



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 80

Managed investment schemes: Interests not for money

December 2016

About this guide

This guide sets out our approach to the relief that we provide from the managed investment, Australian financial services (AFS) licensing, anti-hawking and product disclosure provisions of the *Corporations Act 2001* to certain managed investment schemes that:

- arise from arrangements negotiated with a person because of the particular nature of their business, profession or calling; and
- do not involve raising money.

It explains the conditional relief we have given to certain interests-not-for-money schemes, including show schemes and film investment schemes.

Note: From 27 July 2020, applications for relief should be submitted through the [ASIC Regulatory Portal](#). For more information, see [how you apply for relief](#).

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 December 2016 and is based on legislation and regulations as at the date of issue. The note on the front page was inserted on 27 July 2020.

Previous versions:

- Superseded Policy Statement 80, issued March 1994, reissued February 1996 and May 2007, rebadged as a regulatory guide 5 July 2007
- Superseded Regulatory Guide 19 *Film investment schemes*, issued April 1992, reissued April 1995, rebadged as a regulatory guide 5 July 2007, incorporated into Regulatory Guide 80 in December 2016 and withdrawn

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

Some commercial transactions where persons negotiate to receive a benefit that does not involve money may fall within the definition of a managed investment scheme in s9 of the *Corporations Act 2001* (Corporations Act).

We have given conditional relief from the managed investment, Australian financial services (AFS) licensing, anti-hawking and product disclosure provisions of the Corporations Act to certain managed investment schemes that do not involve raising money.

Purpose of this guide

- RG 80.1 Some commercial transactions where persons negotiate to receive a benefit that does not involve money as consideration (interests-not-for-money schemes) may fall within the definition of a managed investment scheme in s9 of the Corporations Act. Without relief, these interests-not-for-money schemes would be required to comply with:
- (a) the managed investment provisions in Ch 5C;
 - (b) the AFS licensing provisions in Pt 7.6;
 - (c) the anti-hawking provisions in Pt 7.8; and
 - (d) the product disclosure provisions in Pt 7.9.
- RG 80.2 This guide sets out our approach to the relief we provide from these provisions to certain managed investment schemes that:
- (a) arise from arrangements negotiated with a person because of the particular nature of their business, profession or calling; and
 - (b) do not involve raising money.
- RG 80.3 This guide explains the conditional relief we have given to interests-not-for-money schemes, including show schemes and film investment schemes.

Our approach to relief

- RG 80.4 We have provided relief under [ASIC Corporations \(Managed Investment Schemes: Interests Not For Money\) Instrument 2016/1107](#) for certain types of transactions that involve the offer or issue of interests in a managed investment scheme that does not involve raising money or where we consider it would be inappropriate for the managed investment,

AFS licensing, anti-hawking and product disclosure provisions to apply. We have granted conditional relief from these provisions to:

- (a) operators of interests-not-for-money schemes that involve personal or professional services, goods or produce, intellectual property, interests in land, other property or a business—we consider these schemes do not have a predominant investment character (see RG 80.7–RG 80.9);
- (b) operators of ‘show schemes’ that involve transactions of film, writing or entertainment where an interest in those schemes is acquired through personal or professional services provided by the participant, or the sale, transfer or grant of any right to use intellectual property of the participant—we consider that, in the circumstances contemplated by show schemes, distributors and broadcasters do not require the same protections as other investors (see RG 80.10–RG 80.13); and
- (c) operators and promoters of ‘film investment schemes’ where the offer is made to certain government bodies, film distributors and broadcasters—we consider that these entities do not require the same protections as other investors (see RG 80.14–RG 80.30).

RG 80.5 Our relief is subject to a number of conditions designed to ensure the real purpose of the transaction is not to raise money. We may amend these conditions or revoke the relief for particular persons if the relief is used to avoid the managed investment provisions or other provisions where the real purpose of the transaction is to raise money.

RG 80.6 We will also consider individual applications for relief that fall outside the terms of ASIC Corporations (Managed Investment Schemes: Interests Not For Money) Instrument 2016/1107, but fit within the underlying rationale for our relief.

B Relief for interests-not-for-money schemes

Key points

This section explains the conditional relief we have given to interests-not-for-money schemes, including show schemes and film investment schemes.

Interests-not-for-money schemes

RG 80.7 We have granted conditional relief, under ASIC Corporations (Managed Investment Schemes: Interests Not For Money) Instrument 2016/1107, from the managed investment, AFS licensing, anti-hawking and product disclosure provisions for managed investment schemes arising out of a contract or proposed contract under which every interest in the scheme is issued to participants as consideration, or part of consideration, to acquire any of the following:

- (a) personal or professional services provided by the participant or, where the participant is not a natural person, by an officer or employee of the participant in the ordinary course of the participant's business;
- (b) the sale, grant or transfer of any right to use or exploit present or future intellectual property or know-how of the participant resulting from the labour or efforts of the participant or, where the participant is not a natural person, acquired in the ordinary course of the participant's business;
- (c) the sale or transfer of goods imported, manufactured or produced by the participant in the ordinary course of its business;
- (d) the sale or transfer of, or the entry into or grant of any interest in, land where the participant, or a person (other than the issuer or one of its associates) who held an interest in the scheme and from whom the participant has acquired the interest in land, has held the interest in land for at least six months before any offer of an interest in the scheme was made; and
- (e) the sale, grant or transfer of any business, or any proprietary interest with respect to a business, owned by the participant for at least six months before any offer of an interest in the scheme was made.

Note: An example of the type of transaction that may fall within the relief may include where parties are engaged in share farming.

RG 80.8 We consider it would be inappropriate for the managed investment, AFS licensing, anti-hawking and product disclosure provisions to apply to

interests-not-for-money schemes because they generally do not have a predominant investment character.

Conditions of relief

- RG 80.9 The relief under ASIC Corporations (Managed Investment Schemes: Interests Not For Money) Instrument 2016/1107 can only be relied on if:
- (a) the participant does not pay money, or provide any consideration to the offeror or any associate of the offeror other than:
 - (i) the forms of consideration mentioned in RG 80.7; or
 - (ii) fees and incidental expenses as mentioned in RG 80.7;
 - (b) any right of a participant to terminate the agreement or take action for default does not depend on the consent or other action of others who have entered into similar agreements;
 - (c) the interest does not relate to any other managed investment scheme; and
 - (d) other than issues to participants meeting the other requirements of our relief, the interests that have been issued do not require a Product Disclosure Statement (PDS) or, before the commencement of the product disclosure provisions in Pt 7.9 of the Act, another form of regulated disclosure.

Note: This list is not exhaustive.

Show schemes

- RG 80.10 We have granted conditional relief, under ASIC Corporations (Managed Investment Schemes: Interests Not For Money) Instrument 2016/1107, for managed investment schemes for the development and/or production of a cinematograph film, sound recording, work, or live performance, including a script or component of a cinematograph film, sound recording, work, or live performance (show schemes).
- RG 80.11 Our view is that, in the circumstances contemplated by show schemes, distributors and broadcasters of films (i.e. persons whose ordinary business is, or includes, broadcasting or distributing films) do not require protection as investors to the extent provided to other unrelated bodies.
- RG 80.12 If the participant is involved in the film, writing and entertainment industries, we have granted conditional relief from the managed investment, AFS licensing, anti-hawking and product disclosure provisions where an interest in the scheme is to be offered as consideration, or part of consideration, to acquire:

- (a) personal or professional services to be provided by the participant or, where the participant is not a natural person, by an officer or employee of the participant providing such services in the ordinary course of the participant's business; or
- (b) the sale, transfer or grant of any right to use or exploit present or future intellectual property or know-how of the participant resulting from the labour or efforts of the participant or, if the participant is not a natural person, acquired in the ordinary course of the participant's business.

Note: An example of the type of transaction that may fall within this relief may include a scriptwriter agreeing to take royalties as consideration for providing a script.

Conditions of relief

- RG 80.13 The relief for show schemes is conditional. Conditions that generally apply include the conditions that apply to other interests-not-for-money schemes: see RG 80.9.

Film investment schemes

- RG 80.14 We have granted conditional relief, under ASIC Corporations (Managed Investment Schemes: Interests Not For Money) Instrument 2016/1107, for managed investment schemes for the development and/or production of a cinematograph film, including a script or component of a cinematograph film (film investment schemes).
- RG 80.15 It is our view that an interest that an investor acquires in a film investment scheme in return for making the investment in the development or production of the film is an interest as defined in s9 of the Corporation Act. The interest acquired is usually an interest in the copyright in the finished film and the right to participate in the proceeds from the marketing of the finished film by way of recoupment of investment and participation in profits.
- RG 80.16 Accordingly, without relief, a promoter of a film investment scheme under which issues of interests, offers or invitations will be made may need to comply with the managed investment, AFS licensing, anti-hawking and product disclosure provisions.

The nature of film investment

- RG 80.17 The Australian film industry is characterised by ongoing participation by film distributors and broadcasters. Investment by these bodies is often sought by producers so as to enable them to secure an assured outlet or market for completed films. Distributors and broadcasters on the other hand often seek

to invest in film production for the purpose of securing suitable Australian product for distribution or broadcast.

- RG 80.18 In addition, distributors and broadcasters can be motivated by the opportunity to exercise some artistic and financial control over the individual product where they have made a commitment to purchase that product or provide distribution or broadcasting services. Such control would be exercised by a distributor or broadcaster for the purpose of ensuring that the final product is a marketable one for its particular purpose.
- RG 80.19 Control could be exercised, for example, by the investor requiring that certain criteria be met in relation to cast, direction, storyline and so on before agreeing to distribute or broadcast the film. Under normal circumstances, the meeting of such requirements would be a precondition to any agreement to distribute or broadcast and to any investment.
- RG 80.20 In some instances, participation by the broadcaster or distributor in profits from the film beyond those made under the distribution or broadcast agreement within Australia may be incidental to the main purpose of the investment—that is, the supply of product to enable a distributor or broadcaster to carry on its principal business.

Government investment in films

- RG 80.21 A particular feature of the film investment industry in Australia is the participation of the Australian and state governments through several statutory authorities, government departments and wholly owned companies, including, in particular, Screen Australia.
- RG 80.22 Government funds are invested in film development and production (as well as other aspects of the film industry) through the following bodies:
- (a) the Australian Broadcasting Corporation;
 - (b) the Australian Children’s Television Foundation;
 - (c) Screen Australia;
 - (d) Film Victoria;
 - (e) Screen NSW;
 - (f) Screen Queensland;
 - (g) the South Australian Film Corporation;
 - (h) the Special Broadcasting Service Corporation; and
 - (i) ScreenWest.

Note: For the purposes of this guide, each of these bodies is referred to as a ‘government body’.

RG 80.23 Another feature of the film investment industry in Australia is the investment by government bodies in the development of films before production. This is usually by investment in script development, but may also involve investment in budget preparation, location surveying and other aspects of development. Such development funding may be provided by a single government body or several government bodies working together. Other investors may be involved in the event of further development and production of the film.

Relief in respect of films financed by government bodies

RG 80.24 In our view, a government body does not require protection to the same extent as that provided by the Corporations Act to other bodies. The government bodies are experienced in the film industry, can be expected to monitor closely the development and production of a film and may have been established with objectives that are not purely commercial.

RG 80.25 Under ASIC Corporations (Managed Investment Schemes: Interests Not For Money) Instrument 2016/1107, a promoter of a film investment scheme where an issue of, offer for subscription or purchase of, or issue of invitations to subscribe for or buy, interests arising out of the film investment scheme is made to a government body or bodies is exempt from compliance with the managed investment, AFS licensing, anti-hawking and product disclosure provisions.

Additional relief in respect of investment by film distributors and broadcasters

RG 80.26 We consider that in certain circumstances distributors and broadcasters of films (i.e. persons whose ordinary business is or includes broadcasting or distributing films) do not require protection as investors to the extent provided to other unrelated bodies. The particular circumstances arise when they are already participating in the production or development of a film in the capacity of distributor or broadcaster.

RG 80.27 Under ASIC Corporations (Managed Investment Schemes: Interests Not For Money) Instrument 2016/1107, we have given relief from compliance with the managed investment, AFS licensing, anti-hawking and product disclosure provisions to a promoter of a film investment scheme in respect of offers of prescribed interests made to a film distributor or broadcaster arising out of the investment, where that distributor or broadcaster has an interest in licensing or otherwise exploiting the right to use the copyright to the film to which the investment relates.

RG 80.28 The relief only applies to film investment schemes where a distributor or broadcaster has this bona fide collateral interest and involvement in the relevant film.

Other film investment schemes

- RG 80.29 Since our relief for film investment schemes applies only to offers, invitations and issues to government bodies, film distributors and broadcasters, an offeror must comply with the applicable managed investment, AFS licensing, anti-hawking and product disclosure provisions if offers or issues are made to other persons, unless those offers, invitations or issues are excluded offers, invitations or issues.
- RG 80.30 However, a promoter who believes that there are grounds on which we should exercise our discretion may still apply for individual relief. We may grant relief from requirements under the Corporations Act, including the requirement that a managed investment scheme be registered under Ch 5C, on a case-by-case basis in certain circumstances: see [Regulatory Guide 51 Applications for relief](#) (RG 51).

Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A.
AFS licensing provisions	The provisions set out in Pt 7.6 of the Corporations Act and related regulations
anti-hawking provisions	The provisions set out in Div 8 of Pt 7.8 of the Corporations Act and related regulations
ASIC	Australian Securities and Investments Commission
Ch 5C (for example)	A chapter of the Corporations Act (in this example numbered 5C), unless otherwise specified
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
film investment scheme	A film investment scheme as defined in ASIC Corporations (Managed Investment Schemes: Interests Not For Money) Instrument 2016/1107
financial product	A facility through which, or through the acquisition of which, a person does one or more of the following: <ul style="list-style-type: none"> • makes a financial investment (see s763B); • manages financial risk (see s763C); • makes non-cash payments (see s763D) Note: This is a definition contained in s763A of the Corporations Act: see also s763B–765A.
interests-not-for-money scheme	An interests-not-for-money scheme as defined in ASIC Corporations (Managed Investment Schemes: Interests Not For Money) Instrument 2016/1107
managed investment provisions	The provisions set out in Ch 5C of the Corporations Act and related regulations
offeror	The person making an offer for the interest in the managed investment scheme
participant	The person accepting the offer to receive a benefit that does not involve money and acquiring an interest in a managed investment scheme

Term	Meaning in this document
product disclosure provisions	The provisions set out in Pt 7.9 of the Corporations Act and related 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 in accordance with Div 2 of Pt 7.9 of the Corporations Act Note: See s761A for the exact definition.
Pt 7.6 (for example)	A part of the Corporations Act (in this example numbered 7.6), unless otherwise specified
show scheme	A show scheme as defined in ASIC Corporations (Managed Investment Schemes: Interests Not For Money) Instrument 2016/1107

Related information

Headnotes

AFS licensing provisions, anti-hawking provisions, film and theatrical ventures, film investment schemes, interests not for money, interest-not-for-money schemes, licensing, managed investment provisions, managed investment schemes, product disclosure provisions, Product Disclosure Statement, show schemes

Legislative instrument

[ASIC Corporations \(Managed Investment Schemes: Interests Not For Money\) Instrument 2016/1107](#)

Regulatory guide

[RG 51](#) *Applications for relief*

Legislation

Corporations Act, Chs 5C and 7, Pts 7.6, 7.8 and 7.9

Consultation papers and reports

[CP 266](#) *Remaking ASIC class orders on managed investment schemes: Not for money*

[REP 505](#) *Response to submissions on CP 266 Remaking ASIC class orders on managed investment schemes: Not for money*