



**ASIC**

Australian Securities & Investments Commission

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**[PF 206]**

**Pro Forma 206**

**Time-sharing schemes –  
Chapter 5C relief**

*Issued: 20 March 2001*

**Pro Forma 206** [PF 206] is used to give relief from certain managed investment provisions for certain time-sharing schemes involving member controlled clubs. See Policy Statement 160 at [RG 160.12].

Australian Securities and Investments Commission

*Corporations Law – paragraph 601QA(1) – Exemption and Declaration*

Under paragraph 601QA(1)(a) of the *Corporations Law* (“the Law”) the Australian Securities and Investments Commission (“ASIC”) hereby exempts the public company and each of the other persons referred to in Schedule A in the case specified in Schedule B from section 601ED of the Law on the conditions specified in Schedule C and for so long as they are met.

#### **Schedule A**

[*Insert name and ACN of Club*] (“the Club”) and any person engaged by the Club as manager in relation to the time-sharing scheme known as [*insert name of time-sharing scheme*] (“the Scheme”) or the property that members of the Scheme have a right to use, occupy or possess as part of the Scheme (“Property”) and any person acting as an employee or agent of the Club or that manager.

#### **Schedule B**

The operation of the Scheme, where:

- (1) at least 90% of the votes that may be cast on a resolution by members of the Club are held by members that are not, and are not associated in relation to the Scheme with, any operator, manager, promoter or developer in relation to the Scheme, other than where held by members solely in their capacity as an associate of the Club;
- (2) at least 90% by value or number of all the interests in the Scheme that can be issued have been issued and are held by persons who are not, and are not associated in relation to the Scheme with, any operator, manager, promoter or developer in relation to the Scheme, other than where held by members solely in their capacity as an associate of the Club;
- (3) the Club has control over management of the Property to the exclusion of any responsible entity of the Scheme;
- (4) no promoter of the Scheme nor any developer in relation to the Property has failed to perform any contractual obligation to any member in relation to the Scheme that is likely adversely to affect the member’s interests;
- (5) no responsible entity or former responsible entity of the Scheme operates any scheme under which there is pooling of income received for the use of rights to occupy any part of the Property; and
- (6) {*insert if the Scheme is registered*} all decisions in relation to the management of the Property may be made only by the Club or the Club has a right of veto in relation to such decisions.

{or}

- (6) *{insert if the Scheme is not registered}* all decisions in relation to the operation of the Scheme that materially affect the interests of members may be made only by the Club or the Club has a right of veto in relation to such decisions.

### Schedule C

- (1) In relation to each building that was to be built under the terms of any prospectus in relation to the Scheme the Club:
- (a) ensures that the building is substantially completed to the extent that members will not be materially affected if no further construction occurs; or
  - (b) gives ASIC a notice in writing stating that the building will not be substantially completed and that the members of the Scheme will not be materially affected by its not being substantially completed;
- (2) Where any offers of interests in the Scheme for issue or sale are made by the Club or by any other operator, manager, promoter or developer in relation to the Scheme, and the Scheme is not registered, the Club ensures that:
- (a) Chapter 6D of the Law is complied with as far as practicable;
  - (b) the offeror holds a securities dealers licence that contains conditions relating to sales of interests in time-sharing schemes; and
  - (c) the offeror complies with the conditions of the licence, as if the Scheme were a registered scheme;
- (3) The Club must ensure that either:
- (a) the Property is held on trust for the members; or
  - (b) members hold title to the Property, and all members:
    - (i) have received their share or membership certificates in the Club; and
    - (ii) fall into one or more of the following categories:
      - (A) they have received a certificate of title showing the member as holding title in a portion of the Property in accordance with their entitlement (and where there is no certificate of title issued by the relevant titles registry, a copy of a registration confirmation statement or other evidence of title issued by the relevant titles registry); or
      - (B) they have received a copy of the certificate of title certified as a true copy by a Justice of the Peace or a

lawyer, where the Club has acknowledged that it is holding such a certificate in safe custody to be dealt with in accordance with provisions in the Club's constitution that provide for the certificate to be used only to facilitate a transfer authorised by the member, or on forfeiture of the interest; or

- (c) they became members as a result of an offer made before 6 December 1999 that was consequent upon the forfeiture of an interest by a former member;
- (4) The Club must ensure that any management agreement for the Scheme or relating to the Property provides for the dismissal of the manager without any additional payment when members of the Club pass a resolution to that effect in at least one of the following cases:
- (a) more than 50% of all members vote for dismissal;
  - (b) members holding more than 50% by value of the interests vote for dismissal;
  - (c) 75% of members voting (whether in person or by proxy) vote for dismissal where at least 25% of members eligible to vote do so; or
  - (d) members holding 75% by value of the interests that are held by members voting (whether in person or by proxy) vote for dismissal where members holding at least 25% by value of the interests eligible to vote do so,

unless:

- (e) the management agreement was in force on 6 December 1999;
- (f) there has not since that date been any lawful means for the Club to terminate the agreement;
- (g) members are given at least 21 days' written notice that the Club seeks to rely on the exception contained in these paragraphs (e) to (o) and that the management agreement does not meet the usual requirements of ASIC policy concerning how a management agreement may be terminated;
- (h) the notice sent to members allows the member to requisition a vote by ticking a form accompanying the notice;
- (j) the notice contains a summary of all material information that is relevant to a member's decision whether to requisition a vote;
- (k) the notice states prominently a reply paid address to which the form requisitioning a vote may be sent;
- (l) the notice states prominently that if:
  - (i) members who together hold at least 5% of the total value of the interests; or

- (ii) at least 100 members,  
requisition a vote by giving written notice to the reply paid address within 21 days from the date that the notice may reasonably be expected to be received by them, a postal vote will be held on whether the Club should be able to rely on this exception or should be required to comply with the usual ASIC policy concerning how a management agreement may be terminated;
  - (m) a postal vote is conducted if requisitioned in accordance with the notice as soon as practicable;
  - (n) if there is a postal vote:
    - (i) a voting paper must be sent to each member which states a reply paid address to which the voting paper may be sent;
    - (ii) members must be notified in, or in a document accompanying, the voting paper that only votes received at the reply paid address within 28 days after the issue of the voting paper will be counted and that the vote will be taken as passed if supported by either a majority by value or by number of votes cast (as specified in the notice); and
    - (iii) the voting paper must be accompanied by a notice that explains that unless members vote against permitting the Club being allowed to rely upon this exception, the Club may be permitted to do so despite the management agreement not complying with the usual ASIC policy concerning how a management agreement may be terminated;
    - (iv) the notice accompanying the voting paper must contain a summary of information that is materially relevant to a member's decision whether to vote for or against the proposed resolution; and
  - (o) ASIC is notified in writing where a vote was required and, if so, whether the vote was passed;
- (5) The Club must:
- (a) be a member of an approved ISB; or
  - (b) in any period before 1 October 2002 – a member of the Australian Timeshare and Holiday Ownership Council Limited (ACN 065 260 095) (ATHOC) that has covenanted with that body, in the form of an agreement approved by ASIC, to comply with the complaints resolution procedures and other matters specified in that agreement;
- (6) The Club must not make or facilitate the making of any offer for issue or sale of an interest in the Scheme unless the issue or sale is subject to a cooling-off period of:

- (i) not less than ten business days; or
  - (ii) if the Club is a member of ATHOC or an Approved ISB – not less than five business days;
- (7) All expenditure by the Club in relation to the Scheme must be made in compliance with a budget which sets out all estimated expenditure with reasonable particularity and which has been approved by the directors of the Club prior to such expenditure being incurred;
- (8) The Club must give a copy of the budget for a financial year approved by the directors to members with the notice of the annual general meeting of the Club that occurs in that financial year, together with a statement specifying any changes that were made to any budget that had previously been given to members;
- (9) The Club must maintain or causes to be maintained an account designated as a trust account into which all gross income of the Scheme must be paid to be held on trust for members and the Club must ensure that money is disbursed from the account in accordance with its duties to members of the Scheme;
- (10) The Club must cause the trust account to be audited by a registered company auditor at least once every 6 months; and
- (11) The Club must give a copy of the auditor's report to all members within 3 months after each audit.

*{Insert the following paragraph 601QA(1)(b) declaration only if the Scheme is registered}*

[And under paragraph 601QA(1)(b) of the Law ASIC hereby declares that Chapter 5C of the Law applies to the responsible entity of the Scheme in the case specified in Schedule B as if:

- (a) immediately after subsection 601FB(1) new subsections (1A) and (1B) were inserted as follows:

“(1A) The management by a person other than the responsible entity of the property that members have a right to use, occupy or possess as part of a time-sharing scheme shall be taken not to be included in the operation of the time-sharing scheme, and need not be performed by the responsible entity, if that other person is exempt from section 601ED in its operation of the time-sharing scheme under an instrument made by ASIC pursuant to paragraph 601QA(1)(a).

(1B) The operation of a rental pool relating to a time-sharing scheme by a person other than the responsible entity shall be taken not to be included in the operation of the time-sharing scheme, and

need not be performed by the responsible entity provided always that the rental pool is a registered scheme or the rental pool is operated by a person who is exempt from section 601ED in its operation of the rental pool under an instrument made by ASIC pursuant to paragraph 601QA(1)(a).”; and

- (b) immediately after paragraph 601PA(2)(b) a new paragraph (ba) were inserted as follows

“(ba) if on deregistration the continuing operation of the scheme would be exempt from section 601ED under an instrument made by ASIC pursuant to paragraph 601QA(1)(a); or”.]

### **Interpretation**

In this instrument “Approved ISB” means a body specified by ASIC in writing to be an approved industry supervisory body for the purposes of ASIC Policy Statement 160 until the expiration of the period during which ASIC has stated that such approval remains in force or until ASIC publishes in writing that such approval is revoked.

Dated the .....

day of .....

Signed by [*insert name of delegate*]

as a delegate of the Australian Securities and Investments Commission