



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 140

Strata schemes and management rights schemes

April 2017

About this guide

This guide is for operators and promoters of properties that are, or are proposed to be, managed for investors.

It explains:

- how the provisions of the *Corporations Act 2001* (Corporations Act) relating to managed investment schemes apply to arrangements involving real property, including under strata or community title (e.g. units in a serviced apartment, hotel, motel or resort complex), and certain freehold titles or leasehold interests (referred to in this guide as 'strata schemes'); and
- the conditional relief we have given, in ASIC Corporations (Serviced Apartment and Like Schemes) Instrument 2016/869, to operators and promoters of strata schemes, including management rights schemes, from the managed investment, Australian financial services (AFS) licensing, product disclosure and hawking provisions of the Corporations Act.

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 version was issued in April 2017 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- Superseded Policy Statement 140 *Serviced strata schemes*, issued November 2000, rebadged as a regulatory guide 5 July 2007
- Interim Policy Statement 140, issued October 1998, updated December 1998

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.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

Some serviced strata arrangements have the characteristics of a managed investment scheme.

In general, if you are an operator or promoter of a serviced strata arrangement that is a managed investment scheme, you must comply with the managed investment, Australian financial services (AFS) licensing, product disclosure and hawking provisions of the *Corporations Act 2001* (Corporations Act).

However, you may be eligible for relief from some or all of these provisions.

Purpose of this guide

- RG 140.1 Some arrangements for using strata units (e.g. investments in a serviced apartment, hotel, motel or resort complex) have the characteristics of a managed investment scheme. This guide explains how the provisions of the Corporations Act relating to managed investment schemes apply to arrangements involving real property, including under strata or community title (e.g. units in a serviced apartment, hotel, motel or resort complex), and certain freehold titles or leasehold interests.

What is a strata scheme?

- RG 140.2 Typically, the arrangements covered by this guide relate to units under strata title. For convenience, we refer to them as ‘strata units’. However, that expression includes a community title interest, or other interest in real property (including a freehold or leasehold interest). In this guide, we refer to these arrangements as ‘strata schemes’. Section B of this guide explains the types of arrangements that we consider to be ‘strata schemes’.

Corporations Act requirements that apply to strata schemes

- RG 140.3 An operator or promoter of a strata scheme must comply with certain provisions of the Corporations Act—in particular, various provisions of Chs 5C and 7.
- RG 140.4 Generally, the operator of a managed investment scheme, such as a strata scheme, who is not merely acting as the agent of another operator must:
- (a) be a public company;
 - (b) register the scheme with ASIC;

- (c) hold an AFS licence to carry on a financial services business (e.g. deal in a financial product, operate a managed investment scheme and provide financial advice);
- (d) comply with certain disclosure obligations, including giving prospective investors a Product Disclosure Statement (PDS); and
- (e) comply with other relevant provisions, including those in Pt 7.8 prohibiting certain conduct in selling financial products (the hawking provisions).

RG 140.5 In this guide, we refer to these provisions as ‘the managed investment, AFS licensing, product disclosure and hawking provisions’.

RG 140.6 Section C of this guide gives a brief overview of selected provisions of the Corporations Act that may apply to operators or promoters of strata schemes.

Exemptions under the Corporations Act

RG 140.7 In some cases, an operator or promoter of a strata scheme might be exempt under the Corporations Act from some or all of the managed investment, AFS licensing, product disclosure and hawking provisions. For example, the provisions will generally not apply:

- (a) if the scheme is a one-off strata scheme with 20 members or less; or
- (b) except for the AFS licensing provisions, if all the interests in the scheme are issued in circumstances that would not need disclosure through a PDS under Div 2 of Pt 7.9.

ASIC relief from the Corporations Act requirements

RG 140.8 We have given conditional relief, in [ASIC Corporations \(Serviced Apartment and Like Schemes\) Instrument 2016/869](#), to certain operators and promoters of strata schemes (including management rights schemes, schemes where all strata units have been sold for at least \$500,000, closed schemes and well-advanced schemes) from some or all of the managed investment, AFS licensing, product disclosure and hawking provisions of the Corporations Act.

RG 140.9 Relief is given when we consider that:

- (a) strictly complying with these provisions would be impossible or disproportionately burdensome;
- (b) people acquiring or holding interests in the strata scheme would still have the protection that Parliament intended they should have; and
- (c) there would be commercial benefit from such relief to the parties of the strata scheme.

- RG 140.10 This means that the operator or promoter of a strata scheme might not have to comply with some or all of the managed investment, AFS licensing, product disclosure and hawking provisions. Section D of this guide explains the types of strata schemes that might be eligible for relief, including management rights schemes (i.e. managed investment schemes that involve holiday letting arrangements for strata units) and the conditions of the relief.
- RG 140.11 If you are eligible for relief and comply with the conditions of the relief, you do not need to apply for relief. However, you must still comply with other relevant provisions of the Corporations Act and the *Australian Securities and Investments Commission Act 2001* (ASIC Act) (e.g. not engaging in misleading or deceptive conduct: see s12DA of the ASIC Act). We recommend that you seek professional legal advice to ensure that you fully understand your obligations under the Corporations Act and the ASIC Act.
- RG 140.12 If you are not eligible for relief under ASIC Corporations (Serviced Apartment and Like Schemes) Instrument 2016/869, you may be eligible for relief under another ASIC instrument or you may apply to ASIC for individual relief: see RG 140.140–RG 140.141.

Property rental schemes

- RG 140.13 Some investors individually engage an agent or let out their strata unit for residential or commercial purposes, but not as part of a serviced strata arrangement. We consider that such an arrangement should not be regulated as a managed investment scheme, and so to avoid any doubt we have given relief to such arrangements in [ASIC Corporations \(Property Rental Schemes\) Instrument 2016/870](#): see RG 140.40–RG 140.41.

Who this guide applies to

- RG 140.14 This guide is for operators and promoters of properties that are sold on the basis that they can be managed for retail clients (referred to in this guide as ‘investors’).
- RG 140.15 A person who operates a strata scheme as a ‘promoter’ includes a person who offers to issue, or arranges for the issue of, interests in the scheme while also offering a strata unit to which the scheme relates where the scheme is to be managed by another operator.
- RG 140.16 A person who operates the strata scheme as a promoter may be the ‘developer’ of the strata title property, even if the developer has no further role in operating the scheme after all strata units in the arrangement have been sold.

RG 140.17 An 'operator' means a person responsible for operating a strata scheme, and may include operating the scheme as a promoter. This includes:

- (a) the promoter of the arrangement who promotes or markets interests in the arrangement;
- (b) the manager of the serviced apartment, hotel, motel or resort complex; and
- (c) the on-site letting agent of a management rights scheme.

Note: See RG 140.76–RG 140.78 in Section D for an explanation of what we consider to be a 'management rights scheme'.

Who this guide does not apply to

RG 140.18 This guide does not apply to real property transactions that are not related to arrangements to manage the property, such as:

- (a) ordinary sales of standard, completed strata units; or
- (b) 'off-the-plan' sales (i.e. sales when the only money paid by the purchaser before they settle and take possession of the completed strata unit is a deposit held by a stakeholder).

B What is a strata scheme?

Key points

A strata scheme is an arrangement for using strata units that has the characteristics of a managed investment scheme, as defined in s9 of the Corporations Act.

We consider a strata scheme is particularly likely to exist if:

- the investor contributes their rights to the scheme (see RG 140.23–RG 140.24);
- the return to investors depends on the arrangement (see RG 140.25–RG 140.30); or
- there is interdependence and a common enterprise between owners (see RG 140.31–RG 140.38).

The scheme has characteristics of a managed investment scheme

- RG 140.19 A strata scheme is an arrangement for using strata units that has the characteristics of a managed investment scheme. Section 9 of the Corporations Act defines a managed investment scheme as a scheme with the following features:
- (a) people contribute money or money's worth as consideration to acquire rights (interests) to benefits produced by the scheme (whether the rights are actual, prospective or contingent and whether they are enforceable or not);
 - (b) any of the contributions are to be pooled, or used in a common enterprise, to produce financial benefits, or benefits consisting of rights or interests in property, for the people (the members) who hold interests in the scheme (whether as contributors to the scheme or as people who have acquired interests from holders); and
 - (c) the members do not have day-to-day control over the operation of the scheme (whether or not they have the right to be consulted or to give directions).
- RG 140.20 A serviced strata arrangement involves owners of strata units making their units available to an operator for use as part of a serviced apartment, hotel, motel or resort complex. In these arrangements there is a scheme under which an operator pools the occupancy rights attaching to strata units or uses those rights in a common enterprise to produce a financial benefit for the owner of the strata unit.

Pre-packaged sale of interests

- RG 140.21 Interests in a serviced strata arrangement might initially be issued to a promoter or their associate before being resold to investors as part of a pre-packaged resale. If that arrangement is a strata scheme and the issue of interests in the scheme required a PDS under Div 2 of Pt 7.9, generally the managed investment, AFS licensing, product disclosure and hawking provisions of the Corporations Act would apply.
- RG 140.22 The exemption from registering a scheme in s601ED(2) would not apply in this case because the term 'issue' as defined in s9 includes 'make available' (for interests in a managed investment scheme). This would include the first time such interests were sold by a promoter or their associate to investors.

The investor contributes their rights to the scheme

- RG 140.23 Generally, an investor in a strata scheme contributes to the scheme:
- (a) a right to occupy the strata unit (e.g. a lease or licence); or
 - (b) a right to let or license the strata unit (i.e. as an agent of the strata unit owner).
- RG 140.24 By making the rights to their strata unit available to the strata scheme, the investor is making a contribution of money or money's worth to acquire interests in the scheme. We consider that this is the case even though the freehold title to the strata unit is not contributed and is not property of the scheme.

The return to investors depends on the arrangement

- RG 140.25 In general, we consider that an arrangement is likely to be a strata scheme if an investor has a right (including by agreement or an understanding with the promoter) to a return, which depends, in whole or in part, on:
- (a) the use of other investors' strata units; and/or
 - (b) the use of their strata unit.

Proportionate returns

- RG 140.26 We consider there is a strata scheme where the investor might depend on the arrangement to receive a proportionate return. In the simplest case, the investor's benefit is a share of the profit on the use of the whole complex. In these circumstances, we consider there is a common enterprise between the investors and the operator. This is because the return to each is likely to depend on the success or failure of the arrangement.

Fixed or indexed returns

RG 140.27 In some serviced strata arrangements, an investor's benefit might not depend on the arrangement involving their unit. This is because the investor's return is a promised fixed or indexed amount that will be paid regardless of how the serviced strata arrangement is operated. We do not consider that such an arrangement is likely to be a managed investment scheme. The example below illustrates when a type of fixed or indexed return arrangement is not likely to be a managed investment scheme.

Example of a fixed or indexed return arrangement that is not likely to be a managed investment scheme

A person (buyer) is invited to buy a strata unit from a developer and to lease the strata unit to another person (operator). The operator intends to operate a serviced strata arrangement using the strata unit and other property.

The lease is for five years (renewable at the option of the operator for three further periods of ten years). The operator promises an annual rental return to the buyer of 5% (CPI indexed) of the price paid for the strata unit. The buyer understands that the operator has the financial capacity to pay the rental return, and that this does not materially depend on the performance of the serviced strata arrangement.

The strata unit's value at the end of the lease is not likely to depend on the strata arrangement.

The operator has day-to-day operating control of the serviced strata arrangement.

The buyer has the right to terminate the lease on 30 days notice.

The buyer is told that the operator is a substantial company.

The buyer is told that the operator intends to operate a serviced strata arrangement. However, the operator has no legally enforceable obligation to operate a serviced strata arrangement.

RG 140.28 We consider that an arrangement is likely to be a strata scheme if investors have been given to understand that returns from a strata arrangement will be materially supported by the operator using the investor's property as part of the scheme.

Example of an arrangement we do consider is likely to be a managed investment scheme

A person (buyer) is invited to buy a strata unit from a developer and to lease the strata unit to another person (operator). The operator intends to operate a serviced strata arrangement using the strata unit and other property.

The lease is for five years (renewable at the option of the operator for three further periods of five years). The operator promises an annual rental return

to the buyer of 5% (CPI indexed) of the price paid for the strata unit. The likelihood of the return being paid to the buyer in its entirety will be materially affected by whether the strata arrangement operates profitably.

The strata unit's value at the end of the lease is not likely to depend on the strata arrangement.

The operator has day-to-day operating control of the serviced strata arrangement.

The buyer has the right to terminate the lease on 30 days notice.

The buyer is told that the operator is a substantial company.

The operator knows that buyers have come to an explicit (or implicit) understanding with the developer (through sellers acting on behalf of the developer) that the serviced strata arrangement will be operated to help the operator pay the return to buyers. However, the operator has no legally enforceable obligation to operate a serviced strata arrangement.

RG 140.29 To ensure that investors *do not* have this understanding (i.e. they do not expect their return to depend on the operation of the serviced strata arrangement), the promoter needs to make this clear to investors from the nature of the serviced strata arrangement, the marketing documents and other disclosures.

RG 140.30 The promoter should make sure that they do not make false and misleading statements about the arrangement and provide explanations of how the return will be paid. In our view, investors are unlikely to have an understanding that their return depends on the strata arrangement alone if they are given reason to believe that:

- (a) if necessary, all of their return is likely to come from an entity of sufficient financial substance; or
- (b) the arrangement is a non-material part of the operator's overall business operations.

Common enterprise

RG 140.31 We consider that one way in which there is likely to be a strata scheme is if an investor has a right (including by agreement or an understanding with the promoter) to a return that depends, in whole or in part, on the use of other investors' strata units in the scheme (as opposed to common property).

RG 140.32 There is likely to be a strata scheme if there is an agreement or understanding that:

- (a) an investor's return depends on a fair allocation of rent or prospective tenants between participating investors; or
- (b) the strata arrangement will operate on the basis that income from using the strata units will be pooled.

- RG 140.33 If there is no such agreement or understanding, we do consider that there will be a strata scheme only because of the pooling of amounts payable by owners to a body corporate of a strata title property:
- (a) relating to the use of common property; or
 - (b) under the by-laws of the strata title body corporate.
- RG 140.34 An arrangement to use strata units can have the characteristics of a managed investment scheme even if joining the scheme is voluntary for people who own units in a particular location. When joining the scheme is compulsory, it may indicate there is a common enterprise.
- RG 140.35 A common enterprise may exist if an investor's money is, in some way, used in common to operate the serviced strata arrangement to achieve a benefit. There might be a common enterprise even if money is not pooled in one bank account.
- RG 140.36 An operator may be regarded as being in a common enterprise with an investor if the operator's remuneration depends on the amounts obtained through a strata arrangement.

Deferred pool or common enterprise

- RG 140.37 Sometimes a promoter and investor agree or come to an understanding that a common enterprise or pool will operate at some time after the strata unit is first made available. For example, a common enterprise might start after a period where the return to the investor was not dependent on the enterprise involving their units (e.g. where a fixed or indexed return was paid regardless of the profitability of the operation of a serviced strata arrangement).
- RG 140.38 We would generally consider such an arrangement to be a strata scheme if the common enterprise or pool had started immediately. In this case, the managed investment, AFS licensing, product disclosure and hawking provisions of the Corporations Act would apply to the scheme from the time the relevant agreement or understanding is first promoted because an investor would be acquiring an interest in the scheme even though it is prospective: see s9.

Other indicators of a strata scheme

- RG 140.39 We consider that the following characteristics may help support the inference that one or more of the characteristics of a strata scheme are present:
- (a) the strata units are not suitable for use other than as part of a serviced apartment, hotel, motel or resort complex (including whether or not there are zoning restrictions on the use of the strata units);

- (b) nothing is stated about what will happen at the end of a period during which returns do not depend on the use of the units (particularly for short-term fixed or indexed return arrangements of up to five years);
- (c) there is an agreement with each investor that other investors make similar contracts;
- (d) there is pooling of expenses relating to the use of the strata units;
- (e) there is an understanding that the strata units will be used for short-term tenancies (e.g. less than three months); and/or
- (f) the investors place a strong reliance on the activities of the management for generating investor returns.

Ordinary residential or commercial letting arrangements

RG 140.40 Some investors individually engage an agent to let out their strata unit for residential or commercial purposes, but not as part of a serviced strata arrangement. This could be a managed investment scheme that requires registration. We consider that such an arrangement should not be regulated as a managed investment scheme. This is because investors in an ordinary residential or commercial letting arrangement are less dependent on the skill, care and diligence of an operator than investors in a strata scheme.

RG 140.41 To avoid any doubt, we have given relief to such arrangements, in ASIC Corporations (Property Rental Schemes) Instrument 2016/870, from the managed investment, AFS licensing, product disclosure and hawking provisions.

C Requirements that apply to strata schemes

Key points

Unless exempt under our relief (see Section D), the operator or promoter of a strata scheme must comply with the managed investment and other relevant provisions of the Corporations Act, including:

- registering the scheme (see RG 140.42–RG 140.44);
- giving product disclosure (see RG 140.45–RG 140.52);
- holding scheme property (see RG 140.53–RG 140.55);
- valuing scheme property (see RG 140.56);
- complying with obligations under the scheme constitution and compliance plan (see RG 140.57);
- holding an AFS licence with the appropriate authorisations (see RG 140.58–RG 140.61) and complying with product disclosure obligations for financial product advice (see RG 140.62–RG 140.66);
- complying with the hawking prohibition (see RG 140.71); and
- complying with obligations relating to the investor's right to withdraw from the scheme (see RG 140.72–RG 140.73).

These provisions are intended by Parliament to ensure that different investment opportunities are regulated in the same way as much as possible.

The AFS licensing requirements might also apply if you are a real estate agent or developer and you promote or sell strata units that could participate in strata schemes: see RG 140.67–RG 140.70.

This section gives only a brief overview of selected provisions that may apply. You should seek legal advice and consult other relevant provisions of the Corporations Act and our regulatory documents to fully understand your obligations in operating a managed investment scheme.

Registering a scheme

RG 140.42 Unless exempt under our relief (see Section D), a strata scheme that has more than 20 members generally must be registered with ASIC as a managed investment scheme.

RG 140.43 A strata scheme with 20 members or less does not have to be registered unless:

- (a) the promoter is in the business of promoting managed investment schemes (see s601ED(1)(b)); or
- (b) the scheme is aggregated with others because of a determination we have made under s601ED(1)(c) and 601ED(3).

Note: For information on when we will make a determination under s601ED(1)(c) and 601ED(3), see [Regulatory Guide 136](#) *Managed investments: Discretionary powers and closely related schemes* (RG 136).

- RG 140.44 A strata scheme does not have to be registered if all the interests that have been made available in the scheme are through issues that would not need disclosure under Div 2 of Pt 7.9: see s601ED(2).

Giving product disclosure

PDS requirements

- RG 140.45 Generally, unless exempt under our relief (see Section D), if an interest in a strata scheme is offered to or acquired by a retail client (as defined in s761G), a PDS must be given and other requirements might apply: see s1012B(3) and Pt 7.9.
- RG 140.46 The requirement in s1012B(3) to give a PDS also applies to an offer to arrange for the issue of interests. For example, a strata scheme might be used in marketing campaigns by a developer to sell strata units. In this case, the developer might be offering to arrange for the issue of interests in the scheme in some circumstances.
- RG 140.47 Prospective investors must be given a PDS if they are invited to buy a unit and at the same time join a strata scheme. This requirement allows investors to make an informed assessment of the merits and risks of joining the scheme.

Note: For guidance on some disclosure that may be relevant to a PDS for a management rights scheme, see the appendix to this guide.

- RG 140.48 The PDS does not have to include information about the strata unit that buyers would normally get as part of a conveyancing process for real estate transactions (e.g. information in a contract of sale, or searches or inquiries related to the sale).
- RG 140.49 However, it could be difficult for investors to assess the merits and risks of joining a strata scheme as well as assessing the merits and risks of investing in the strata unit.
- RG 140.50 Usually, investors will be making one decision (i.e. whether to buy a strata unit that will be used as part of the strata scheme). They will be assessing:
- (a) key factors that will affect the market value of the strata unit; and
 - (b) how the market value may be affected by how the scheme operates.
- RG 140.51 As such, some information in the PDS about factors that could affect the market value of the strata unit might be necessary as information that is material for a reasonable person in making their decision: see s1013E.

Other Pt 7.9 requirements

RG 140.52 In addition to any conditions of relief that apply to the strata scheme (see Section D), the operator of a strata scheme must comply with additional product disclosure and other requirements as relevant to the scheme: see Pt 7.9. These include:

- (a) providing further information on request (see s1017A);
- (b) disclosing significant events (see s1017B);
- (c) confirming transactions (see s1017F);
- (d) being a member of an alternative dispute resolution scheme (see s1017G); and
- (e) meeting requirements for advertising (see Div 4 of Pt 7.9).

Note: For more information on these obligations, see [Regulatory Guide 168 Disclosure: Product Disclosure Statements \(and other disclosure obligations\)](#) (RG 168) and [Regulatory Guide 169 Disclosure: Discretionary powers](#) (RG 169).

Holding scheme property

RG 140.53 Operators of registered strata schemes must meet (among other requirements):

- (a) financial requirements applying in respect of holders of scheme property under [Regulatory Guide 166 Licensing: Financial requirements](#) (RG 166); and
- (b) custody standards for holders of scheme property under [Regulatory Guide 133 Managed investments and custodial or depository services: Holding assets](#) (RG 133).

RG 140.54 As set out in Table 9 of RG 166, different financial requirements apply depending on the circumstances and nature of the assets held.

RG 140.55 However, if the strata scheme property is limited to certain assets that are 'special custody assets' as set out in RG 166, the requirement for net tangible assets to permit the responsible entity to hold the scheme property does not apply. This is because there is a lower risk of custodial failure in holding these kinds of assets. Generally, the property of a strata scheme is likely to be limited to assets that are special custody assets. But operators should assess any scheme property in light of RG 166 to ensure that they (or any custodian they appoint) meet the relevant financial requirements.

Valuing scheme property

- RG 140.56 Unless exempt under our relief (see Section D), the responsible entity of a strata scheme must regularly value the scheme property: see s601FC(1)(j) and 601HA(1)(c).

Obligations under the scheme constitution and compliance plan

- RG 140.57 There are other obligations under Ch 5C that apply to operators and promoters of strata schemes, including obligations under the scheme constitution and compliance plan. Some regulatory guides that discuss these obligations are:

- (a) [Regulatory Guide 132](#) *Managed investments: Compliance plans* (RG 132);
- (b) [Regulatory Guide 133](#) *Managed investments and custodial or depository services: Holding assets* (RG 133);
- (c) [Regulatory Guide 134](#) *Managed investments: Constitutions* (RG 134); and
- (d) [Regulatory Guide 136](#) *Managed investments: Discretionary powers and closely related schemes* (RG 136).

AFS licensing and advice obligations

- RG 140.58 Unless exempt under our relief (see Section D), or another exemption applies, you must hold an AFS licence with the appropriate authorisations (or be an authorised representative of an AFS licensee) if you carry on a business that includes:

- (a) operating a registered strata scheme;
- (b) issuing or arranging for the issue of interests in a registered strata scheme or a scheme that is not registered (whether the marketing occurs at the original sale of the strata units or on a later sale by an individual strata unit owner);
- (c) dealing in financial products that are assets of the scheme on behalf of the members (e.g. an insurance contract) or holding a financial product or beneficial interest in a financial product for the members in providing a custodial or depository service; or
- (d) giving financial product advice about acquiring interests in a registered strata scheme or a scheme that is not registered (see RG 140.62–RG 140.66).

Note: The requirements in RG 140.58(a)–(d) do not apply to interests in a managed investment scheme that is not registered because none of s601ED(1)(a)–(c) are satisfied: see s765A(1)(s).

- RG 140.59 For operators and promoters of strata schemes, the AFS licence might include authorisations to:
- (a) operate a registered scheme (if the scheme must be registered);
 - (b) deal in financial products by issuing an interest in, or arranging for the issue of an interest in, a scheme;
 - (c) deal in, or provide a custodial or depository service, for financial products that are assets of the scheme; and
 - (d) provide financial product advice (see RG 140.62–RG 140.66).
- RG 140.60 These requirements might also apply to real estate agents and developers if they promote or sell strata units that could participate in strata schemes: see RG 140.67–RG 140.70.
- RG 140.61 The following is a list of some regulatory guides that can help you apply for an AFS licence with the necessary authorisations and understand the various obligations you have under a licence:
- (a) [Regulatory Guides 1–3](#) *AFS Licensing Kit* (RG 1–RG 3);
 - (b) [Regulatory Guide 36](#) *Licensing: Financial product advice and dealing* (RG 36);
 - (c) [Regulatory Guide 38](#) *The hawking provisions* (RG 38);
 - (d) [Regulatory Guide 78](#) *Breach reporting by AFS licensees* (RG 78);
 - (e) [Regulatory Guide 98](#) *Licensing: Administrative action against financial services providers* (RG 98);
 - (f) [Regulatory Guide 105](#) *Licensing: Organisational competence* (RG 105);
 - (g) [Regulatory Guide 126](#) *Compensation and insurance arrangements for AFS licensees* (RG 126);
 - (h) [Regulatory Guide 165](#) *Licensing: Internal and external dispute resolution* (RG 165);
 - (i) [Regulatory Guide 166](#) *Licensing: Financial requirements* (RG 166);
 - (j) [Regulatory Guide 167](#) *Licensing: Discretionary powers* (RG 167);
 - (k) [Regulatory Guide 168](#) *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168);
 - (l) [Regulatory Guide 175](#) *Licensing: Financial product advisers—conduct and disclosure* (RG 175);
 - (m) [Regulatory Guide 181](#) *Licensing: Managing conflicts of interest* (RG 181);
 - (n) [Regulatory Guide 244](#) *Giving information, general advice and scaled advice* (RG 244); and
 - (o) [Regulatory Guide 246](#) *Conflicted remuneration* (RG 246).

Giving financial product advice

RG 140.62 Representations generally involve financial product advice if recommendations or statements of opinion are made that are, or could reasonably be regarded as being, intended to influence the user in making a decision about a particular financial product or class of financial product or an interest in a particular financial product or class of financial product: see s766B. Whether representations involve financial product advice (either personal or general) will depend on the facts of the particular case.

Note 1: 'Personal advice' is financial product advice given to a person when the provider of the advice has considered the objectives, financial situation or needs of the person, or when the person might reasonably expect that the provider has considered these matters: see s766B(3). 'General advice' is financial product advice that is not personal advice: see s766B(4). Table 1 sets out some obligations relating to the giving of personal and general advice.

Note 2: For a discussion of the meaning of financial product advice, see RG 36.

RG 140.63 Operators and promoters of strata schemes might make recommendations to investors about participating in a scheme. In some circumstances recommendations about buying a strata unit might also be reasonably regarded as being intended to influence the decision of a person to acquire an interest in a strata scheme. These recommendations may constitute financial product advice.

RG 140.64 If a person provides financial product advice, they are generally required to:

- (a) hold an AFS licence or be an authorised representative of an AFS licensee (see RG 140.58–RG 140.59); and
- (b) if the investor is a retail client, give necessary disclosures under Pt 7.7 depending on whether the advice is personal or general advice.

Note 1: For a discussion of the relevant disclosure obligations when providing financial product advice, see RG 175.

Note 2: There are exemptions from these requirements.

Table 1: Some obligations relating to personal and general advice

Personal advice	General advice
<p>If personal advice is given to a retail client, the provider (i.e. the AFS licensee or authorised representative) must comply with the personal advice regime in Div 3 of Pt 7.7. This includes an obligation to act in the best interests of the client and to give priority to the client's interests (the best interests obligation). Meeting the objectives, financial situation and needs of the client must be the paramount consideration when providing advice: see Div 2 of Pt 7.7A.</p> <p>Note: Section 961B(2) sets out a 'safe harbour' for complying with the best interests duty in s961B(1). The client must generally be given a Statement of Advice (SOA) setting out, among other things, the advice and the basis upon which it is given: s946A.</p>	<p>At the time of giving the general advice and by the same means as the general advice is given, the AFS licensee or authorised representative giving the advice must warn the client that:</p> <ul style="list-style-type: none"> the advice has been prepared without taking into account the client's objectives, financial situation and needs; and they should therefore consider the appropriateness of the advice to their situation before acting on the advice (s949A). <p>When a person gives general advice to a client, no SOA is required.</p>

- RG 140.65 Operators, as product issuers, have some scope to give general advice without an AFS licence: see reg 7.1.33H of the Corporations Regulations 2001 (Corporations Regulations). Generally, the issuer of a financial product is the person responsible for the obligations owed under the terms of the product to a client or a person nominated by that person: see s761E(4). However, under reg 7.1.33H, a product issuer who gives another person general advice about a product they issue does not provide a financial service provided that they also:
- inform the person that the product issuer is not licensed to give financial product advice;
 - recommend that the person obtain a PDS before acquiring the product; and
 - make certain disclosures about cooling-off rights.
- RG 140.66 As a general rule, AFS licensees and authorised representatives who give financial product advice to retail clients must give those clients a Financial Services Guide (FSG): see s941A and 941B. A product issuer does not have to give an FSG to a client if the issuer is only dealing in their own products: see s941C(2).

Real estate agents and developers

- RG 140.67 Unless exempt under our relief (see Section D), if you are a real estate agent or property developer and you arrange for the issue of interests in a strata scheme along with a strata unit, you must hold an AFS licence.
- RG 140.68 This requirement applies if a person who buys the strata unit automatically becomes a member of the strata scheme (e.g. because the strata unit is subject to a lease in such a scheme). It may apply to real estate agents if they

promote or sell strata units that could participate in schemes. This is because the real estate agent may be making recommendations that are intended to influence the decision of a person to participate in the scheme (as well as their decision to purchase a strata unit). This may amount to financial product advice. In other situations, you might not have to be licensed—for example, if you are not:

- (a) issuing interests in schemes;
- (b) arranging for buyers to become members of a scheme; or
- (c) giving financial product advice about interests in a scheme.

RG 140.69 The AFS licensing provisions apply even if you already hold a real estate agent's or property developer's licence. The AFS licence applies to the financial services aspect of your business.

RG 140.70 You generally do not need an AFS licence if you merely undertake administrative activities. For example, you do not need a licence to distribute or display a PDS for a strata scheme, provided you do not make any recommendations about that scheme that may amount to financial product advice: see RG 140.62–RG 140.67.

The hawking prohibition

RG 140.71 Unless exempt under our relief (see Section D), a person (including their agent) must not offer financial products (such as interests in a strata scheme) for issue or sale in the course of, or because of, an unsolicited meeting or telephone call: see Div 8 of Pt 7.8. The hawking prohibitions aim to prevent pressure selling of financial products to retail clients (e.g. 'badgering' and 'boiler room' practices).

Note: For a discussion of the hawking provisions and how they apply, see RG 38.

Investor's right to withdraw from the scheme

RG 140.72 Operators and promoters of strata schemes should be aware that investors may have rights under the Corporations Act to withdraw from a scheme and get their money back if:

- (a) interests in a scheme have been issued (or a person has acquired interests in a scheme); and
- (b) that scheme was not, but should have been, complying with the requirements for registration of a managed investment scheme under Ch 5C or the requirements of Div 2 of Pt 7.9 in relation to a PDS.

RG 140.73 The reference to 'asking for their money back' could include:

- (a) terminating the lease, licence or agreement that empowers the operator to grant leases or licences of units as an agent for the strata unit

owners—this would happen if a strata scheme was offered to persons who already owned strata units; or

- (b) refunding the purchase price of the strata unit and any costs in return for transfer of the strata unit to the promoter—this would happen if the right to join the strata scheme was offered as an inducement to buy a strata unit.

D ASIC relief for operators and promoters of strata schemes

Key points

If you meet the conditions of ASIC Corporations (Serviced Apartment and Like Schemes) Instrument 2016/869, you may be exempt from certain provisions of the Corporations Act. The following strata schemes may be eligible for relief:

- a management rights scheme (see RG 140.76–RG 140.117);
- a scheme where all strata units have been sold for at least \$500,000 (see RG 140.118–RG 140.124); and
- a closed scheme or a well-advanced scheme (see RG 140.125–RG 140.134).

You may also be eligible for relief if you operate an arrangement that incidentally involves such a scheme: see RG 140.137–RG 140.138.

For schemes that relied on previous ASIC class orders before ASIC Corporations (Serviced Apartment and Like Schemes) Instrument 2016/869 came into effect, the older class orders continue to apply: see RG 140.75.

If you are not eligible for relief under ASIC Corporations (Serviced Apartment and Like Schemes) Instrument 2016/869 or under other ASIC relief (see RG 140.139), you may apply to ASIC for individual relief on a case-by-case basis: see RG 140.140–RG 140.141.

Overview of our relief

RG 140.74 We have given conditional relief, in ASIC Corporations (Serviced Apartment and Like Schemes) Instrument 2016/869, to operators and promoters of strata schemes (including management rights schemes, schemes where all strata units have been sold for at least \$500,000, closed schemes and well-advanced schemes) from certain provisions of the Corporations Act: see Table 2.

RG 140.75 For schemes that relied on Class Orders [\[CO 02/245\]](#) *Closed schemes*, [\[CO 02/303\]](#) *Management rights schemes—amendment*, [\[CO 02/304\]](#) *Management rights schemes* and [\[CO 02/305\]](#) *Management rights schemes* before ASIC Corporations (Serviced Apartment and Like Schemes) Instrument 2016/869 came into effect, the older class orders continue to apply.

Table 2: Relief available in ASIC Corporations (Serviced Apartment and Like Schemes) Instrument 2016/869

Type of arrangement	Relief we have given	Guidance
Strata schemes that are management rights schemes	Conditional relief is available from the managed investment, AFS licensing (for general advice and dealing only) and the hawking provisions	See RG 140.76–RG 140.117–
Strata schemes if all of the strata units (including real property and furniture and fittings) have been sold for at least \$500,000	Conditional relief is available from the managed investment, product disclosure and hawking provisions	See RG 140.118–RG 140.124
Strata schemes that are ‘closed schemes’ as at 6 October 1998 (i.e. a scheme where all the strata units were sold and no primary offers to join the scheme were made after 1998)	Conditional relief is available from the managed investment, AFS licensing (for general advice and dealing only), hawking and some product disclosure provisions	See RG 140.125–RG 140.131
Strata schemes that are ‘well-advanced schemes’ as at 6 October 1998 (i.e. a scheme established before 6 October 1998 but we accepted was quite advanced when we issued our initial policy in 1998)	Conditional relief is available from the managed investment, AFS licensing (for general advice and dealing only), hawking and some product disclosure provisions	See RG 140.125–RG 140.127 and RG 140.132–RG 140.134
Registered strata schemes	For registered strata schemes, relief is available from the duty to value scheme property where there is no obligation to pay members an amount related to the value of scheme property when investors leave the scheme	See RG 140.135–RG 140.136

Note: You may also be eligible for relief under another ASIC instrument (see RG 140.139), or you may be able to apply to ASIC for individual relief: see RG 140.140–RG 140.141.

Relief for management rights schemes

- RG 140.76 Management rights schemes are a type of strata scheme. The term ‘management rights’ refers to the advantage in offering property management services arising from the practice of buying that part of the complex that has the fittings and location that enable it to function as a front office for the complex. A typical management rights scheme involves an operator who resides in a holiday accommodation complex and who:
- (a) provides short-term leases or licences to visitors;
 - (b) markets the complex;
 - (c) manages the common property;
 - (d) provides an office and caretaking facilities;

- (e) collects the rent or licence fees; and
- (f) pays expenses out of the rent or licence fees collected and then pays the proceeds to the owner.

RG 140.77 Serviced strata arrangements that involve an operator who has management rights are generally managed investment schemes under s9 of the Corporations Act. This is because investors make their strata units available to the operator to manage so that they do not have day-to-day control, and the strata units are made available for letting, with the income used to provide benefits and operate the strata scheme. The following example illustrates a type of serviced strata arrangement commercially known as a ‘management rights scheme’.

Example of a management rights scheme

An investor is invited to buy a strata unit from a developer. They are told that they can give an on-site letting agent the right to let or license use of the strata unit.

The investor is told that the on-site letting agent will operate a serviced apartment arrangement using the strata unit and other strata units made available in a similar manner. The investor will not be involved in the day-to-day operation of the arrangement.

The investor is given to understand that the letting agent will seek to find tenants or licensees for the unit and what the on-site letting agent pays them will be based on the rent and licence fees received for use of the unit after the agent deducts costs and fees.

The investor might decide to live in their strata unit or use their own off-site letting agent. Therefore, joining the on-site letting agent’s serviced apartment arrangement is voluntary.

The investor has a right to terminate participation in the serviced apartment arrangement by terminating the operator’s right to enter new leases or licences for their unit on 90 days notice.

RG 140.78 Generally, in such management rights schemes, all investors come to an explicit (or implicit) understanding with the on-site letting agent about how strata units will be allocated to visitors looking for accommodation. The understanding is that the operator will allocate units on the basis of what the visitors prefer. However, they also agree that this will be done, as far as possible, in a way that fairly allocates income between investors in strata units who join the arrangement.

RG 140.79 If you operate a management rights scheme, you might be eligible for relief from the managed investment, AFS licensing (for general advice and dealing only) and hawking provisions of the Corporations Act. To take advantage of our relief, you must meet the conditions of relief in ASIC Corporations (Serviced Apartment and Like Schemes) Instrument 2016/869: see Table 3 and RG 140.82–RG 140.117.

- RG 140.80 We have given relief for management rights schemes because we consider that compliance with all aspects of the managed investment, AFS licensing (for general advice and dealing only) and hawking provisions would be an unreasonable burden for these schemes. These schemes are usually small, and there would be limited benefit in requiring registration or licensing.
- RG 140.81 Members in management rights schemes are unlikely to be materially disadvantaged from participating in the scheme because they have the option to withdraw their unit (on short notice) and arrange for it to be managed separately. If owners join, it is voluntary. They are not likely to have been induced to join on the basis of the management expertise of a particular operator who manages the letting of the strata units. This is because the operator can also withdraw on limited notice.

Overview of conditions of relief

- RG 140.82 We consider that it is appropriate for our relief for management rights schemes in ASIC Corporations (Serviced Apartment and Like Schemes) Instrument 2016/869 to be subject to the conditions in Table 3. These conditions restrict our relief to schemes where it is appropriate in the circumstances, and set reasonable operational obligations for these schemes.

Table 3: Overview of relief for management rights schemes under ASIC Corporations (Serviced Apartment and Like Schemes) Instrument 2016/869

Condition	Summary of condition
Promotion of the scheme (giving general advice)	Operators who are AFS licensees or are licensed under state or territory law to manage real estate and persons acting on their behalf under the exemption can give general advice about a management rights scheme: see RG 140.83–RG 140.86. Persons licensed under state or territory law to sell real estate who are not operators and persons acting on their behalf can give general advice about a management rights scheme under the exemption.
Product disclosure	An operator must provide a PDS to an investor before an offer is made: see RG 140.87–RG 140.91. Referring to the possible disclosures in the appendix to this guide may assist in preparing a PDS.
Participation and investor liability	Joining the scheme must be voluntary. Owners must not have to pay any money either to join the scheme or during the scheme, except for amounts covering fees and expenses: see RG 140.92.
Cash held on trust	An operator that manages the letting or licensing of strata units must ensure that any part of the property of the scheme that is cash is deposited with an Australian ADI in a trust account that is audited annually: see RG 140.93.
Withdrawal rights	An operator or owner may withdraw from the scheme on no more than 90 days notice: see RG 140.94–RG 140.96.

Condition	Summary of condition
Restrictions on alternate use	Where there are restrictions on the use of any of the strata units as a residence the exemption is available if the operator provides a written statement to ASIC from an independent real estate agent that the agent is willing and able to offer the unit for letting at a reasonable rate and expects a reasonable degree of occupancy: see RG 140.97–RG 140.99.
Rental guarantees by operators	The relief does not apply if the operator, either directly or indirectly, offers rental guarantees to owners that could apply after they are no longer the operator: see RG 140.100–RG 140.101.
Furniture, fittings and equipment	Operators may require upfront payments from owners for a furniture, fittings and equipment fund (FFE fund) as long as the purchased items become the property of the owner and any money in the FFE fund is returned to the owner if the owner withdraws from the scheme or if the scheme ends: see RG 140.102–RG 140.105.
Periodic reporting	The operator must give a periodic statement as soon as practicable and at least within six months after the end of a reporting period, detailing any transactions affecting the owner's entitlement in the scheme during that period: see RG 140.106–RG 140.109.
Transferring rights and property to a new operator	The terms of the agreement between the operator who manages the letting of the strata units and each owner must allow a majority of the unit owners in the scheme to make the operator transfer any rights and property it uses for operating the scheme to a nominated new operator: see RG 140.110–RG 140.113.
Dispute resolution	Generally, requirements under the Corporations Act for internal complaints and external dispute resolution processes must be complied with: see RG 140.114–RG 140.115.
Breach reporting	Breach reporting requirements must be complied with: see RG 140.116–RG 140.117.

Promotion of the scheme (giving general advice)

RG 140.83 A person who operates a strata scheme, including a promoter, and who expresses opinions about a management rights scheme or strata units that can be used in a management rights scheme that might reasonably be regarded as intended to influence the decision of a person to participate in the scheme (as well as their decision to acquire a strata unit) will generally be providing financial product advice, which requires an AFS licence: see RG 140.62–RG 140.66.

Note: For a discussion about the meaning of financial product advice, see [Regulatory Guide 36 Licensing: Financial product advice and dealing](#) (RG 36).

RG 140.84 Under reg 7.1.33H of the Corporations Regulations, operators and promoters have some scope to give general advice without an AFS licence if certain disclosures are made. In ASIC Corporations (Serviced Apartment and Like Schemes) Instrument 2016/869, we have given further relief so that operators and promoters, as well as real estate agents in some circumstances (see RG 140.67–RG 140.70), can give general advice about a management rights scheme without a licence if the scheme meets the conditions of our relief.

- RG 140.85 Our relief applies only if the provider is:
- (a) the operator and holds an AFS licence or is licensed under state or territory law to manage real property or if they are only a promoter licensed under state or territory laws in relation to real property; or
 - (b) not an operator, but is licensed under state or territory law to sell real property; or
 - (c) a person acting on behalf of a person covered by paragraph (a) or (b).
- RG 140.86 Our relief is limited to general advice. We recognise that general advice on interests in a management rights scheme may be given in the context of a transaction to purchase real estate, and primarily focus on the merits of the real estate. As the real property industry is regulated under a different regime from financial products, a degree of consumer protection provided in state and territory licensing regimes will apply. However, state and territory laws do not regulate AFS licensees or the provision of financial product advice and, in light of the protections intended under the Corporations Act to apply to personal advice, the exemptions do not apply to personal advice.

Product disclosure

- RG 140.87 A PDS must generally be given to each investor when they receive an offer to participate in a management rights scheme, or an offer to arrange for them to participate in a management rights scheme that is to operate in relation to their strata unit: see Pt 7.9 of the Corporations Act.
- RG 140.88 The PDS ensures that investors can get relevant information about the significant features of the financial product (including its risks, benefits and costs) so that they can make an informed choice. The PDS must be given in addition to any disclosure about the scheme or strata unit required under state or territory legislation.
- RG 140.89 Generally, the issuer of a financial product must prepare the PDS. This person is known as the 'responsible person' for the PDS: see s1013A. The product issuer is the person who is responsible for the obligations owed under the product to the holder of the financial product. As such, the operator who is responsible for the letting of the strata units for a management rights scheme has the obligation to issue a PDS under Div 2 of Pt 7.9.
- RG 140.90 Strata units under development (that might at some stage participate in a management rights scheme) can be sold before an operator is appointed to manage the letting of the strata units. Promotion for those strata units should not promote the management rights scheme in these circumstances. Under s1018A(2) a person should not advertise or issue a statement reasonably likely to induce people to acquire a financial product that is not already available for acquisition, unless the issuer is identified.

RG 140.91 When the operator offers the letting agreement, which will issue an interest in a managed investment scheme to the investor, a PDS must be given, if no previous PDS has been given. If permitted under reg 7.9.15DA of the Corporations Regulations, a PDS prepared by the operator could incorporate by reference information in a written disclosure that the developer has already given.

Note: For guidance on how to prepare a PDS, see RG 140.45 and the appendix to this guide, and [Regulatory Guide 168](#) *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168).

Participation and investor liability

RG 140.92 Owners of strata units must not be placed under an obligation to pay money either for:

- (a) joining the scheme (as opposed to buying the strata unit); or
- (b) during the scheme—except for amounts covering fees and expenses for up to three months to acquire furniture, fittings and equipment, or to be held in a fund for the repair and refurbishment of furniture, fittings and equipment for their strata unit.

Cash held on trust

RG 140.93 An operator that manages the letting or licensing of strata units must ensure that:

- (a) any part of the property of the scheme that is cash is promptly deposited with an Australian ADI on trust for investors in a trust account; and
- (a) the account is subject to audit—as to whether the money has been dealt with in accordance with the terms of the trust—by a registered company auditor at least annually.

Withdrawal rights

RG 140.94 Each owner of a strata unit and the operator who manages the letting or licensing of the strata units (i.e. the person who grants leases or licences to visitors of the serviced apartment, hotel, motel or resort complex) must be able to withdraw from the scheme on no more than 90 days notice.

RG 140.95 When an owner withdraws, the withdrawal can be made subject to any rights to occupy a strata unit that a person, other than the operator or its associate, was given before the owner gave notice that they were withdrawing from the scheme. When an owner withdraws they must not be restricted from appointing another person to manage their unit.

RG 140.96 These requirements are to restrict relief to cases where the investor's reliance on the operator is likely to be limited.

Restrictions on alternate use

- RG 140.97 To ensure that there is only limited reliance by the investor on the performance of the operator, it must be commercially practicable for the investor to use their strata unit if they withdraw. To demonstrate this, a condition of our relief is that either:
- (a) there must be no restrictions on the use of any of the strata units as a residence (e.g. imposed by the local authority under zoning restrictions or a development approval) that might affect an owner's participation in the scheme; or
 - (b) ASIC has been provided with a written statement from an independent real estate agent that, in relation to each strata unit to which the scheme relates, the agent would:
 - (i) be willing and able to offer the unit for letting at a reasonable rate having regard to the value of the unit; and
 - (ii) expect that there would be a reasonable degree of occupancy of the unit at that rate.
- RG 140.98 An independent real estate agent is a person licensed under state or territory law to lease real property who is not the operator or an associate of the operator.
- RG 140.99 To ensure that the scheme operates consistently with the premise that participation is voluntary and there is limited reliance by investors on the operator, there must be no obligation for owners of strata units to agree to join on the same or similar terms.

Rental guarantees by operators

- RG 140.100 Our relief for management rights schemes does not apply if the operator who manages the letting of the units, either directly or indirectly, offers rental guarantees to owners that could apply after they are no longer the operator. This is because there should only be limited reliance by an owner on an operator and this is ensured by the ability of the operator to withdraw at short notice. This underlying principle would be undermined if operators were to provide rental guarantees that they have to honour even after they stop managing the scheme. The following example illustrates an indirect relationship.

Example of an indirect relationship

A developer undertakes to make any necessary payments to investors in the management rights scheme to cover any shortfall in rent reaching a specified amount.

The letting agent indemnifies the developer for any amounts that a developer had to pay to meet this obligation.

- RG 140.101 This means that our relief for management rights schemes will not apply if:
- (a) the operator who manages the letting of the strata units is obligated, either directly or indirectly (e.g. by indemnifying another person who provides a guarantee), to make payments in relation to the use of the strata units (e.g. provide a guaranteed level of rental payment to owners); and
 - (b) this rental guarantee is required to be fulfilled by the operator even after the operator ceases to operate the scheme because the operator has exercised their power to terminate their obligations.

Furniture, fittings and equipment

- RG 140.102 We recognise that having standard furniture, fittings and equipment in strata units participating in a management rights scheme might be commercially appropriate and advantageous to both owners and operators. Our relief allows operators to require upfront payments for furniture, fittings or equipment for an owner's strata unit as a condition of participating in a scheme set out in the agreement with the operator as long as the purchased items become the property of the owner. Our relief also allows the operator to require payment to indemnify themselves for the expected expenses in acquiring these items over the following three months at any time if they are buying items on behalf of owners.
- RG 140.103 We consider that it is appropriate to permit the agreement between an owner and the operator to allow the operator to require payments into a furniture, fittings and equipment fund (FFE fund) by withholding payments from amounts due to owners as rental income to allow for the accumulation of owner's money for the repair or replacement of the owner's furniture, fittings and equipment within a certain limit. This applies only if the money is not pooled and is held in trust for each owner, to be returned if the owner withdraws from the scheme or the scheme ends before the money is expended on the owner's furniture, fittings and equipment.
- RG 140.104 Under our relief, operators can only withhold money for furniture, fittings and equipment from money they hold as net rent. The limit on the amount an operator can require a member to pay into an FFE fund is 3% of the annual gross scheme revenue attributable to the member, up to a limit of \$10,000 per strata unit. An owner can make payments of an amount exceeding this limit if the operator agrees to accept such payments where, for example, the owner wishes to save for extensive refurbishments of their strata unit.
- RG 140.105 The FFE fund and other property held in relation to the scheme that is cash must be deposited in an Australian ADI on trust for investors, in a trust account, and must be audited by a registered company auditor at least annually.

Periodic reporting

- RG 140.106 Generally, operators of schemes that rely on relief from the requirement to register a scheme with ASIC must comply with the periodic reporting requirement in s1017D: see [Regulatory Guide 169](#) *Disclosure: Discretionary powers* (RG 169) at RG 169.24. This is an important consumer protection requirement and generally reflects good commercial practice for managed investments.
- RG 140.107 However, state or territory legislation already requires some form of periodic reporting to owners by operators who manage the letting of strata units. For this reason, we have imposed a limited requirement for periodic reporting, which provides sufficient flexibility for operators who manage the letting of strata units and avoids regulatory duplication.
- RG 140.108 Under our relief for management rights schemes, a periodic statement must be given as soon as practicable, and at least within six months after the end of a reporting period, by the operator who manages the letting of the strata units to the owner of each strata unit detailing any transactions affecting the owner's entitlement in the scheme during that period. A periodic statement might include:
- (a) rental receipts for the owner's strata unit;
 - (b) letting agent's fees; and
 - (c) FFE fund transactions.
- RG 140.109 As a matter of good practice, it might help an owner understand their investment better if the following information is also provided:
- (a) the number of owners participating in the management rights scheme;
 - (b) the collective average achieved rentals and average achieved occupancy; and
 - (c) information about the allocation of visitors to strata units.

Transferring rights and property to a new operator

- RG 140.110 It is appropriate that members of a management rights scheme have the right to decide to replace the operator who manages the letting of strata units. This right reflects a key aspect of the managed investment provisions that allows members of a registered managed investment scheme, by a majority, to replace the operator of the scheme: see s601FM.
- RG 140.111 We have maintained this right by requiring the operator to agree to transfer any rights and property they use for operating the management rights scheme to the new operator if owners collectively decide to replace the operator who manages the letting of strata units.

- RG 140.112 We consider that the right of owners in a management rights scheme to collectively, by majority, replace the operator of the scheme cannot be substituted by:
- (a) any rights that the body corporate of a strata property has under state or territory legislation to remove an operator of a management rights scheme in circumstances of misconduct; or
 - (b) the rights of each owner in a management rights scheme to terminate their arrangement with the operator.
- RG 140.113 To limit how affected they would be by any forced transfer, operators who manage the letting of the strata units could negotiate so that any property rights they use to operate the scheme are by leasehold or under licence rather than freehold.

Dispute resolution

- RG 140.114 Under the Corporations Act, there is a minimum requirement for internal complaints and external dispute resolution processes to protect retail clients acquiring financial products: see s1017G.
- RG 140.115 We have not given relief from this requirement for management rights schemes because the required dispute resolution processes are an appropriate means to ensure that retail clients can have disputes about the financial product they acquire resolved. In particular, this includes disputes about the PDS or other representations that might induce a person to become a member of a management rights scheme.

Note: For a discussion of the internal and external dispute resolution requirements, see [Regulatory Guide 165 Licensing: Internal and external dispute resolution](#) (RG 165).

Breach reporting

- RG 140.116 Failure to comply with certain conditions of our relief for management rights schemes will not automatically exclude relief as long as the breach is reported to us in writing promptly (within 15 business days) when the person relying on the relief becomes aware they are in breach. We may exercise our power to exclude a person from relief after receiving such a report. This will depend on the circumstances.
- RG 140.117 You can lodge a written breach report:
- (a) at any ASIC office (but preferably the office in the state or territory where you live—see www.asic.gov.au/asicoffices) addressed to ‘Stakeholder Services, Misconduct and Breach Reporting’; or
 - (b) by email to fsr.breach.reporting@asic.gov.au.

Relief where all strata units are sold for at least \$500,000

- RG 140.118 In some strata schemes, all interests are offered to investors who already have or, if they take up the offer, will have strata units for which they have paid or will pay at least \$500,000 (taking into account any real property or furniture, fittings and equipment acquired or purchased with the investment-based financial product costs).
- RG 140.119 Under ASIC Corporations (Serviced Apartment and Like Schemes) Instrument 2016/869, these investors are conferred the status of wholesale clients for the purpose of Pts 7.6 (except Divs 4 and 8), 7.7, 7.8 and 7.9 of the Corporations Act. This applies to investors if they would be wholesale clients under reg 7.1.18 of the Corporations Regulations if the price paid to invest in the scheme included the value of any real property or furniture, fittings and equipment acquired or purchased with the investment-based financial product. This applies when the total of the price and these amounts is at least \$500,000.
- RG 140.120 We treat these investors as if they were wholesale clients to the extent that the operators of such schemes are given managed investment, product disclosure and hawking provision relief so that requirements do not apply if they would not apply if these investors are wholesale clients, consistent with s761G(7)(a) of the Corporations Act and reg 7.1.18(2) of the Corporations Regulations.
- RG 140.121 Our relief also applies to a later purchaser of real estate if an earlier purchaser of that real estate, either from the operator, developer or promoter or their associates, paid at least \$500,000 for the real property or furniture, fittings and equipment acquired or purchased with the investment-based financial product acquired or purchased with it.
- RG 140.122 Affected clients will not be treated as 'retail clients' for the purpose of requirements that apply to retail clients in relation to the terms of authorisation in an AFS licence, requirements for a dispute resolution system complying with s912A(2), having compensation arrangements complying with 912B or providing an FSG required by Pt 7.7.
- RG 140.123 As they will not be treated as retail clients, it is not necessary to provide investors with a PDS required under Pt 7.9 and the offer of an interest in the scheme will not give rise to the requirement to register the scheme.
- RG 140.124 If there is any change in the amount of investment required to qualify as a wholesale client in reg 7.1.18, the changed amount will also apply for the purpose of offers and issues of interests in those strata schemes affected by ASIC Corporations (Serviced Apartment and Like Schemes) Instrument 2016/869.

Relief for closed schemes and well-advanced schemes

- RG 140.125 In ASIC Corporations (Serviced Apartment and Like Schemes) Instrument 2016/869, we have given relief in certain circumstances to:
- (a) *closed schemes*—that is, strata schemes where all the strata units in the scheme were sold, and no primary offers to join the scheme were made, after 6 October 1998 (see RG 140.128–RG 140.131); and
 - (b) *well-advanced schemes*—that is, strata schemes established before 6 October 1998 that we have accepted were quite advanced when we issued our initial policy on strata schemes in 1998 (see RG 140.132–RG 140.133).
- RG 140.126 Our relief applies only to those strata schemes that had never been registered as managed investment schemes or did not have an approved deed under the Corporations Law that applied before 1 July 1998 (non-complying schemes).
- RG 140.127 We have taken a special approach to regulating these schemes due to the uncertainty about how the earlier Corporations Law applied to arrangements involving units under strata, community or similar title before we issued our policy on strata schemes on 6 October 1998.
- RG 140.128 We consider that requiring operators of closed schemes and well-advanced strata schemes to comply with the Corporations Act would be disproportionately burdensome and likely to disadvantage investors.

Closed schemes

- RG 140.129 We have given operators of closed, non-complying, strata schemes conditional relief from the managed investment, AFS licensing (for advice and dealing only), product disclosure and hawking provisions. Our relief applies only to strata schemes that involve units under strata, community and similar title.
- RG 140.130 For closed schemes, relief is conditional on there being only limited new issues (i.e. no more than 20 new members can join the scheme in any 12 months) made after 6 October 1998 subject to certain exclusions for issues that do not require a PDS. All offers made after 6 October 1998 within the 20 new member limit must not be primary offers in the sense that they must relate to strata units in the relevant complex that have been sold by 6 October 1998. At that date, the relevant strata units must not have been held by:
- (a) the promoter or its associates; or
 - (b) the operator and its associates.

- RG 140.131 The offer of an interest in the scheme may be made to:
- (a) a person who already owns a strata unit but is not a member of the scheme; or
 - (b) a person who is newly offered a strata unit for sale who might wish to participate in the scheme.

Well-advanced schemes

- RG 140.132 We have given certain operators of certain well-advanced, non-complying, strata schemes conditional relief from the managed investment, AFS licensing (for advice and dealing only), hawking and some product disclosure provisions. The relief applies when ASIC had, before 2016, granted individual relief on the basis of [Pro Forma 186](#) *Well advanced schemes* (PF 186).
- RG 140.133 Our relief allows for new offers of interests in these schemes to be made provided that no more than 20 new members join the scheme in any 12 months after 31 December 2000, excluding offers that do not require product disclosure to be given under s1012B (e.g. offers to wholesale clients). The scheme must be limited to strata units not held on 31 December 2000 by someone who was a promoter or developer.
- RG 140.134 We provided the relief on the basis that certain information was provided relating to the construction stage of the strata units, the anticipated sales after December 2000, and the provision of marketing and disclosure material available to investors and disclosure: see PF 186.

Relief from the obligation to value scheme property

- RG 140.135 We have given relief in ASIC Corporations (Serviced Apartment and Like Schemes) Instrument 2016/869 so that the responsible entity of a strata scheme only has to value an item of property when they have reasonable grounds to believe that a valuation of that item is in the best interests of members or is needed to be fair to all members. This relief applies only if, under the terms of the scheme, there is no obligation to pay members an amount related to the value of scheme property when they leave the scheme.
- RG 140.136 We consider that it might be unreasonably burdensome for the responsible entity of a strata scheme to regularly revalue scheme property. Valuations are appropriate in certain circumstances (e.g. to give relevant information for accounts, for calculating investors' voting or withdrawal rights, for the consideration to acquire interests, or for the proper management of scheme property).

Relief for arrangements that incidentally involve a scheme

- RG 140.137 Some arrangements might fall into the definition of a managed investment scheme merely because they offer incidental rights of personal consumption or use (e.g. rights to occupy hotel rooms at discounted rates). We consider that, unless such benefits are a significant part of the value of the arrangement to the investor, regulation under the managed investment, AFS licensing, product disclosure and hawking provisions would not be an appropriate means of protection.
- RG 140.138 Such incidental benefits to a strata scheme may be an interest in a time-sharing scheme as defined in s9. As such, we will exempt such schemes from the managed investment, product disclosure, AFS licensing and hawking provisions on a case-by-case basis.

Other relief that may be available

Relief under other ASIC instruments

- RG 140.139 In addition to the relief we have given to strata schemes in ASIC Corporations (Serviced Apartment and Like Schemes) Instrument 2016/869, other ASIC instrument relief may also be available—for example:
- (a) for managed investment schemes where the interests are not for money (see [Regulatory Guide 80](#) *Managed investments: Interests not for money* (RG 80)); and
 - (b) for time-sharing schemes (see [Regulatory Guide 160](#) *Time-sharing schemes* (RG 160)).

Note: If you are eligible for relief under an ASIC instrument, you do not need to apply for relief.

Relief available to individuals (on application)

- RG 140.140 If you are unable to rely on the relief available under an ASIC instrument, you can apply for individual or case-by-case relief. To submit a relief application, you should:
- (a) lodge an electronic copy to applications@asic.gov.au or a hard copy of the document to an ASIC office in your state or territory;
 - (b) include the prescribed fee(s); and
 - (c) ensure that your application addresses the criteria in [Regulatory Guide 51](#) *Applications for relief* (RG 51) and this guide.
- RG 140.141 You can also call 1300 300 630 for information and assistance.

Appendix: Information in a PDS for a management rights scheme

RG 140.142 The PDS for a management rights scheme must contain certain information under s1013D and 1013E. The following information is provided as a guide to some of the disclosures that may be appropriate.

Information in a PDS for a management rights scheme

What is being offered?

- How would an owner's property rights be affected if they hold an interest in the management rights scheme (scheme)?
- What key rights will an owner have on how their strata unit is used by the letting agent?
- What sort of serviced apartment, hotel, motel or resort complex is being operated under the scheme? How will it be operated?
- What are the key terms of any lease, licence or rights that an owner confers on the letting agent and any person engaged by the letting agent to operate the scheme?
- The letting agent or any person they propose to engage to operate the scheme may own or have rights to property that is used to facilitate the scheme. What rights do they have? How would their rights adversely affect:
 - how the scheme would be operated by a new letting agent if the letting agent changed; or
 - the amount an owner is likely to receive for use of their unit if the letting agent's property or rights to property ceased to be available (for whatever reason)?

What are the risks and returns?

- How, in general terms, will the serviced apartment, hotel, motel or resort complex generate returns for owners?
- When and how are these returns to be calculated and made available to owners? For example, does the letting agent aim to achieve a particular return? Can owners expect any particular return? Are returns from the scheme uncertain?
- Returns from the scheme might vary from what is aimed for or expected, or may be uncertain for some reason. In this case, what are the main factors that will affect the return? If occupancy rates will affect the rate of return, what are the main factors that will affect occupancy rates?
- Do owners have a potential liability to pay money to the scheme 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?

- Is there a suggested minimum period of time that an owner should remain in the scheme? If so, why is that period of time suggested? What are the qualifications (if any) on that suggested period?

What are the fees, charges, expenses and taxes?

- This information must comply with Sch 10 to the Corporations Regulations.

Who is operating the scheme?

- For each person engaged to take a material part in the operation of the serviced apartment, hotel, motel or resort complex, who is that person and what credentials does that person need to perform their role?
- What are the custodial arrangements for holding the money of the scheme? This includes money for distribution to owners, for repairs and refurbishment in a furniture, fittings and equipment (FFE) fund, and to meet expenses of the scheme.

How can membership in the scheme be withdrawn or transferred?

- When and how can an owner withdraw from the scheme?
- Can the owner's membership in the scheme be transferred? If so, in what circumstances? What legal requirements apply?
- How is money in any FFE fund for repairs and refurbishment returned if an owner withdraws from the scheme?

What other information is available?

- How can the letting agent or developer (if relevant) be contacted?
- Is there any particular information available to a prospective or existing owner if they ask the letting agent or promoter? If so, how can that information be obtained?
- When and how does the letting agent report to an owner on the operation of the scheme, including the scheme's performance (e.g. in periodic statements)?
- What are the details of any dispute resolution processes the responsible entity has in place, including the contact details of the external dispute resolution scheme of which the responsible entity is a member?

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
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
authorised representative	A person authorised by an AFS licensee, in accordance with s916A or 916B of the Corporations Act, to provide a financial service or services on behalf of the licensee Note: This is a definition contained in s761A.
best interests duty	The duty to act in the best interests of the client when giving personal advice to a client as set out in s961B(1) of the Corporations Act
best interests duty and related obligations	The obligations in Div 2 of Pt 7.7A of the Corporations Act
Ch 5C (for example)	A chapter of the Corporations Act (in this example numbered 5C)
closed scheme	A serviced strata scheme where no further primary offers (including offers to which s1012C applies) are to be made, or were made after 6 October 1998, of interests in the scheme, except for: <ul style="list-style-type: none"> • offers that did not require disclosure under the Corporations Act; or • exempted offers and offers of interests in schemes as described in RG 140.131
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
developer	A person who arranges for the building of a serviced apartment, hotel, motel or resort complex, and for the sale of the built complex or units in the complex

Term	Meaning in this document
Div 8 (for example)	A division of the Corporations Act (in this example numbered 8)
FFE fund	Money held for owners for the repair and refurbishment of furniture, fittings and equipment
financial product	<p>A facility through which, or through the acquisition of which, a person does one or more of the following:</p> <ul style="list-style-type: none"> • makes a financial investment (see s763B); • manages financial risk (see s763C); • makes non-cash payments (see s763D) <p>Note: This is a definition contained in s763A of the Corporations Act: see also s763B–765A.</p>
financial product advice	<p>A recommendation or a statement of opinion, or a report of either of these things, that:</p> <ul style="list-style-type: none"> • is intended to influence a person or persons in making a decision about a particular financial product or class of financial product, or an interest in a particular financial product or class of financial product; or • could reasonably be regarded as being intended to have such an influence. <p>This does not include anything in an exempt document</p> <p>Note: This is a definition contained in s766B of the Corporations Act.</p>
Financial Services Guide (FSG)	<p>A document required by s941A or 941B to be given in accordance with Div 2 of Pt 7.7 of the Corporations Act</p> <p>Note: This is a definition contained in s761A.</p>
general advice	<p>Financial product advice that is not personal advice</p> <p>Note: This is a definition contained in s766B(4) of the Corporations Act.</p>
hawking provisions	The provisions set out in Div 8 of Pt 7.8 of the Corporations Act and related regulations
investor	A retail client
letting agent	An operator who grants leases or licences to visitors to a serviced apartment, hotel, motel or resort complex
managed investment provisions	The provisions set out in Ch 5C of the Corporations Act and related regulations
managed investment scheme	A scheme that is a managed investment scheme as defined in s9 of the Corporations Act
management rights scheme	A strata scheme (i.e. a managed investment scheme) that involves holiday letting arrangements for strata units

Term	Meaning in this document
operator	<p>A person responsible for operating a serviced strata arrangement, including:</p> <ul style="list-style-type: none"> • the promoter of the arrangement who promotes or markets interests in the arrangement; • the manager of the serviced apartment, hotel, motel or resort complex; and • the on-site letting agent of a management rights scheme
personal advice	<p>Financial product advice given or directed to a person (including by electronic means) in circumstances where:</p> <ul style="list-style-type: none"> • the person giving the advice has considered one or more of the client's objectives, financial situation and needs; or • a reasonable person might expect the person giving the advice to have considered one or more of these matters <p>Note: This is a definition contained in s766B(3) of the Corporations Act.</p>
product disclosure provisions	The provisions set out in Pt 7.9 of the Corporations Act and related regulations
Product Disclosure Statement (PDS)	<p>A document that must be given to a 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</p> <p>Note: See s761A for the exact definition.</p>
promoter	A person who authorises, causes or allows the promoting and marketing of a serviced strata arrangement
Pt 7.9 (for example)	A part of the Corporations Act (in this example numbered 7.9)
reg 7.1.33H (for example)	A regulation of the Corporations Regulations (in this example numbered 7.1.33H)
registered scheme	A managed investment scheme (whether a strata scheme or other scheme) that is registered under Ch 5C of the Corporations Act
retail client	A retail client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of Ch 7 of the Corporations Regulations
s601ED (for example)	A section of the Corporations Act (in this example numbered 601ED)
serviced strata arrangement	An arrangement that involves owners of strata units making their units available to a person for use as part of a serviced apartment, hotel, motel or resort complex
strata scheme	A serviced strata arrangement that is a managed investment scheme under the Corporations Act

Term	Meaning in this document
strata unit	A strata title unit, community title interest, or other interest in real property (including freehold or leasehold interests)
Statement of Advice (SOA)	A document that must be given to a client for the provision of personal advice under Subdivs C and D of Div 3 of Pt 7.7 of the Corporations Act Note: See s761A for the exact definition.
well-advanced scheme	A strata scheme established before 6 October 1998 that we have accepted was quite advanced when we issued our initial policy on strata schemes in 1998

Related information

Headnotes

AFS licence, AFS licensee, Australian financial services licence, common enterprise, community title interest, exemption, hotel, letting arrangements, managed investment scheme, management rights scheme, motel, property rental scheme, real estate agent, resort, retail client, sale of interests, scheme property, serviced apartment, serviced strata arrangement, strata scheme, strata title unit, strata unit, valuation

Legislative instruments and pro formas

[ASIC Corporations \(Property Rental Schemes\) Instrument 2016/870](#)

[ASIC Corporations \(Serviced Apartment and Like Schemes\) Instrument 2016/869](#)

[\[CO 02/245\]](#) *Closed schemes*

[\[CO 02/303\]](#) *Management rights schemes—amendment*

[\[CO 02/304\]](#) *Management rights schemes*

[PF 186](#) *Well advanced schemes*

Regulatory guides

[RG 1–RG 3](#) *AFS Licensing Kit*

[RG 36](#) *Licensing: Financial product advice and dealing*

[RG 38](#) *The hawking provisions*

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

[RG 78](#) *Breach reporting by AFS licensees*

[RG 80](#) *Managed investment schemes: Interests not for money*

[RG 98](#) *Licensing: Administrative action against financial services providers*

[RG 104](#) *Licensing: Meeting the general obligations*

[RG 105](#) *Licensing: Organisational competence*

[RG 126](#) *Compensation and insurance arrangements for AFS licensee*

[RG 132](#) *Managed investments: Compliance plans*

[RG 133](#) *Managed investments and custodial or depository services: Holding assets*

[RG 134](#) *Managed investments: Constitutions*

[RG 136](#) *Managed investments: Discretionary powers and closely related schemes*

[RG 160](#) *Time-sharing schemes*

[RG 165](#) *Licensing: Internal and external dispute resolution*

[RG 166](#) *Licensing: Financial requirements*

[RG 167](#) *Licensing: Discretionary powers*

[RG 168](#) *Disclosure: Product Disclosure Statements (and other disclosure obligations)*

[RG 169](#) *Disclosure: Discretionary powers*

[RG 175](#) *Licensing: Financial product advisers—conduct and disclosure*

[RG 181](#) *Licensing: Managing conflicts of interest*

[RG 244](#) *Giving information, general advice and scaled advice*

[RG 246](#) *Conflicted remuneration*

Legislation

Corporations Act, Chs 5C and 7, Pts 7.6, 7.7, 7.8 and 7.9, s9, 601ED(1), 601ED(2), 601ED(3), 601FC(1)(j), 601FM, 601HA(1)(c), 761G, 765A, 766B, 761E, 912A, 912B, 941A, 941B, 941C, 946A, 949A, 961B, 1012B, 1012D, 1013A, 1013D, 1013E, 1017A, 1017B, 1017D, 1017F, 1017G, 1018A

Corporations Regulations, regs 7.1.18, 7.1.33H, 7.9.15DA

ASIC Act, s12DA

Consultation papers

[CP 81](#) *Management rights schemes*

[CP 250](#) *Remaking ASIC class orders on property, strata and management rights schemes*

Media releases

[16-330MR](#) *ASIC remakes class orders relating to property, strata and management rights schemes (29 September 2016)*