



**ASIC**

Australian Securities & Investments Commission

**[PF 207]**

**Pro Forma 207**

**Title-based time-sharing  
schemes**

*Issued: 20 March 2001*

**Pro Forma 207** [PF 207] is used to give relief from the managed investment provisions for certain title-based time-sharing schemes which satisfy the requirements set out in Summary Policy Statement 160 at [RG 160.3].

Australian Securities and Investments Commission

*Corporations Law* – paragraph 601QA(1)(a) – Exemption

Under paragraph 601QA(1)(a) of the Corporations Law (“the Law”) the Australian Securities and Investments Commission (“ASIC”) hereby exempts the person specified in Schedule A (“Operator”) in the case specified in Schedule B from section 601ED of the Law on the conditions set out in Schedule C and for so long as they are met.

#### **Schedule A**

*[insert name and ACN of operator]*

#### **Schedule B**

The operation of the time-sharing scheme known as {insert the name of the time-sharing scheme} (“Scheme”) where:

- (1) the management of the property to which the scheme relates is supervised by a company (“the Club”);
- (2) at least 90% of the votes that may be cast on a resolution of the 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;
- (3) at least 90% or more by value or number of all the interests in the Scheme that can be issued have since 1 June 2000 been held by persons who are not, and are not associated in relation to the Scheme with, the Operator or any other operator, manager, promoter or developer in relation to the Scheme, other than where held by persons solely in their capacity as an associate of the Club;
- (4) no promoter of the Scheme or any developer in relation to the property to which the Scheme relates 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; and
- (5) the constitution of the Club provides for the removal of a director if a resolution for their removal is supported by more than 50% of its members by value or, if the constitution so provides, by number.

#### **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 Operator:
  - (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 Operator, or by any other operator, manager, promoter or developer of the Scheme, the Operator must ensure 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 Operator must ensure that each member of the Scheme:
- (a) has received share or membership certificates in the Club (or where the constitution of the Scheme and the Law has permitted and no share or membership certificates in the Club are issued, documentation or other evidence of membership in the Club); and
  - (b) falls into one or more of the following categories:
    - (i) they have received a certificate of title (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) showing the member as holding title in a portion of the real property to which the Scheme relates in accordance with their entitlement; or
    - (ii) 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
    - (iii) they became a member as a result of the forfeiture of the interest by a former member;
- (4) The Operator must ensure that any management agreement for the Scheme or property that members have a right to use, occupy or possess as part of the Scheme 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 Operator seeks to rely on the exception contained in these paragraphs (e) to (o) despite the fact that the management agreement does not meet the requirements that would otherwise apply;
- (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 Operator 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 Operator being allowed to rely upon this exception, the Operator 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 Operator must:
- (a) be a member of an approved ISB; or
  - (b) become before 31 March 2001, and remain thereafter, a member of an external complaints resolution scheme approved by ASIC that can deal with complaints relating to its operation of time-sharing schemes; or
  - (c) both:
    - (i) become before 1 October 2002, and remain thereafter, a member of an external complaints resolution scheme approved by ASIC that can deal with complaints relating to its operation of time-sharing schemes; and
    - (ii) be at least until such time as it becomes a member of an external complaints resolution scheme as referred to in subparagraph (i), a member of Australian Timeshare and Holiday Ownership Council Limited (ACN 065 260 095) (ATHOC) and have 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 Operator 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:
- (a) not less than ten business days; or
  - (b) if the Club is a member of ATHOC or an Approved ISB – not less than five business days.

**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 [*name of delegate*]

as a delegate of the Australian Securities and Investments Commission