



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 74

Review of Policy Statement 160: Time-sharing schemes

May 2006

What this paper is about

1. This consultation paper sets out our proposed refinement of Summary Policy Statement 160 Time-sharing schemes (PS 160) on regulating time-sharing schemes. The consultation paper discusses our proposals to:

(a) require that all time-sharing operators that have or are seeking relief under pro forma 205, 206 or 207 be members of an ASIC approved external dispute resolution scheme;

(b) require that all purchasers of time-sharing interests be given 14 calendar days to exercise their cooling-off rights;

(c) grant licensing relief for time-sharing schemes that have or are seeking relief under pro forma 206 or 207 in relation to the resale of time-sharing interests.

2. Our policy on regulating time-sharing schemes is currently set out in PS 160. Our proposed refinements to PS 160 has regard to evidence presented before the Parliamentary Joint Committee on Corporations and Financial Services for its report "*Timeshare: the price of leisure*" released in September 2005 (PJC Report).

3. We still intend to apply our existing policy in PS 160 pending finalisation of this consultation.

4. Our policy in PS 160 does not yet take into account the financial services reform amendments to the *Corporations Act 2001* (Corporations Act) because it was published before the amendments were made. Following our policy proposal process, we propose to also update PS 160 more generally to take into account the financial services reform amendments to the Corporations Act.

Your feedback is invited

5. We invite you to comment on our proposals and the issues for consideration in this consultation paper. We would also like to receive any qualitative or quantitative information to support your comments or arguments. All submissions will be treated as public documents unless you specifically request that we treat the whole or part of your submission as confidential. Following the consultation period, we aim to publish our final policy by the end of 2006.

Your comments

Submissions are due by 17 **July 2006** and should be sent to:

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Section 1: What is our current policy?

Industry supervisory bodies

1.1 Under section 601ED of the Corporations Act, time-sharing schemes must be registered as managed investment schemes.

1.2 Our existing policy in PS 160 currently provides that we may grant an exemption from the managed investments provisions to the following forms of time-sharing schemes on certain conditions:

(a) schemes not required under state or territory law to comply with the previous prescribed interest regime – see PS 160.2 and pro forma 205

(b) title based schemes substantially sold out prior to 1 June 2000 – see PS 160.3 and pro forma 207

(c) schemes where the responsible entity relinquishes control to a member-controlled club – see PS 160.12 and pro forma 206

1.3 We grant conditional relief under pro forma 205, pro forma 206 and pro forma 207 on a case-by-case basis.

1.4 One of the conditions we have imposed on relief granted under pro forma 205, pro forma 206 and pro forma 207 is a requirement for time-sharing schemes to belong to an industry supervisory body or external dispute resolution scheme.

1.5 Since the release of PS 160, we have allowed Australian Timeshare and Holiday Ownership Council members to rely on their membership instead of obtaining industry supervisory body membership as a condition of being exempt from the managed investments provisions under pro forma 205, pro forma 206 and pro forma 207. This was an interim alternative to:

(a) becoming a member of an external dispute resolution scheme such as the Financial Industry Complaints Service Ltd;

(b) becoming a member of an industry supervisory body. It would also allow enough time for any interested applicant to attempt to satisfy the criteria for approval as an industry supervisory body.

Cooling-off rights

1.6 The cooling-off provisions of the Corporations Act generally have no application to time-sharing operators or time-sharing promoters.

1.7 We think that cooling-off rights are an important consumer protection mechanism, so we currently require time-sharing operators and time-sharing promoters to allow purchasers of time-sharing interests to exercise cooling-off rights. For members of the Australian Timeshare and Holiday Ownership Council or an industry supervisory body, the cooling-off period following the issue or sale of a time-sharing interest is 5 business days, but for non-members, the cooling-off period is 10 business days.

1.8 We impose this requirement on time-sharing operators and time-sharing promoters either as a licence condition on their AFS Licence or as a condition of relief under pro forma 206 and pro forma 207.

Time-sharing resales

1.9 Under section 911A of the Corporations Act, time-sharing operators and time-sharing promoters are required to hold an AFS Licence to issue or sell interests in a time-sharing schemes or obtain a licensing exemption from us.

Section 2: Our proposals

Industry supervisory bodies

2.1 This section only concerns those types of time-sharing schemes that have been granted relief or are seeking relief under pro forma 205, 206 or 207.

2.2 We propose to limit the ability for time-sharing companies to choose who can resolve complaints from owners of time-sharing interests. Instead we would require they become members of an external dispute resolution scheme such as Financial Industry Complaints Service Ltd.

2.3 However, we do propose to take into account the compliance arrangements of an applicant in considering an application for relief under pro forma 206 (applications for relief under pro forma 205 and 207 being unlikely). Membership of the applicant with industry bodies may be relevant, specifically in assessing whether the applicant has policies, procedures and systems in place to meet the requirements of relief under pro forma 206.

Your comments

- Q1** Do you agree with this approach? If not, please give details.
- Q2** Does compliance with our proposed policy any cause practical difficulties? If so, please quantify any costs involved.
- Q3** What are the benefits in considering membership of an industry body as a relevant factor in deciding whether to grant relief?

Cooling-off rights

2.4 We propose to require that all time-sharing operators give purchasers of time-sharing interests 14 calendar days to exercise their cooling-off rights.

Your comments

- Q4** Do you agree with this approach? If not, please give details.

- Q5** Does compliance with our proposed policy cause any practical difficulties? If so, please quantify any costs involved.
- Q6** Should time-sharing companies have the benefit of a transition period? If so, what length of time is required and why?

Time-sharing resales

2.5 This section only concerns those types of time-sharing schemes that have been granted relief or are seeking relief under pro forma 206 or 207. Policy Statement 167: *Licensing: discretionary powers and transition* sets out ASIC's policy in relation to when time-sharing schemes that have or are seeking relief under pro forma 205 should be granted licensing relief.

2.6 We propose to grant conditional licensing relief on a case-by-case basis for the resale of time-sharing interests where the time-sharing scheme has, or is seeking, relief under pro forma 206 or 207.

2.7 We propose to impose the following conditions on any relief granted under pro forma 206 or 207 on condition that:

- (a) no more than 5% of the time-sharing interests are re-sold in one calendar year;
- (b) purchasers of re-sold time-sharing interests are given cooling-off rights by the vendor;
- (c) purchasers of re-sold time-sharing interests are told about their rights to a cooling-off period in a separate statement in a form approved by ASIC and are given a copy of this statement to keep;
- (d) records of:
 - (i) all persons to whom cooling-off statements have been given; and
 - (ii) the date on which each statement was given and the purchaser's signed acknowledgment of receipt,
 are kept;
- (e) the cooling-off period is 14 calendar days and begins when all required documents (including the cooling-off statement) are given to the purchaser and they have acknowledged in writing that they have received them;
- (f) all monies provided by a prospective purchaser are returned if the prospective purchaser decides not to proceed with the purchase of time-sharing interests, including any administration or other fees;

- (g) all monies received in relation to the re-sold time-sharing interests:
 - (i) are paid into an account that is held with an Australian ADI;
 - (ii) are paid into an account that only has money paid into it that is money received from purchasers of re-sold time-sharing interests and interest on that amount;
 - (iii) is paid into the account on the day it is received by the time-sharing company on the next business day; and
 - (iv) are held in trust by the person selling the time-sharing interest for the benefit of the person who paid the money until any cooling off period has expired.

Your comments

- Q3** Do you agree with this approach? If not, please give details.
- Q4** Should our proposed relief be extended further? If yes, please give reasons?
- Q5** Does compliance with our proposed policy cause any practical difficulties? If so, please quantify any costs involved.
- Q6** Does this approach raise any investor protection issues? Please provide reasons.

Section 3: Why are we proposing the changes to our policy?

Industry supervisory bodies

3.1 We have not approved an industry supervisory body (ISB) since PS 160 was published in April 2000. We have considered some applications for approval as an industry supervisory body, but did not grant approval on the basis that our criteria for approval was not satisfied. For this reason, we think it is appropriate to remove the ISB concept from our policy and require timeshare operators to become members of an external dispute resolution scheme.

3.2 However, we do think that membership of a relevant industry body can be important. ASIC may consider whether schemes have adequate compliance arrangements when deciding whether to grant relief. To the extent that that membership of an industry body results in adequate disciplinary and enforcement arrangements it may be a relevant, but not determinative factor, in considering whether we grant relief under pro forma 206.

Cooling-off rights

3.3 We think that the current cooling-off period for Australian Timeshare and Holiday Ownership Council or industry supervisory body members of 5 business days may not adequately work to protect consumers. We are concerned that 5 business days may not be long enough for consumers to obtain advice and consider their options properly. We think that 14 calendar days provides enough time for consumers to really consider their purchase and obtain advice as to their rights if they choose. It is also consistent with s1019B of the Corporations Act.

Time-sharing resales

3.4 The resale of time-sharing interests generally occurs as a result of members not wishing to be part of the time-sharing scheme or forfeiting their time-sharing interests. Our experience is that there are only small numbers of time-sharing interests being resold.

3.5 We consider that meeting licensing, conduct and disclosure requirements of the Corporations Act could impose considerable initial and ongoing costs on time-sharing companies reselling very small

numbers of time-sharing interests. We think that these costs may not be justified if only small numbers of time-sharing interests are resold.

3.6 We also think that any risks to consumers could be mitigated by the imposition of conditions.

3.7 We do not propose any relief for timeshare schemes that are registered managed investment schemes because they should have license authorisations to resell timeshare interests in any event.

Key terms

In this consultation paper, terms have the following meaning:

Corporations Act the *Corporations Act 2001* including regulations made for the purposes of the Act

PJC Report *Timeshare: the Price of Leisure* the Parliamentary Joint Committee on Corporations and Financial Services September 2005

Pro forma 205 ASIC Pro Forma 205 Time-sharing schemes formerly exempt under State laws

Pro forma 206 ASIC Pro Forma 206 Time-sharing schemes – Chapter 5C relief

Pro forma 207 ASIC Pro Forma 207 Title-based time-sharing schemes

PS 160 ASIC Summary Policy Statement 160 Time-sharing schemes

PS 167 Policy Statement 167: Licensing: discretionary powers and transition