 190 Little Colin Street, Busselton, Western Australia developed in accordance with an approval of a local government organisation that was given to ASIC on 8 August 2003 and in relation to which on 1 March 2000 there was no person who had bought or agreed to buy a strata unit and who, before agreeing to buy, had been offered an interest in the scheme, where:

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- (a) the sale of the strata unit is not and was not conditional on participation in the serviced strata scheme;
- (b) each investor and the operator may withdraw from participation in the scheme on no more than 90 days notice and an investor that withdraws will not be bound after that notice expires to allow use of their strata unit except for occupation of the strata unit:
 - (i) by a person other than the operator or an associate of the operator; and
 - (ii) under an agreement that the operator made with that person before the notice of withdrawal was given;
- (c) each investor may, if the investor withdraws from participation in the scheme, appoint another person to manage their strata unit;
- (d) the operator is licensed in relation to the conduct of the letting services under the law of a State or Territory or is an Australian financial services licensee;
- (e) no payment is liable to be made by an investor to participate in the scheme other than:
 - (i) payment of money to buy the strata unit; and
 - (ii) one or more payments of the investor's reasonable proportion of the operator's fees and expenses with respect to the management of the scheme where each such payment:
 - (A) relates to a period of no more than 3 months; and
 - (B) is reasonably commensurate with the work done or to be done, or the expenses incurred or likely to be incurred (as the case may be), by the operator during that period;
- (f) there is no obligation on any person to ensure that other owners of strata units agree to participate in the scheme; and
- (g) the serviced apartment, hotel, motel or resort complex is operated in accordance with a written agreement entered into or to be entered into between the operator and each investor which agreement includes provisions as specified in Schedule E.

SCHEDULE C — CONDITIONS ON OPERATORS AND PROMOTERS

1. The operator must ensure that any part of the scheme property held in cash or on deposit with an Australian ADI or another financial institution must be held on trust for the members in a trust account and subject to audit as to whether the moneys have been dealt

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with in accordance with the terms of the trust by a registered company auditor at least annually;

2. Each promoter that is involved in making an offer of interests in the scheme for issue must:
 - (a) not engage in any misleading or deceptive conduct or conduct that is likely to mislead or deceive in connection with those offers;
 - (b) during the transition period (within the meaning of subsection 1438(3) of the Act) ensure that a disclosure statement complying with Schedule D is given to each person to whom an offer is made at or before the making of the offer; and
 - (c) during the transition period (within the meaning of subsection 1438(3) of the Act) ensure that the disclosure statement is signed and dated by the operator or, if the operator is not knowingly concerned in the offer, by a promoter; and
3. The operator must comply with the provisions specified in Schedule E that are included in the agreement referred to in paragraph (g) of Schedule B.

SCHEDULE D — THE DISCLOSURE STATEMENT

1. The disclosure statement must:
 - (a) describe the main features of the interests in the scheme;
 - (b) set out the main terms and conditions of the offer; and
 - (c) provide answers to the questions set out in paragraph 2 of this Schedule (the questions need not be set out, and the answers can be provided in any order or format),

sufficiently to enable a typical investor in those interests to make an informed decision whether to become a member of the scheme, having regard to every matter which is material to such a decision that is known to any person who authorised or caused the issue of the disclosure statement.

2. The questions are:
 - (a) What is being offered?
 - (i) How are the investor's property rights affected by holding an interest in the scheme?
 - (ii) What key rights will investors have in relation to the use of their strata unit by the operator?

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- (iii) What sort of serviced apartment, hotel, motel or resort complex is being operated under the scheme? How will it be operated?
 - (iv) What are the key terms of any lease, licence or rights that investors are to confer on the operator in relation to the operation of the scheme?
 - (v) Does the operator own or have rights in relation to any property that may adversely affect:
 - (A) how the scheme would operate if the operator were changed; or
 - (B) the amount investors are likely to receive for use of their strata unit if the property ceases to be available (for whatever reason),and, if so, what are those rights? How could the adverse effect happen?
- (b) What are the risks and returns of the investment?
- (i) How, in general terms, will the operation of the serviced apartment, hotel, motel or resort complex generate returns for investors?
 - (ii) When and how are these returns to be calculated and made available to investors?
 - (iii) Are investors in the scheme guaranteed or promised that they will receive a particular rate of return from the scheme? If so:
 - (A) what are the conditions for receiving the benefits of this guarantee or promise;
 - (B) what (if any) are the circumstances in which the person providing the guarantee or promise may be unable to honour it;
 - (C) what is the financial position of the person giving the guarantee or promise; and
 - (D) on what basis do investors receive returns once the guarantee or promise expires?
 - (iv) If no particular rate of return is guaranteed or promised:
 - (A) is the operator aiming to achieve a particular return;
 - (B) can investors expect any particular return; or

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- (C) are returns from the scheme uncertain?
- (v) If returns from the scheme may vary from what is aimed for or expected, or are otherwise uncertain, what are the main factors which will affect the level of return? If occupancy rates will affect the returns what are the main factors that will affect occupancy rates?
- (vi) Do investors have potential liability to pay moneys in relation to the scheme or their ownership of a strata unit in any circumstances? If so, what are these liabilities and what main factors will affect the amount of these liabilities? For example, how will any repairs, refurbishment or replacement of any part of the serviced apartment, hotel, motel or resort complex and its furniture and fittings be paid for?
- (vii) Is there a suggested minimum period of time that an investor's investment should remain in the scheme? If so, why is that period of time suggested? What, if any, are the kinds of qualifications on that suggestion?
- (c) What are the fees, charges, expenses and taxes associated with the scheme?
- (i) What fees, charges, expenses or taxes, if any, may be payable by an investor if they join the scheme?
- (ii) What fees, charges, expenses or taxes, if any, may be payable by an investor if they withdraw from the scheme?
- (iii) What other fees, charges, expenses or taxes may be deducted from the assets or income of the scheme or otherwise borne by investors?
- (iv) What general kinds of tax are likely to be payable on an investor's returns on investment in the scheme?
- (d) Who is the operator?
- (i) If the operator signs the disclosure statement, who is it and what are its credentials in operating hotels, motels, resorts or serviced apartment complexes (including details of its principal activities and relevant experience)?
- (ii) If the operator does not sign the disclosure statement, how, and on what basis, will the operator be selected to undertake the operation of the scheme?
- (iii) If the operator signs the disclosure statement and the operator is to engage a person to operate the complex on its behalf, what credentials will that person have to operate the hotel, motel, resort or serviced apartment complex?

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- (iv) What are the custodial arrangements for holding the money of the scheme including money held for distribution to members and to meet expenses of the scheme?
- (e) When can investments be withdrawn and transferred?
 - (i) When and how can an investor withdraw from the scheme?
 - (ii) Can the interest in the scheme be transferred and, if so, in what circumstances? What legal requirements apply?
- (f) What information can be obtained?
 - (i) How can the entity signing the disclosure statement be contacted?
 - (ii) Is there any particular information available to a prospective or existing investor on request made to that entity? If so, how can that information be obtained?
 - (iii) When and how is the operator to report to an investor in the scheme on the operations of the scheme (including the scheme's performance)?
- 3. The disclosure statement must also include a prominent statement to the effect that a person should consider whether to consult:
 - (a) an investment adviser who is either an Australian financial services licensee or an authorised representative of an Australian financial services licensee;
 - (b) a taxation adviser; and
 - (c) a lawyer,

before making a decision to become a member of the scheme and if the disclosure statement is given to a person that does not own and has not agreed to buy a strata unit to which the scheme relates, also before signing any contract to buy a strata unit on the basis that the person will become a member.

SCHEDULE E — PROCEDURES FOR TRANSFERRING MANAGEMENT RIGHTS

- 1. *Transfer of management rights*
 - (a) If a majority of scheme members advise the operator in writing that they wish to terminate the operator's engagement, the operator must within 9 months transfer the management rights to a person that is chosen by the operator that has not been involved in the operation (including promotion) of the scheme and is not controlled by a person that has been involved in the operation (including promotion) of the scheme.

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- (b) If an operator fails to complete that transfer within the 9 month period, the operator must cause the transfer of the management rights to a replacement operator named in a written notice given by a majority of scheme members, at a price specified in the notice.
- (c) A transfer referred to in paragraphs (a) or (b) must be done as soon as practicable, but if there is a body corporate for the real property to which the scheme relates, there must be a reasonable time for members of the body corporate to consider whether to make a decision referred to in paragraph 2(b) unless the body corporate has consented to the transfer.
2. *Consent of body corporate to new care-taking arrangements*
- (a) If an operator receives a notice under paragraph 1(b) of this Schedule, the operator must advise all body corporate members of the name of the person to whom the transfer is to be made.
- (b) Unless the body corporate has consented to the transfer, an operator does not have to transfer the management rights to the person named in the notice described in paragraph 1(b) of this Schedule if a majority of body corporate members state in writing to the operator that the person should not be engaged by the body corporate to perform care-taking functions.
- (c) If a majority of body corporate members make a decision referred to in paragraph 2(b) of this Schedule, a majority of scheme members may then at any time name a replacement operator by a written notice, to whom the operator must transfer the management rights at a price specified in the notice and the notice will be taken to be given in accordance with paragraph 1(b) of this Schedule.
- (d) This paragraph 2 does not apply if the body corporate or a majority of body corporate members agree in writing to the transfer to the person named in a notice under paragraph 1(b) or 2(c) of this Schedule before that notice is given to the operator.
3. *Price payable on transfer*

The price scheme members specify in a notice under paragraph 1(b) of this Schedule must be one of the following:

- (a) the average of two valuations of the management rights by independent qualified valuers nominated by the Australian Property Institute (or another relevant independent professional body approved by ASIC); or
- (b) the highest bona fide bid for the management rights (excluding a bid by the operator or its associates) at an auction of which at least 60 days' notice had been given; or

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- (c) the highest bona fide amount tendered (excluding any tender by the operator or its associates) for the management rights following reasonable efforts to market the property for at least 60 days.

4. *Voting*

- (a) In determining if there is a majority of scheme members or body corporate members, the operator and its associates and any person nominated as a replacement operator and associates of that person must not be counted.
- (b) For scheme members, a majority is based on their entitlement to vote at body corporate meetings if there is a body corporate for the property to which the scheme relates, and otherwise each member shall have one vote.
- (c) For body corporate members, a majority is based on their entitlement to vote at body corporate meetings.
- (d) A scheme member or a body corporate member makes a decision by signing a document that sets out the decision.

5. *Costs*

- (a) Any member may arrange a valuation or auction of, or may market, the management rights before or after the expiration of the 9 month period referred to in paragraph 1(a) of the Schedule for the purposes of determining a price to be specified in a notice under paragraph 1(b) of this Schedule.
- (b) If a member incurs any reasonable valuation, auction or marketing costs under paragraph 5(a) of this Schedule that member is entitled to be reimbursed out of the price payable by any person nominated by the members as transferee of the management rights when the price is paid to the operator.

6. *Assistance*

The operator must give reasonable assistance to enable the transferee to operate the resort, hotel, motel or serviced apartment complex including making available information concerning any prospective bookings.

7. *Definitions*

In this Schedule:

“scheme members” means investors in the scheme excluding the operator and its associates;

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“management rights” means all real or personal property (including contractual rights) held by the operator or any of its associates that facilitates the operation of the scheme; and

“transfer” in relation to management rights means to assign or transfer the management rights or to cause another person to become the holder of those rights or rights substantially the same as those rights.

Interpretation

In this instrument:

1. “financial services licensee” means:
 - (a) a financial services licensee within the meaning of the Act; and
 - (b) a person who, on 11 March 2002, was the holder of a dealers licence within the meaning of the old Corporations Act (as defined in subsection 1410(1) of the Act), until the earlier of:
 - (i) if ASIC revokes the person's dealers licence — the date of that revocation; or
 - (ii) 11 March 2004; and
2. “offer” is to be interpreted in accordance with subsection 1010C(2) of the Act.

Dated this 18th day of September 2003

Signed by

Peter Knight
as a delegate of the Australian Securities and Investments Commission