



ASIC
Australian Securities &
Investments Commission

REGULATORY GUIDE 160

Time-sharing schemes

December 2020

About this guide

This guide is for responsible entities, operators and promoters of time-sharing schemes, and those who provide credit (credit providers) and credit assistance (credit assistance providers) for the purchase of an interest in a time-sharing scheme.

It explains our general approach to regulating time-sharing schemes under the Corporations Act, including exercising ASIC's powers to modify the law.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This guide was issued in December 2020 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 160, issued 14 February 2008, reissued 15 June 2012
- Superseded Policy Statement 160, issued 20 April 2000, reissued 7 February 2007, rebadged as a regulatory guide 5 July 2007

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

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A Overview

Key points

Responsible entities, operators and promoters of a time-sharing scheme must comply with the managed investment, licensing, disclosure and conduct provisions of the *Corporations Act 2001* (Corporations Act).

Financial advice and lending obligations arising under the Corporations Act and *National Consumer Credit Protection Act 2009* (National Credit Act) are also relevant when promoting a time-sharing scheme and offering finance to acquire an interest in a scheme.

In addition, the consumer protection provisions in Div 2 of Pt 2 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) apply to financial services provided in relation to interests in time-sharing schemes and credit facilities.

We have provided technical relief from, and modified, certain provisions of the Corporations Act for time-sharing schemes. Some of the relief is subject to conditions.

We will consider requests for other relief on a case-by-case basis.

Time-sharing schemes

- RG 160.1 The Corporations Act defines a time-sharing scheme as a scheme, undertaking or enterprise, whether in Australia or elsewhere, that operates for a period of three years or more and in which participants are, or may become, entitled to use, occupy or possess the property of the scheme for two or more periods.
- RG 160.2 Time-sharing schemes are specifically included in the s9 definition of a ‘managed investment scheme’. Time-sharing schemes are a type of managed investment scheme for the purposes of Ch 5C of the Corporations Act.
- Note: All references to legislative provisions are references to the Corporations Act, unless otherwise specified.
- RG 160.3 As an interest in a time-sharing scheme is an interest in a managed investment scheme, it is a financial product under the Corporations Act: see s764A.
- RG 160.4 Time-sharing schemes commonly involve providing accommodation to members. Accommodation-based time-sharing schemes are generally structured as:
- (a) points-based programs, where members buy points that they can redeem at certain resorts or holiday accommodation; or
 - (b) interval-based programs, where members are given the use of a specific property for a given period.

- RG 160.5 There are two types of points-based programs: allocation points-based programs and pay as you go (PAYG) points-based programs.
- RG 160.6 Time-sharing schemes can also include non-accommodation arrangements—for example, boating or aircraft syndicates.

Purpose of this guide

- RG 160.7 The purpose of this guide is to outline:
- (a) our approach to regulating time-sharing schemes, including the specific obligations we have imposed on responsible entities, operators and promoters of time-sharing schemes—see [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#). This instrument also provides some relief from certain managed investment, licensing and product disclosure provisions of the Corporations Act;
 - (b) our guidance on the general conduct and disclosure obligations arising under the Corporations Act, ASIC Act and the National Credit Act that are relevant to time-sharing schemes, including the consumer protection provisions; and
 - (c) the individual relief we have given to operators of certain closed or member-controlled and non-accommodation time-sharing schemes from the managed investment provisions of the Corporations Act.

Note: References to the ASIC Corporations (Time-sharing Schemes) Instrument 2017/272 are to the instrument as amended by ASIC Corporations (Amendment) Instrument 2020/1064 and ASIC Corporations (Amendment) Instrument 2020/1065. For details about the transitional arrangements that apply, see Table 1 and the appendix.

Regulatory framework for time-sharing schemes

- RG 160.8 Responsible entities, operators and promoters of time-sharing schemes carry on financial services businesses when they provide advice about, deal in interests in and operate time-sharing schemes. Generally, they will need an Australian financial services (AFS) licence to carry on that financial services business. The time-sharing scheme must also be registered with ASIC before the scheme can be offered to consumers, unless an exemption from registration applies.

Note: In this guide, we use the term ‘consumer’ in the context of a *credit product* to mean a natural person or strata corporation (see s5 of the National Credit Act) and in the context of *financial product* to mean a retail client (see s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations 2001 (Corporations Regulations)). We use the term ‘responsible entity’ for the entity that operates a registered time-sharing scheme and ‘operator’ to refer to both a responsible entity and operator of an exempt time-sharing scheme. We use ‘promoter’ for an associate of a responsible entity of a registered time-sharing scheme that holds an AFS licence authorising it to advise

and deal in interests in a registered time-sharing scheme and that provides such advice to consumers. Most responsible entities market the sale of interests in their own schemes to consumers; some choose to use a promoter instead.

RG 160.9 We have imposed specific obligations, including disclosure obligations, on AFS licensees authorised to operate a registered time-sharing scheme as a responsible entity and/or deal in interests in a registered time-sharing scheme. We have also imposed some obligations on promoters who are also AFS licensees. This is because of the particular characteristics of time-sharing schemes and the way they are sold to consumers.

Note: As a regulator, ASIC recognises that, while disclosure is necessary, disclosure alone is often not sufficient to drive good consumer outcomes. For more information, see [Report 632](#) *Disclosure: Why it shouldn't be the default* (REP 632), our joint report with the Dutch Authority for the Financial Markets.

RG 160.10 Operators and promoters of time-sharing schemes must comply with obligations under the Corporations Act and ASIC Act, including (but not limited to):

- (a) for operators and promoters that are AFS licensees, the obligations under Pts 7.6, 7.8 and 7.10 of the Corporations Act;
- (b) for responsible entities of registered time-sharing schemes, the obligations under Ch 5C of the Corporations Act;
- (c) the Product Disclosure Statement (PDS) and ongoing disclosure requirements for interests in a registered time-sharing scheme, under Pt 7.9 of the Corporations Act;
- (d) when financial product advice is provided to consumers, the obligations under Pts 7.7 and 7.7A of the Corporations Act; and
- (e) the general consumer protection provisions in the Corporations Act and Div 2 of Pt 2 of the ASIC Act (e.g. the hawking prohibitions and the misleading or deceptive conduct restrictions).

RG 160.11 If finance is offered for the purchase of an interest in a time-sharing scheme, the provider of credit under a credit contract (credit provider) and persons who provide credit assistance (credit assistance providers) must comply with conduct and disclosure obligations under the National Credit Act.

Note: 'Credit assistance' is suggesting to a consumer, or assisting a consumer to apply for, a particular credit contract.

RG 160.12 See Section B for further guidance on the regulatory framework. See Section C for guidance on the general consumer protection and finance-related obligations that apply to operators, promoters, credit providers and credit assistance providers for time-sharing schemes. Section D sets out our guidance on the obligations for people who provide advice about interests in time-sharing schemes.

Our approach to non-compliance

- RG 160.13 We have a number of regulatory options for dealing with breaches of the provisions of the Corporations Act, National Credit Act and ASIC Act. These include (but are not limited to) licensing action, stop orders, product intervention orders, and civil or criminal proceedings.

Note: For more information on product intervention orders, see [Regulatory Guide 272 Product intervention power](#) (RG 272).

- RG 160.14 The type of regulatory response we will take depends on the particular provision that has been breached and the seriousness of the contravention and its consequences.

Note: For more information about how we approach our enforcement role, see [Information Sheet 151 ASIC's approach to enforcement](#) (INFO 151).

- RG 160.15 We anticipate seeking recurrent data from time-sharing scheme operators and their associates. This is to help us identify potential non-compliance risks or detriment for consumers under the current regulatory framework.

Our approach to granting relief

- RG 160.16 Given the recreational (rather than investment) nature of time-sharing schemes, we have granted technical relief from certain provisions of the Corporations Act for time-sharing schemes: see [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#).

- RG 160.17 We have also continued relief from the managed investment, licensing and product disclosure provisions for rental pools, but only for those operators who relied on Superseded Class Order [SCO 02/237] *Time-sharing schemes—Operation of rental pool* before its repeal. We will assess any new applications for rental pool relief on a case-by-case basis.

- RG 160.18 We have granted individual relief from the managed investment and licensing provisions to certain types of time-sharing schemes, including non-accommodation based and closed or member-run time-sharing schemes: for more information on legacy schemes, see RG 160.20–RG 160.21.

- RG 160.19 Section E provides information on our general approach to relief. For guidance on how to apply for relief, see RG 160.229–RG 160.233.

Legacy schemes

- RG 160.20 State-exempt time-sharing schemes, title-based time-sharing schemes and member-controlled clubs (legacy schemes) were granted individual relief based on:
- (a) Pro Forma 205 *Time-sharing schemes formerly exempt under state laws* (PF 205);

- (b) Pro Forma 206 *Time-sharing schemes Ch 5C relief* (PF 206); and
- (c) Pro Forma 207 *Titled-based time-sharing schemes* (PF 207).

RG 160.21 We have withdrawn these pro formas and are continuing the relief in the existing individual relief instruments, with amendments as appropriate. We will consider any new applications for relief on a case-by-case basis: for more information on our policy for granting relief, see RG 160.212–RG 160.225.

Transitional arrangements

RG 160.22 In December 2020 we issued ASIC Corporations (Amendment) Instrument 2020/1064 and ASIC Corporations (Amendment) Instrument 2020/1065, which updated certain obligations in [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#).

RG 160.23 To facilitate business and cut red tape, where possible we have made certain relief and concessional requirements available immediately or at the election of the licensee. Responsible entities and promoters of registered time-sharing schemes must comply with:

- (a) all new requirements and obligations (other than the fees and costs requirements and obligations for PDSs) after 30 September 2021 (first transition period); and

Note: The provisions to facilitate hardship withdrawals from members (see RG 160.188–RG 160.199) are contained in s601GA(1A), as inserted by [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#) (notional s601GA(1A)). A responsible entity may not be able to change the constitution of a registered time-sharing scheme to reflect notional s601GA(1A) because of the circumstances in RG 160.242. If this is the case, responsible entities do not need to comply with the obligations in [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#) relating to hardship withdrawals, and may continue to rely on the relevant provisions of [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#) that were in force immediately before the commencement of [ASIC Corporations \(Amendment\) Instrument 2020/1064](#).

- (b) the modified enhanced fees and costs disclosure requirements for PDSs after 30 September 2022 (second transition period).

Note: The second transition period has been aligned with our transitional arrangements under [Regulatory Guide 97 Disclosing fees and costs in PDSs and periodic statements](#) (RG 97).

Responsible entities and promoters can opt in early to all of the new and modified obligations and requirements that have a transition period.

RG 160.24 Table 1 sets out the transitional arrangements for complying with these new obligations, and where operators and promoters can find more information on the transitional arrangements for registered time-sharing schemes.

Table 1: Transitional arrangements for obligations in ASIC Corporations (Time-sharing Schemes) Instrument 2017/272

Date	Arrangements	More information
Commencing immediately	Operators of time-sharing schemes can rely on the new rental pool relief under ASIC Corporations (Time-sharing Schemes) Instrument 2017/272 (as amended by ASIC Corporations (Amendment) Instrument 2020/1064).	RG 160.234–RG 160.235 in the appendix
Until 30 September 2021 (first transition period)	<p>Responsible entities and promoters of registered time-sharing schemes must continue to comply with</p> <ul style="list-style-type: none"> the net tangible assets (NTA) and audit requirements that apply because of the definition of ‘special custody assets’ given in Class Order [CO 13/760] Financial requirements for responsible entities and operators of investor directed portfolio service; the relevant enhanced fees and costs disclosure requirements for periodic statements in Sch 10 to the Corporations Regulations; and the previous obligations under ASIC Corporations (Time-sharing Schemes) Instrument 2017/272. <p>Note: Early opt-in arrangements apply.</p>	Note to RG 160.93, RG 160.236–RG 160.243 and Table 5–Table 6 in the appendix
After 30 September 2021	<p>Responsible entities and promoters of registered time-sharing schemes must comply with all the modified obligations (other than the modified enhanced fees and costs disclosure requirements for PDSs) inserted into the Corporations Act by ASIC Corporations (Time-sharing Schemes) Instrument 2017/272 and [CO 13/760], as amended by ASIC Corporations (Amendment) Instrument 2020/1064 and ASIC Corporations (Amendment) Instrument 2020/1065.</p> <p>Note: Early opt-in arrangements apply.</p>	Section B and Section E RG 160.236–RG 160.245 and Table 5–Table 7 in the appendix
Until 30 September 2022 (second transition period)	<p>Responsible entities and promoters of registered time-sharing schemes must comply with the relevant enhanced fees and costs disclosure requirements for PDSs in Sch 10 to the Corporations Regulations.</p> <p>Note: Early opt-in arrangements apply.</p>	RG 160.236–RG 160.239 and Table 5 in the appendix
After 30 September 2022	<p>Responsible entities and promoters of registered time-sharing schemes must comply with the modified enhanced fees and costs disclosure requirements for PDSs.</p> <p>Note: Early opt-in arrangements apply.</p>	RG 160.236–RG 160.239 and Table 5 in the appendix

B Regulatory framework for time-sharing schemes

Key points

This section explains how time-sharing schemes are regulated, including:

- the requirement to hold an AFS licence and register a scheme;
- the obligations imposed on AFS licensees;
- the PDS and ongoing disclosure requirements;
- the specific obligations that apply to registered time-sharing schemes; and
- how the financial requirements apply to responsible entities of registered time-sharing schemes.

Requirements that apply to time-sharing schemes

- RG 160.25 Time-sharing schemes are regulated in a way that is consistent with the Parliamentary intention to regulate time-sharing schemes as managed investment schemes, and interests in time-sharing schemes as financial products. This means that, generally, an operator or promoter of a time-sharing scheme must comply with certain provisions of the Corporations Act. This includes the requirements to:
- (a) hold an AFS licence to carry on a financial services business—for example, to deal in a financial product, operate a registered managed investment scheme and provide financial advice (RG 160.27);
 - (b) comply with the general AFS licensee obligations (RG 160.28);
 - (c) register the scheme with ASIC and operate the scheme in accordance with Ch 5C (RG 160.31–RG 160.36);
 - (d) comply with certain disclosure obligations—including giving a PDS, providing ongoing disclosure and meeting the enhanced fee disclosure requirements under Sch 10 to the Corporations Regulations when disclosing the fees and costs (RG 160.37–RG 160.47);
 - (e) comply with the specific obligations imposed on registered time-sharing schemes—including requirements relating to the cooling-off period, subject to finance rights, verbal and written consumer warnings, inclusion of a prominent summary of key features in the PDS, disclosure obligations about hardship and forfeiture, purchases involving finance, fees and charges, deposits, and points-based programs (RG 160.48–RG 160.86);

Note: Given the nature of time-sharing schemes, we have also provided operators with technical relief from provisions of the Corporations Act (see [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#)). However, such relief will only be available to

registered time-sharing schemes that have a constitution that complies with the provisions to facilitate hardship withdrawals from members (see RG 160.188–RG 160.201).

- (f) meet the financial requirements, including the base-level financial requirements and those specific to time-sharing schemes (RG 160.87–RG 160.94); and
- (g) meet the requirements for holding scheme property imposed on responsible entities of registered time-sharing schemes.

Note: The minimum standards that apply are set out in [Class Order \[CO 13/1409\] Holding assets: Standards for responsible entities](#) and [Regulatory Guide 133 Funds management and custodial services: Holding assets](#) (RG 133).

RG 160.26 Operators and promoters must also meet other conduct obligations under the Corporations Act and ASIC Act, including the general consumer protection provisions. Credit providers and credit assistance providers for time-sharing schemes must comply with conduct and disclosure obligations under the National Credit Act. See Sections C and D for guidance on our expectations for complying with conduct and disclosure obligations.

Requirement to hold an AFS licence

RG 160.27 Before a person carries on a financial services business in Australia, they must hold an AFS licence or act as a representative of an AFS licensee. Operators and promoters of time-sharing schemes provide financial services when they:

- (a) operate a registered scheme;
- (b) deal in (including by issuing) interests in a time-sharing scheme; or
- (c) give financial product advice about an interest in a time-sharing scheme.

Note: For more information about carrying on a financial services business in Australia, see [Regulatory Guide 121 Doing financial services business in Australia](#) (RG 121).

RG 160.28 Operators and promoters that are AFS licensees must comply with the general licensee obligations, set out in the Corporations Act, to:

- (a) do all things necessary to ensure that the financial services covered by their licence are provided efficiently, honestly and fairly (s912A(1)(a));
- (b) have adequate arrangements in place for managing conflicts of interest (s912A(1)(aa));
- (c) comply with the conditions on their licence (s912A(1)(b));
- (d) comply with the financial services laws (s912A(1)(c));

Note: ‘Financial services law’ is defined in s761A and includes, among other laws, Chs 5C and 7 of the Corporations Act and the provisions of Div 2 of Pt 2 of the ASIC Act.

- (e) take reasonable steps to ensure that their representatives comply with the financial services laws (s912A(1)(ca));
- (f) have adequate financial, technological and human resources to provide the financial services covered by their licence and to carry out supervisory arrangements (s912A(1)(d));
- (g) maintain the competence to provide the financial services covered by their licence (s912A(1)(e));
- (h) ensure that their representatives are adequately trained and competent to provide those financial services (s912A(1)(f));
- (i) if they provide financial services to consumers, have internal dispute resolution (IDR) procedures and membership of the Australian Financial Complaints Authority (AFCA) (s912A(1)(g) and 912A(2));
- (j) establish and maintain adequate risk management systems (s912A(1)(h)); and
- (k) have adequate compensation arrangements if financial services are provided to consumers (s912B).

Note: For further guidance on the general obligations, see [Regulatory Guide 104 Licensing: Meeting the general obligations](#) (RG 104).

RG 160.29 As an AFS licensee, various conduct obligations in Pts 7.6, 7.8 and 7.10 also apply.

RG 160.30 An AFS licensee must tell ASIC in writing within 10 business days of becoming aware of any significant breach (or likely breach) of specified obligations: see s912D.

Note: For guidance on breach reporting, see [Regulatory Guide 78 Breach reporting by AFS licensees](#) (RG 78)

Registration and operation of a scheme

RG 160.31 Generally, a time-sharing scheme with more than 20 members must be registered with ASIC, unless an exemption applies: see s601ED. If there are 20 or fewer members, the time-sharing scheme does not have to be registered unless:

- (a) the responsible entity 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).

RG 160.32 A time-sharing 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

require a PDS under Div 2 of Pt 7.9, if Div 2 applied at the time of the issue: see s601ED(2).

- RG 160.33 The requirements for registration of a scheme are set out in Pt 5C.1 and include that the scheme has:
- (a) a constitution that meets the minimum content requirements in notional s601GA(1A) and is legally enforceable by the members, as required by s601GB; and
 - (b) a compliance plan that sets out adequate measures that the responsible entity will apply when operating the scheme to ensure compliance with the Corporations Act and the scheme's constitution (see s601HA).

Note: An example of measures we expect to be in the compliance plan are measures to ensure that, in operating the scheme, the responsible entity continues to comply with the financial requirements (under s912AA, as notionally inserted by [\[CO 13/760\]](#)) and the additional licensee obligations for registered time-sharing schemes (under s912AJ, as notionally inserted by [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#)).

- RG 160.34 The responsible entity's compliance with the compliance plan must be audited annually: see s601HG. Unless at least half of the responsible entity's directors are 'external directors' (see the definition in s601JA(2)), compliance must also be monitored by a compliance committee established under Pt 5C.5.
- RG 160.35 The responsible entity must ensure the scheme meets the requirements of Ch 5C of the Corporations Act on an ongoing basis.
- RG 160.36 The responsible entity has duties under Ch 5C, including to:
- (a) act in the best interests of the members of the scheme (s601FC(1)(c));
 - (b) comply with the compliance plan of the scheme (s601FC(1)(h));
 - (c) ensure scheme property is clearly identified and held separately from the property of the responsible entity and the property of any other scheme (s601FC(1)(i)); and
 - (d) hold that property on trust for scheme members (s601FC(2)).

Requirement to provide a PDS and ongoing disclosure

PDS requirements

- RG 160.37 Generally, promoters and operators of time-sharing schemes must give a PDS to a consumer when offering or issuing them an interest in a time-sharing scheme: see s1012B(3).

- RG 160.38 As an interest in a time-sharing scheme is a financial product, the disclosure obligations in Pt 7.9 apply to the offer or acquisition (including to provide a PDS). The PDS must:
- (a) be worded and presented in a clear, concise and effective manner (s1013C(3));
 - (b) make specific disclosures (s1013D)—including setting out, among other things:
 - (i) information about the fees and costs;
 - (ii) the significant risks and benefits; and
 - (iii) any other significant characteristics or features associated with holding the product; and
 - (c) include all other information that might reasonably be expected to have a material influence on the decision of a reasonable person (when acquiring as a retail client) about whether to acquire the product (s1013E). Examples of information that would have a material influence include information about:
 - (i) any related party transactions and material agreements (including any arrangements and payments to a developer of a time-sharing scheme); and
 - (ii) the quality, upkeep and availability of accommodation.

Note: For guidance on preparing a PDS, see [Regulatory Guide 168](#) *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168). For guidance on related party transactions, see [Regulatory Guide 76](#) *Related party transactions* (RG 76).

RG 160.39 A PDS for interests in a time-sharing scheme must also disclose certain matters upfront, including a written consumer warning and a prominent summary of the key features: see RG 160.65–RG 160.68.

RG 160.40 We consider that the shorter, simpler PDS disclosure regime in Schs 10A and 10E to the Corporations Regulations does not apply to interests in a time-sharing scheme or time-sharing schemes generally. This is because a time-sharing scheme does not satisfy the liquidity requirements in the definition of a ‘simple managed investment scheme’ in reg 1.0.02(1) of the Corporations Regulations.

Ongoing disclosure requirements

RG 160.41 There are ongoing disclosure obligations that apply to responsible entities under Pt 7.9, including the requirement to provide periodic statements to members who acquired their interests as retail clients: see s1017D. The periodic statement must give members information that the responsible entity reasonably believes members need to understand their interests in the time-sharing scheme.

Modified enhanced fees and costs disclosure requirements

RG 160.42 Issuers of interests in time-sharing schemes (and other managed investment products provided to consumers) must meet certain requirements for disclosing fees and costs in PDSs and periodic statements under the applicable ‘enhanced fee disclosure regulations’ in Sch 10 to the Corporations Regulations: see [Class Order \[CO 14/1252\] Technical modifications to Schedule 10 of the Corporations Regulations](#) and [ASIC Corporations \(Disclosure of Fees and Costs\) Instrument 2019/1070](#).

RG 160.43 Under Sch 10, the PDS must include:

- (a) a standardised fees and costs template (cls 201–202A of Sch 10);
- (b) certain additional explanations of fees and costs (cl 209 of Sch 10);
- (c) an example of annual fees and costs (cls 210–212 of Sch 10); and
- (d) a boxed consumer advisory warning (cls 221–222 of Sch 10).

RG 160.44 We have modified the enhanced fees and costs requirements that apply to PDSs for registered time-sharing schemes to take into account the nature of the scheme and fees and costs involved: see [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#). Under the modified requirements, the responsible entity or promoter as issuer must provide PDS disclosure using:

- (a) adapted fees and costs summaries for the different types of time-sharing scheme, to capture all upfront and ongoing fees and costs associated with a purchase (including the purchase price, finance, and other fees and costs);
- (b) terminology and explanations of fees and costs tailored to the time-sharing scheme;
- (c) an adapted example of fees and costs, to help consumers ascertain how much they could pay for an interest in a time-sharing scheme (with and without finance) each year the product is held. The example must be based on:
 - (i) in the case of points-based programs, the most common membership option purchased as at the date of the PDS; or
 - (ii) in the case of interval-based programs, the interval purchased by the greatest number of members in the prior financial year.

The example must also include the costs of any financing of the purchase of an interest, if the finance arrangement is facilitated by the responsible entity;

- (d) adapted cost-of-product information;
- (e) an adapted consumer advisory warning; and
- (f) an additional explanation of fees and costs.

RG 160.45 Similarly, we have modified the requirements for the periodic statements that must be given under s1017D.

Note 1: Responsible entities have until 30 September 2022 to comply with the modified enhanced fees and costs disclosure requirements imposed by the [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#) (as amended by ASIC Corporations (Amendment) Instrument 2020/1065) for PDSs. The modified requirements for periodic statements will apply to a periodic statement for a reporting period that commences on or after 30 September 2021, or ends on a day after 30 September 2021: see RG 160.236–RG 160.239 and Table 5 of the appendix for a summary of the transitional arrangements for fees and costs disclosure.

Note 2: For guidance on our expectations when disclosing fees and costs information, issuers should read [RG 97](#). In particular, issuers should read the relevant parts of Sections E, G, H and I of RG 97.

RG 160.46 Our view is that the modifications reflect the central features of the prescribed format in Sch 10 while promoting the principles of transparency, comparability and ease of consumer understanding that underlie the requirements. We consider that, to achieve these principles, consumers must be informed of all upfront and ongoing costs involved in purchasing an interest in a time-sharing scheme.

RG 160.47 The information must be disclosed in a separate section of the PDS, which may include a separate price list that can be easily updated.

Additional obligations that apply to registered time-sharing schemes

RG 160.48 As well as modifying Sch 10 for registered time-sharing schemes, we have also imposed additional obligations on responsible entities and promoters of registered time-sharing schemes. See Table 2 for a summary of the additional obligations we have imposed.

RG 160.49 We have modified the Corporations Act to impose these obligations on AFS licensees: see [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#).

Table 2: Additional obligations that apply

Additional obligations	Applies to	More information
Cooling-off rights	Both responsible entities and promoters	RG 160.50–RG 160.53, Table 3
‘Subject to finance’ rights	Both responsible entities and promoters	RG 160.50, RG 160.54–RG 160.61,
Verbal consumer warning	Both responsible entities and promoters	RG 160.50, RG 160.62–RG 160.64

Additional obligations	Applies to	More information
Disclosure obligations for PDSs, including a written consumer warning and prominent summary of key features	Both responsible entities and promoters	RG 160.42–RG 160.47 and RG 160.65–RG 160.68
Disclosure obligations about hardship and forfeiture	Responsible entities	RG 160.50, RG 160.69–RG 160.70
Paying continuing charges on interests and providing levy notices	Responsible entities	RG 160.71–RG 160.74
Restrictions on deposits for property developments	Responsible entities	RG 160.75–RG 160.83
Additional obligations for the allocation of points in points-based programs	Responsible entities	RG 160.84–RG 160.86
Hardship arrangements	Responsible entities	RG 160.188–RG 160.201

Note 1: See Table 6–Table 7 of the appendix for a summary of the transitional arrangements for cooling-off periods, payment of fees and charges, handling deposits and the new AFS licensee obligations.

Note 2: If an AFS licensee meets the new licensee obligations in the [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#) (as amended by ASIC Corporations (Amendment) Instrument 2020/1064 and ASIC Corporations (Amendment) Instrument 2020/1065), they will be taken to have complied with any specific time-sharing scheme licence conditions that are still imposed under their licence. See [Pro Forma 209 Australian financial services licence conditions \(PF 209\)](#) for our standard licence conditions, including licence conditions specific to time-sharing schemes.

- RG 160.50 A consumer may choose to void their application for an interest if the responsible entity notifies them of its failure to give them:
- (a) a cooling-off statement and ‘subject to finance’ notice (see Table 3, RG 160.55);
 - (b) the verbal consumer warning (see RG 160.64);
 - (c) copies of the following signed and dated documents received from the consumer:
 - (i) the application form; and/or
 - (ii) the acknowledgement of receipt of the cooling off statement and subject to finance notice (see Table 3); or
 - (d) a copy of the PDS explaining whether the hardship arrangements in notional s601GA(1A) apply to the scheme. If they do provide hardship arrangements, they must explain that a member may lodge a hardship application and set out the hardship criteria and procedures. If they do not, they must explain the reason why. The responsible entity must also explain the provisions and procedures for forfeiture and exercising a power of sale. This information must also be disclosed on the responsible entity’s website—see s912AJ(13) (as notionally inserted by ASIC Corporations (Time-sharing Schemes) Instrument 2017/272).

Note: If there is no PDS in use before a consumer acquires an interest in the scheme, this information must be provided in writing.

- RG 160.51 If the responsible entity becomes aware that they have failed to give the consumer any of the documents or warnings in RG 160.50, they must notify the consumer of their refund rights: see s912AJ(15) (as notionally inserted by [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#)).

Cooling-off rights

- RG 160.52 As a non-liquid scheme, the purchase of an interest in a time-sharing scheme is not subject to any cooling-off requirements under the Corporations Act. However, under our modification we have imposed an obligation on the responsible entity and promoters to provide:

- (a) cooling-off rights to consumers, to allow the consumer to withdraw from the arrangement they have entered into with the responsible entity within a specific period; and
- (b) a full refund to the consumer of all money they paid.

- RG 160.53 A responsible entity that deals in an interest in a time-sharing scheme by issuing or selling it to a consumer must (and must ensure any of its associates):

- (a) comply with the cooling-off period requirements set out in Table 3;
- (b) prominently disclose that the consumer has a right to withdraw during a cooling-off period that is:
 - (i) not less than 7 calendar days, if the operator is a member of the Australian Timeshare and Holiday Ownership Council (ATHOC); and
 - (ii) not less than 14 calendar days in all other cases.

The cooling-off period disclosure must be in any PDS and application form a responsible entity or promoter provides to a consumer.

Note: A shorter cooling-off period applies to ATHOC members because members are bound by the ATHOC Code of Practice, which specifically deals with marketing, selling, related issues and reporting to ASIC.

Table 3: Summary of the cooling-off period requirements

Requirement	Details
Form of the statement	<p>Consumers must be given a written cooling-off statement in the form set out in s912AK(1) (as notionally inserted by ASIC Corporations (Time-sharing Schemes) Instrument 2017/272), together with the application form for the offer and a copy of the PDS (if required).</p> <p>If the consumer signs an application form, the responsible entity or promoter must give the consumer a copy to keep of:</p> <ul style="list-style-type: none"> • the signed and dated application form; • the PDS—or if there is no PDS in use before a consumer acquires an interest in the scheme, information in writing—providing a clear explanation about the hardship and forfeiture arrangements (see RG 160.50(d)); • the cooling-off statement; • the ‘subject to finance’ notice; and • the consumer’s signed and dated acknowledgement that they have received the cooling-off statement and the ‘subject to finance’ notice.
Length of the period	<p>If the responsible entity is a member of ATHOC, the cooling-off period is seven days. If the responsible entity is not a member of ATHOC, the cooling-off period is 14 days.</p> <p>The cooling-off period commences on the date on which the consumer signs the acknowledgement that they have received the cooling-off statement. The cooling-off period expires at the end of the 7th or 14th day after that date. This means a consumer can cool off at any point up until midnight on the 7th or 14th calendar day.</p> <p>Note: If the 7th or 14th day is a Saturday, Sunday, public holiday or bank holiday where the consumer is, then the cooling-off period ends on the next day that is not a Saturday, Sunday, public holiday or bank holiday—see s36(2) of the <i>Acts Interpretation Act 1901</i>, as in force on 1 January 2005.</p>
Manner of exercise	<p>Consumers can give notice that they wish to exercise their cooling-off rights in any way that is disclosed in the PDS or cooling-off statement.</p> <p>We consider that responsible entities should provide consumers with both electronic and physical methods for giving the responsible entity notice they wish to exercise their cooling-off rights.</p>
Consequences of exercise	<p>If a consumer withdraws their application by exercising their cooling-off rights, all money paid by the consumer for the application (including any administration fees or other fees) must be returned to the consumer.</p>
Record keeping	<p>The responsible entity must keep records of:</p> <ul style="list-style-type: none"> • all consumers given the responsible entity’s cooling-off statement; • the dates the statements were given; and • each signed and dated acknowledgement that the consumer has received the cooling-off statement.

Finance to purchase an interest in a time-sharing scheme

RG 160.54 It is common for consumers to obtain finance to purchase an interest in a time-sharing scheme and for the finance to be facilitated by an entity related

to the responsible entity (related finance provider). Our view is that, in addition to circumstances where the consumer exercises their cooling-off rights, the purchase should not proceed if the consumer does not obtain finance to enable the purchase, even if the cooling-off period has already ended.

RG 160.55 Accordingly, we have imposed additional obligations on responsible entities and promoters. They must provide consumers with a subject to finance notice, including a cancellation form, and obtain from consumers an acknowledgement that they have received this notice.

RG 160.56 The responsible entity must ensure a purchase does not proceed when a consumer does not obtain finance for the purchase. Consumers already have some rights against suppliers of goods and services and credit providers, under s134 and 135 of the National Credit Code (in Sch 1 to the National Credit Act). The additional obligations we have imposed supplement those existing rights.

Additional requirements and consumer rights where the purchase of an interest in the scheme is ‘subject to finance’

RG 160.57 Applications to purchase an interest in a time-sharing scheme must include:

- (a) a question about whether the consumer intends to seek finance to pay for the interest in a time-sharing scheme; and
- (b) a description of the ‘subject to finance’ rights to withdraw the application and how those rights may be exercised.

RG 160.58 The effect of the ‘subject to finance’ rights is that the application for the interest in the time-sharing scheme is withdrawn if the applicant notifies the responsible entity or promoter that they have:

- (a) failed to obtain finance;
- (b) decided not to proceed with an application for finance; or
- (c) rejected an offer of finance.

RG 160.59 A responsible entity or promoter must not require a consumer to accept any finance offered to the consumer. This is intended to ensure consumers are able to exercise ‘subject to finance’ rights.

Consumer rights when finance is from a related finance provider

RG 160.60 Under s135 of the National Credit Code, consumers that have a ‘tied loan contract’ with a ‘linked credit provider’ of a supplier are entitled to terminate the tied loan contract, and recover interest charges and other amounts paid under that contract, if the sale contract for the associated goods or services is rescinded or discharged. The provisions require the supplier to notify the credit provider of the rescission or discharge, and allow for the credit

provider to recover from the supplier any loss suffered by the credit provider as a result of the contract being terminated.

Note: ‘Tied loan contracts’ are credit contracts consumers enter into for the purpose of purchasing goods or services, and the credit provider knows or should reasonably know about this purpose. The credit provider is a ‘linked credit provider’ when they have arrangements with the supplier for facilitating the provision of credit: see s127 of the National Credit Code.

RG 160.61 For information on the requirements that apply to the credit provider, see Section C.

Verbal consumer warning

RG 160.62 The acquisition of an interest in a time-sharing scheme generally involves the outlay of many thousands of dollars, as well as an ongoing financial commitment to pay levies and other charges, which can increase over the membership term. Depending on the length of the term, the ongoing financial commitment may last for up to 80 years.

RG 160.63 There is often only a short time between the communication of an offer of an interest in a time-sharing scheme and consumers acquiring these interests. In these circumstances, we consider that it is important for a consumer to be provided some additional information before making a decision about acquiring an interest, which may improve their understanding of the product.

RG 160.64 A responsible entity or promoter must take reasonable steps to ensure that, at any seminar or sales presentation promoting a time-sharing scheme, consumers are provided with a verbal consumer warning. This applies regardless of whether the seminar or presentation is conducted in person, by telephone or by electronic communication. The warning must be given at the start of the presentation and must consist of the statements set out in s912AK(4) (as notionally inserted by [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#)): see RG 160.67.

Written consumer warning and prominent summary of key features

RG 160.65 An interest in a time-sharing scheme is complex. To help consumers understand interests in time-sharing schemes, responsible entities must disclose key information upfront in a PDS. We consider that this promotes compliance with the requirement that PDSs must be worded in a clear, concise and effective manner, by highlighting certain matters that may assist consumers making a decision about whether to acquire an interest in a time-sharing scheme.

RG 160.66 We have modified the Corporations Act to require responsible entities to ensure that the PDS for an interest in the time-sharing scheme contains a prominent consumer warning on the front cover of the PDS and a prominent

summary of the key features of the time-sharing scheme in the first seven pages of the PDS.

Note: When calculating the first seven pages of the PDS, the front cover should be counted as the first page.

Written consumer warning

RG 160.67 A boxed consumer warning must be presented on the front cover of the PDS and be in the form set out in s912AK(3) (as notionally inserted by [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#)). See Figure 1 for the wording of the warning.

Figure 1: Written consumer warning

Consumer warning

Timeshares are not appropriate for everyone. You should take time to consider whether buying this timeshare is right for you *before you sign the application form.*

It is important to understand:

1. Timeshares are generally very **long term**. The term of this timeshare is [*state period of this scheme in years or different years of the PAYG memberships*]. You will generally be required to pay **ongoing costs** for as long as you own the timeshare, regardless of whether or not you use the timeshare. [*Insert if applicable— This includes any costs of financing the purchase.*]
2. [*Insert if applicable— You are **not guaranteed** the type of accommodation or location you want at the time you want.*]
3. After the cooling-off period has ended, [*insert if applicable— and you have not withdrawn your application under any ‘subject to finance’ rights*], **it may be difficult to get out of this timeshare** and there is **no guarantee** that you will be able to sell it to another person or get any money back.
4. Timeshares are **not an investment** and you should not expect any financial return from a timeshare. You are buying an interest in a managed investment scheme for recreational use [*insert if applicable— and not buying real property*].

Note: In the consumer warning, a ‘timeshare’ is an interest in a time-sharing scheme.

Prominent summary of key features

RG 160.68 The prominent summary of key features should be clear and concise and must be included in the first seven pages of the PDS. It must contain the following information:

- (a) the length of the term of membership of the scheme;
- (b) any criteria used by the responsible entity to identify consumers the responsible entity considers most likely to be:
 - (i) suited to the time-sharing scheme; and

- (ii) interested in purchasing an interest in the scheme through its sales presentations (if applicable);
- (c) a description of the restrictions on exit from the scheme;
- (d) a statement that the consumer should have no expectation of being able to sell the membership on any secondary market or get any money back;
- (e) a description of the consumer's cooling-off rights;
- (f) a description of the consumer's 'subject to finance' rights;
- (g) a description of key limitations on access to accommodation (such as seasonality or other factors);
- (h) a summary of the fees and costs involved in acquiring and holding an interest, and a cross-reference to where further information about fees and costs can be found in the PDS; and
- (i) for points-based programs, a summary of how the points system works, and a cross-reference to where further information about the operation of the points system can be found in the PDS.

Note: The information in the summary of key features should be balanced, giving equal prominence to the risks, costs and benefits of acquiring and holding an interest in a time-sharing scheme. The summary should direct consumers to where they can find more information on the key features in the PDS (see [RG 168](#) at RG 168.67(e)).

Disclosure obligations about hardship and forfeiture

RG 160.69 A responsible entity of a registered managed investment scheme must provide consumers with a clear explanation about the hardship and forfeiture arrangements: see s912AJ(13) (as notionally inserted by [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#)).

Note 1: For a summary of these disclosure obligations, see RG 160.50(d). For further information on hardship withdrawals, see RG 160.188–RG 160.201.

RG 160.70 It is important that consumers understand whether hardship arrangements are provided and the forfeiture provisions that apply to defaulting members before purchasing an interest in a time-sharing scheme.

Note: For the definition of 'defaulting member', see s601GA(1B) of the Corporations Act (as notionally inserted by [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#)).

Fees and charges

Continuing charges

RG 160.71 To prevent members from incurring the costs of continuing charges (such as maintenance levies and special levies) on interests in a time-sharing scheme

that are held by the responsible entity or any of its associates, we have modified the Corporations Act. The modification requires the responsible entity and its associates to pay the same continuing charges as members are required to pay.

Levy notices

- RG 160.72 It is important for members to understand their liability for charges and levies, any changes in those charges and levies, and how the money paid as charges or levies will be used.
- RG 160.73 We have modified the Corporations Act to require responsible entities to give members a levy notice for each period that the member is charged levies, and a copy of the budget that relates to that period. The budget must include the estimated and itemised material expected income and expenditure for the period to which the levy notice relates.
- RG 160.74 These levy and budget details can be provided electronically or published on the responsible entity's website (if the notification requirements in [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#) are satisfied).

Deposits for property developments

- RG 160.75 We consider that consumers take on additional risks when they purchase an interest in a time-sharing scheme where the scheme relates to a property under construction or part of a property development that is not ready for occupation.
- RG 160.76 We have modified the Corporations Act to impose restrictions on the deposits taken for an interest in such a time-sharing scheme, to protect consumers from these risks.

Cap on deposits

- RG 160.77 We have imposed a cap on the size of a deposit for the purchase or issue of an interest in a time-sharing scheme if the scheme relates to a property under construction or part of a property development that has not been completed to the stage at which it is ready for occupation.
- RG 160.78 If the property of the scheme is not ready for occupation, any deposit for the purchase or issue of an interest must be no more than 30% of the price payable for the interest.

Use of deposits—Registerable dealings not lodged and incomplete construction

- RG 160.79 We have modified the Corporations Act to impose restrictions on a responsible entity's use of a deposit when:

- (a) a registrable dealing, conferring title to any real property that the member is to acquire, has not been lodged with the relevant authority; and
- (b) the construction of the property to which the interest being acquired by the consumer relates, and any improvements necessary to permit normal use of that property, have not been substantially completed.

RG 160.80 In those cases, the responsible entity must deposit any money paid by the consumer into a trust account with an Australian authorised deposit-taking institution (ADI) on the day they receive it or the next business day.

RG 160.81 Further, the responsible entity must not use the deposit for any other purpose until both:

- (a) a registrable dealing, conferring title to any real property that the consumer is to acquire, is lodged with the relevant authority; and
- (b) the construction of the property to which the interests being acquired by the consumer relates, and any improvements necessary to permit normal use of that property, are substantially completed.

RG 160.82 The responsible entity must also immediately notify a member if it becomes aware that, by the date specified in the PDS:

- (a) the registrable dealing is not lodged with the relevant authority; or
- (b) the development of property is not substantially completed.

RG 160.83 The responsible entity must then repay the member the deposit, any income earned on the deposit (less any fees and disbursements properly chargeable against the income), and any amounts paid under a contract with a related finance provider.

Additional obligations for the allocation of points in points-based programs

RG 160.84 We consider that time-sharing schemes that are points-based programs require specific compliance measures relating to the points allocation system, so that:

- (a) the number of points each member holds reflects the extent of their interest in benefits produced by the scheme; and
- (b) the responsible entity considers the impact of further issues of interests on existing members.

RG 160.85 The responsible entity of a points-based program must ensure that further issues of interests only occur if they are satisfied, on reasonable grounds, that existing members will continue to have access to the benefits of the scheme that they would reasonably expect to have. This expectation will be

based on disclosure in the PDS at the time of acquisition and as represented in advertisements and promotional material before the time of acquisition.

- RG 160.86 Responsible entities of points-based programs must also have measures in their compliance plan for ensuring that:
- (a) in an allocation points-based program:
 - (i) the pricing of the points issued to members is consistent with the constitution and PDS;
 - (ii) the total number of points issued to all members for scheme accommodation is in accordance with the scheme's constitution; and
 - (iii) members' periodic points allocations occur in accordance with the requirements of the constitution and PDS; and
 - (b) in a PAYG points-based program:
 - (i) the price paid by members for an interest (including PAYG points) is consistent with the constitution and PDS;
 - (ii) the total number of PAYG points purchased by members is in accordance with the constitution; and
 - (iii) PAYG points are redeemed for the use of scheme property at the time the points are purchased.

Financial requirements

- RG 160.87 AFS licensees must have 'adequate financial resources': see s912A(1)(d). To meet this obligation, licensees must meet the minimum financial requirements we impose. The financial requirements are designed to ensure that:
- (a) licensees have sufficient financial resources to conduct their financial services business in compliance with the Corporations Act;
 - (b) there is a financial buffer that decreases the risk of disorderly or non-compliant wind-up if the business fails; and
 - (c) there are incentives for AFS licensees to comply with the Corporations Act through risk of financial loss.
- RG 160.88 The financial requirements vary in their application, depending on the nature, scale and complexity of the financial services provided. All AFS licensees must meet the base level financial requirements to hold their licence, including:
- (a) being able to pay their debts as and when they become due and payable;

- (b) having total assets that exceed total liabilities, or adjusted assets that exceed adjusted liabilities, as shown in the most recent statement of financial position lodged with ASIC; and
- (c) having sufficient resources to meet anticipated cash flow expenses.

Note: For more information on the financial requirements that apply, see [Regulatory Guide 166 Licensing: Financial requirements](#) (RG 166) and [\[CO 13/760\]](#).

RG 160.89 Certain categories of AFS licensees must meet tailored and additional financial requirements, described in RG 166, that reflect the particular financial products and services offered. This includes an NTA requirement imposed on licensees who are responsible for holding client assets, whether they are custodians, responsible entities or IDPS operators. The requirements are aimed at ensuring that an entity responsible for holding the scheme property and other assets of the scheme is an entity of some substance. They also aim to ensure that the entity has sufficient financial resources to enable assets to be transferred if it ceases to be a custodian or responsible entity.

Note: For the custody standards that apply to holders of scheme property, see [RG 133](#).

RG 160.90 Where a responsible entity holds scheme property or assets, it must hold in NTA the greater of \$10 million or 10% of the responsible entity's average revenue. However, exceptions apply if, in each registered scheme the entity operates, all the scheme property or assets of the scheme not held by members are:

- (a) held by a custodian (or a sub-custodian appointed by that custodian) that the responsible entity reasonably believes meets the financial requirements for AFS licensees authorised to provide a custodial or depository service; or
- (b) special custody assets or Tier \$500,000 class assets, each of which are held by the responsible entity or a person appointed by the responsible entity (or a sub-custodian of that custodian).

Note: 'Special custody assets' has the meaning given in [\[CO 13/760\]](#).

RG 160.91 If RG 160.90(a) or RG 160.90(b) apply, the responsible entity is subject to a reduced NTA requirement. They must hold, at all times, a minimum NTA of the greater of:

- (a) \$150,000;
- (b) 0.5% of the average value of scheme property of the registered scheme(s) operated by the responsible entity up to \$5 million; or
- (c) 10% of the responsible entity's average revenue.

RG 160.92 We consider it appropriate for concessional NTA requirements to apply to assets that fall within the definition of 'special custody assets'. Given the nature of these schemes and the property held, it is our opinion that there is a lower risk of loss or misappropriation of these assets due to custodial failure.

This is particularly the case where certain additional controls are applied, such as audit arrangements.

RG 160.93 Generally, we expect that a responsible entity of a time-sharing scheme will only hold ‘special custody assets’. ‘Special custody assets’ means, in relation to a time-sharing scheme:

- (a) land and other real property of a time-sharing scheme;
- (b) general insurance products relating to real property and other assets of a time-sharing scheme;
- (c) levies of the time-sharing scheme, held in a trust account;
- (d) funds of a time-sharing scheme, held in an account with:
 - (i) an Australian ADI; or
 - (ii) a foreign ADI whose deposit-taking activities are prudentially regulated by a government or an agency of a government;
- (e) interests in other time-sharing schemes that are registered, or have been granted an exemption from the requirement to be registered, under s601ED; and
- (f) interests in other time-sharing schemes established in another jurisdiction that the responsible entity reasonably considers, for documented reasons, to be subject to adequate regulation under foreign law.

Note: The definition of ‘special custody assets’ under [\[CO 13/760\]](#) only includes the assets outlined in RG 160.93(a), RG 160.93(c) and RG 160.93(d)(i) until 30 September 2021. The expanded definition of ‘special custody assets’ above will apply from 30 September 2021. See RG 160.236–RG 160.239 and Table 5 of the appendix for a summary of the transitional arrangements for ‘special custody assets’.

RG 160.94 A registered company auditor must audit the custody arrangements for the scheme property described in RG 160.93(c)–RG 160.93(f) annually and provide a report to the responsible entity that, in the auditor’s opinion, the assets have been operated or held in accordance with the trust.

Note: A foreign equivalent to a registered company auditor may be used to audit custody arrangements for assets held in other jurisdictions.

C Guidance on general consumer protection and finance-related obligations

Key points

The Corporations Act imposes various conduct and disclosure obligations on operators and promoters of time-sharing schemes.

Where finance is offered for the purchase of an interest in a time-sharing scheme, credit providers and credit assistance providers must comply with conduct and disclosure obligations under the National Credit Act.

Operators, promoters, credit providers and credit assistance providers are all subject to the consumer protection provisions in the ASIC Act.

This section covers our expectations for compliance with:

- the general consumer protection provisions, which apply to operators and promoters of time-sharing schemes; and
- finance-related obligations—including the obligations in Ch 3 of the National Credit Act, and other general conduct and general consumer protection obligations—that apply to credit providers and credit assistance providers when finance is offered for the purchase of an interest in a time-sharing scheme.

Note: In September 2020, the Australian Government announced proposed reforms that would replace the current responsible lending obligations—see the [consumer credit reforms consultation](#) on the Treasury website.

The general consumer protection provisions for operators and promoters

- RG 160.95 Operators and promoters are prohibited from engaging in certain conduct under the Corporations Act and ASIC Act, including:
- (a) hawking (s992AA of the Corporations Act);
 - (b) misleading or deceptive conduct (s1041H of the Corporations Act and s12DA of the ASIC Act);
 - (c) making false or misleading representations or inducing persons to deal (s1041E–1041F of the Corporations Act and s12DB of the ASIC Act);
 - (d) unconscionable conduct (s991A of the Corporations Act and s12CA–12CC of the ASIC Act); and
 - (e) harassment or coercion (s12DJ of the ASIC Act).

Hawking prohibitions

RG 160.96 The Corporations Act prohibits a person from offering an interest in a time-sharing scheme in the course of, or because of, an unsolicited meeting or telephone call with a consumer. This covers circumstances where an issuer and seller of an interest in a time-sharing scheme (as well as their agents and representatives) invites a consumer to apply for the purchase of an interest in a time-sharing scheme.

Note 1: For further information about the hawking prohibitions, see [Regulatory Guide 38](#) *The hawking prohibitions* (RG 38).

Note 2: The Australian Government is proposing to amend the hawking prohibitions as part of the response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry: see the Financial Sector Reform (Hayne Royal Commission Response) Bill 2020. We will consider updating RG 38 if these amendments are made. We will also consider whether any amendments are required to RG 160.

RG 160.97 The aim of the hawking prohibitions is to prevent pressure selling of financial products to consumers. This is of particular concern when the consumer does not have sufficient time to consider the features, benefits and suitability of the product. Whether a particular offer breaches the hawking prohibitions depends on the facts and the circumstances in which the offer is made. Separating the making of an offer from an earlier unsolicited meeting with the consumer will not necessarily avoid the breach.

RG 160.98 Generally, we consider an approach, meeting or telephone call to be unsolicited unless it takes place in response to a positive, clear and informed request from a consumer that they wish to discuss an interest in a time-sharing scheme. If the consumer made the request with an expectation that the meeting or telephone call would be about a different type of product or a different topic, the offeror cannot rely on the request.

Note: [RG 38](#) provides further guidance on what is a positive, clear, and informed request.

Example 1: Unsolicited meeting

Scenario

A promoter has a stall at a shopping centre with a banner about free movie tickets. The promoter approaches a consumer about participating in a survey on holiday destinations and hearing information about holidays, and offers free movie tickets in return. The survey will take place at a nearby resort. The consumer attends and is told that the survey will take place at the end of a presentation and the free movie tickets will be handed out then. The consumer discovers that the presentation is about a time-sharing scheme and is offered an opportunity to purchase an interest in the scheme during the presentation.

Commentary

The later meeting (i.e. the presentation) is unsolicited because it does not take place in response to an informed request from the consumer to discuss the purchase of an interest in a time-sharing scheme. In any case, in these circumstances, the offer is 'because of' the promoter's initial, unsolicited contact with the consumer: see [RG 38](#) for a discussion of 'because of' in the hawking prohibitions.

Misleading or deceptive conduct and other prohibited conduct

- RG 160.99 Operators and promoters must ensure that the advertising or promotion of an interest in a time-sharing scheme is not misleading or deceptive—this includes ensuring that it is balanced and that there are reasonable grounds for any statements about the future.
- RG 160.100 Examples of conduct that we consider may be misleading or deceptive include:
- (a) 'now or never' offers (such as time-limited discounts), if they lead a consumer to believe that an offer is only available on more favourable terms at certain times when there are no reasonable grounds for such a statement. An example is where a sales representative offers a person a free membership upgrade if they sign on the day, but the representative is aware that the person may still be eligible for the same offer in a month's time or that such free upgrades are routinely available;
 - (b) representations that acquiring an interest in a time-sharing scheme is low cost or that the cost of accommodation through the time-sharing scheme will not be affected by inflation;
 - (c) statements promoting the availability of a particular resort or a certain level of service or amenities without explaining factors that limit their availability, such as that generally bookings must be made at least six months in advance; and
 - (d) representations made that a consumer will receive a 'free' gift where some payment is still required to access the benefits (e.g. discounted theme park tickets).
- RG 160.101 Operators and promoters must also take care to ensure that, in the course of promoting an interest in a time-sharing scheme, they do not engage in unconscionable conduct, harassment or coercion. Unconscionable conduct, harassment or coercion may include targeting consumers with limited financial or other literacy skills.

Finance-related obligations for credit providers and credit assistance providers

How the credit regime applies

RG 160.102 Consumers may be offered finance to purchase an interest in a time-sharing scheme. Credit providers and credit assistance providers will generally need to have an Australian credit licence (credit licence), unless they are exempt or authorised to engage in those activities as a credit representative.

Note: For guidance on when a person engages in credit activities that require a credit licence, and exemptions that may be available, see [Regulatory Guide 203](#) *Do I need a credit licence?* (RG 203).

RG 160.103 The National Credit Act applies to credit that is wholly or predominantly for personal, domestic or household purposes and credit to purchase, renovate or improve residential property for investment purposes: see s5 of the National Credit Code. The National Credit Act does not otherwise apply to credit for investment purposes. While an interest in a time-sharing scheme may involve an interest in a managed investment scheme, it does not typically involve an investment in the ordinary ‘for profit’ sense (i.e. it is for a recreational purpose). Credit obtained to purchase an interest in a time-sharing scheme is likely to be for personal, domestic or household purposes and is, therefore, unlikely to be exempt from the National Credit Act.

RG 160.104 The National Credit Act imposes licensing requirements, general conduct obligations and lending obligations on credit providers and credit assistance providers.

Note 1: For guidance on the general conduct obligations for credit licensees, see [Regulatory Guide 205](#) *Credit licensing: General conduct obligations* (RG 205).

Note 2: In September 2020, the Australian Government announced proposed reforms that would replace the current responsible lending obligations—see the [consumer credit reforms consultation](#) on the Treasury website.

RG 160.105 Under the general conduct obligations in s47 of the National Credit Act, credit licensees must have in place adequate arrangements to ensure that consumers are not disadvantaged by any conflicts of interest that may arise wholly or partly in relation to credit activities engaged in by the licensee or its representatives. As operators of time-sharing schemes typically have arrangements with credit providers to facilitate the provision of loans for the purchase of interests in time-sharing schemes, those credit providers must ensure any conflicts of interest raised by those arrangements are appropriately managed to ensure that consumers are not disadvantaged.

Example 2: Remuneration structure creates conflict of interest**Scenario**

A time-sharing scheme operator has an arrangement with a credit provider to provide loans to consumers to purchase interests in the time-sharing scheme. Credit representatives attend the seminars conducted by the operator. The representatives' pay is primarily based on commissions from:

- the operator, on the sale of an interest in the time-sharing scheme—the likelihood of which is improved by the availability of finance; and
- the credit provider, on credit contracts that are approved.

There is no provision for the commissions paid to the representatives to be 'clawed back' if the consumer defaults on their credit contract.

Commentary

The remuneration structure used for the credit representatives is likely to involve a conflict of interest that would disadvantage consumers. There is a risk that representatives would be incentivised to misstate the consumer's capacity to make repayments to ensure the loan is approved and commissions are secured (both for the credit contract and the interest in the time-sharing scheme). The lender would need to consider additional steps to manage this conflict of interest and the potential to encourage misconduct by its representatives.

- RG 160.106 The National Credit Code contains requirements for the entry into, terms of and enforcement of credit contracts. Part 7 of the National Credit Code includes additional provisions that apply when there are related sales contracts.

Lending obligations

- RG 160.107 Ch 3 of the National Credit Act contains the current responsible lending obligations. These obligations apply to credit providers and credit assistance providers when finance is offered for the purchase of an interest in a time-sharing scheme.

Note: In September 2020, the Government announced proposed reforms that would replace the current responsible lending obligations—see the [consumer credit reforms consultation](#) on the Treasury website.

The general consumer protection obligations for credit providers and credit assistance providers

- RG 160.108 In addition to obligations under the National Credit Act, credit providers and credit assistance providers are subject to the general consumer protection provisions in the ASIC Act, because they are providing financial services in relation to a financial product (a credit facility).

Note: Credit facilities are financial products for the purpose of the ASIC Act—see the definition of 'financial product' in s12BAA of the ASIC Act.

- RG 160.109 These general consumer protection provisions in the ASIC Act include prohibitions against misleading or deceptive conduct, making false or misleading representations, and engaging in harassment and coercion in connection with the supply or possible supply of financial services or payment for financial services: see RG 160.95–RG 160.101.
- RG 160.110 The general licensee obligations of credit licensees include a requirement to comply with, and take reasonable steps to ensure that representatives comply with, the credit legislation (which includes the consumer protection provisions in the ASIC Act): see s47(1)(d) and (e) of the National Credit Act.

D Guidance on advice-related obligations

Key points

Certain obligations apply to operators and promoters of time-sharing schemes when they provide consumers with financial product advice (including general and personal advice).

This section covers:

- the definitions of ‘factual information’ and ‘financial product advice’; and
- our expectations for compliance with the financial advice requirements, including the best interests duty and related obligations.

We have provided detailed guidance on the obligations that apply when giving general advice and personal advice to consumers on financial products. See:

- [Regulatory Guide 36](#) *Licensing: Financial product advice and dealing* (RG 36);
- [Regulatory Guide 175](#) *Licensing: Financial product advisers—Conduct and disclosure* (RG 175); and
- [Regulatory Guide 244](#) *Giving information, general advice and scaled advice* (RG 244).

This guidance also applies to time-sharing schemes.

Addressing issues in advice on time-sharing schemes

- RG 160.111 Persons who provide financial product advice to consumers about a time-sharing scheme must comply with certain conduct and disclosure obligations: see Pt 7.7 and Div 2 of Pt 7.7A of the Corporations Act. These obligations are designed to ensure that consumers receive good-quality advice about financial products and are able to make informed decisions about that advice. The obligations vary, depending on whether the advice is personal advice or general advice: see Section A of RG 175.
- RG 160.112 We have provided detailed guidance in [RG 36](#), [RG 175](#) and [RG 244](#) on the obligations that apply to all persons giving consumers general advice and personal advice on financial products. Our guidance in RG 36, RG 175 and RG 244 applies to time-sharing schemes.
- RG 160.113 We have included additional guidance on giving personal advice to consumers about time-sharing schemes in this guide. This is to help advice providers better understand their advice conduct and disclosure obligations.

Note: We refer to persons who provide personal advice to consumers as ‘advice providers’ in this regulatory guide.

- RG 160.114 The need for additional guidance was made clear by our targeted review of a sample of personal advice on time-sharing schemes provided to consumers between August 2018 and June 2019. The review applied the standards explained in RG 175 and RG 244 to 20 instances of personal advice. We found high levels of non-compliance with the best interests duty and related obligations in Pt 7.7A of the Corporations Act. Specifically, we found inadequate inquiries into:
- (a) whether the consumer could afford the financial commitments, at the time the advice was given and for the period of membership;
 - (b) the consumer's objectives, particularly their interest in saving money on their holiday accommodation costs; and
 - (c) reasonably foreseeable changes to the consumer's circumstances and the ongoing appropriateness of the membership.
- RG 160.115 Our targeted review also found:
- (a) an imbalance of information—purported benefits were promoted without equal or appropriate prominence to risks, such as illiquidity, ongoing fees, long-term contracts, required booking periods and availability of accommodation; and
 - (b) documentation showing a templated advice process.

Definition of factual information

- RG 160.116 Factual information is objectively ascertainable information, the truth or accuracy of which cannot reasonably be questioned. Generally, a person does not need to hold an AFS licence to give factual information to consumers.

Note: For further discussion about the difference between factual information and financial product advice, see Section B of [RG 36](#).

- RG 160.117 However, in some circumstances, a communication that consists only of factual information *may* amount to financial product advice. If factual information is presented in a manner that may reasonably be regarded as suggesting or implying a recommendation to buy, sell or hold a particular financial product or class of financial products, the communication may constitute financial product advice (e.g. where the features of two financial products are described in such a manner as to suggest that one compares more favourably than the other).
- RG 160.118 We will not treat the communication of factual information as general or personal advice if:
- (a) the person clarifies at the outset that they are giving the consumer factual information if there is reasonable likelihood of doubt; and
 - (b) the information is not intended to imply any recommendation or opinion about a financial product.

Definition of financial product advice

RG 160.119 The Corporations Act considers that a person is generally providing financial product advice if they:

- (a) express a recommendation or a statement of opinion (or a report of either of those things) about a time-sharing scheme or an interest in a time-sharing scheme; and
- (b) that recommendation or statement of opinion is (or could reasonably be regarded as) intended to influence a consumer in making a decision about a time-sharing scheme or an interest in a time-sharing scheme.

Note: For a discussion of the meaning of 'financial product advice', see Section B of [RG 36](#).

RG 160.120 A person who carries on a business in Australia of providing financial product advice must hold an AFS licence or act as the representative of an AFS licensee.

Note: For a discussion about when a person needs to hold an AFS licence to provide financial product advice, see Section E of RG 36.

General advice

RG 160.121 Financial product advice that is not personal advice is general advice: s766B(4). For a definition of personal advice, see s766B(3) and RG 160.123.

RG 160.122 A person can adjust the general advice they give to a consumer so that it is more relevant for the consumer. However, the person must ensure that they do not, in fact, consider the consumer's relevant circumstances when preparing and giving the general advice. If they do, they will be giving personal advice. A person cannot avoid this by merely giving the general advice warning to the consumer.

Note 1: For a definition of 'relevant circumstance', see RG 160.133(b)(ii).

Note 2: For further guidance and examples of general advice, see [RG 244](#) at RG 244.47.

Personal advice

RG 160.123 Personal advice is financial product advice given or directed to a consumer (including by electronic means) in circumstances where:

- (a) the person giving or directing the advice has considered one or more of the consumer's objectives, financial situation and needs (other than for the purposes of complying with the Anti-Money Laundering and Counter Terrorism Financing Act 2006, or regulations or rules under that Act); or
- (b) a reasonable person might expect the person giving or directing the advice to have considered one or more of those matters (see s766B(3)).

Example 3: Personal advice**Scenario**

A sales representative meets with a consumer and obtains some basic details about them—for example, the consumer’s holiday experiences, where they want to holiday and their income range.

The sales representative explains to the consumer that an interest in a time-sharing scheme can benefit them. They tell the consumer that they will be able to secure their holidays for the future and enjoy the broad range of benefits available through their partnership programs.

Commentary

In this example, the sales representative has provided personal advice to the consumer. The sales representative has considered, or the consumer would reasonably expect the sales representative has considered, their personal circumstances when providing an opinion about the benefits to be received.

General advice obligations

- RG 160.124 Whenever general advice is provided to a consumer, the person providing the advice must warn the consumer that:
- (a) the advice has been prepared without taking into account the consumer’s objectives, financial situation or needs;
 - (b) the consumer should therefore consider the appropriateness of the advice, in light of their own objectives, financial situation and needs, before following the advice; and
 - (c) if the advice relates to the acquisition or possible acquisition of a particular financial product, the consumer should obtain a copy of, and consider, the PDS for that product before making any decision (see s949A).
- RG 160.125 If a person provides the general advice verbally, they must still provide a general advice warning. The verbal warning can be simpler, as long as it warns that the advice is general and may not be appropriate for the consumer.
- Note: For more information on the general advice warning, see [RG 175](#) at RG 175.51–RG 175.59.
- RG 160.126 The provision of a general advice warning, in writing or verbally, does not make the advice general advice. Even if a general advice warning is given to a consumer, the advice will be personal advice if one or more of the consumer’s objectives, financial situation and needs have been considered, or a reasonable person might expect that they have been considered.

Note: For further information about the distinction between giving general advice and personal advice, see Section B of [RG 175](#) and all of [RG 244](#).

Personal advice obligations

RG 160.127 Division 2 of Pt 7.7A imposes four key obligations on persons who provide personal advice to consumers. These are to:

- (a) act in the best interests of the consumer (s961B);
- (b) provide the consumer with appropriate advice (s961G);
- (c) warn the consumer if advice is based on incomplete or inaccurate information (s961H); and
- (d) prioritise the consumer's interests over their own interests or those of a related party (s961J).

Note: These obligations are known as the 'best interests duty and related obligations'—see Div 2 of Pt 7.7A of the Corporations Act.

Act in the best interests of the consumer

RG 160.128 An advice provider must act in the best interests of the consumer in relation to the advice they provide: see s961B(1). We refer to this as the 'best interests duty'.

RG 160.129 When assessing whether an advice provider has complied with the best interests duty, we will consider whether, at the time the advice is given, a reasonable advice provider would believe that the consumer is likely to be in a better position if they follow the advice: see Section E of [RG 175](#).

RG 160.130 We consider that special care needs to be taken with the best interests duty when giving personal advice on an interest in a time-sharing scheme. Among other things, the long term nature of interests in time-sharing schemes and the availability of other holiday options make compliance with the obligation challenging.

Safe harbour steps

RG 160.131 Section 961B(2) sets out a 'safe harbour' for complying with the best interests duty in s961B(1). The 'safe harbour' is a series of steps an advice provider can take to demonstrate compliance with the best interests duty.

RG 160.132 Showing that all of the elements in s961B(2) have been met is one way for an advice provider to satisfy the duty in s961B(1). However, it is not the only way. If an advice provider does not take these steps, there is a greater risk that they will not comply with the best interests duty.

RG 160.133 The safe harbour requires an advice provider to:

- (a) identify the objectives, financial situation and needs of the consumer that were disclosed by them through instructions;

- (b) identify:
 - (i) the subject matter of the advice sought by the consumer (whether explicitly or implicitly); and
 - (ii) the objectives, financial situation and needs of the consumer that would reasonably be considered relevant to advice sought on that subject matter (consumer's relevant circumstances);
- (c) when it is reasonably apparent that the information relating to the consumer's relevant circumstances is incomplete or inaccurate, make reasonable inquiries to obtain complete and accurate information;
- (d) assess whether the advice provider has the expertise required to provide the consumer with advice on the subject matter sought and, if not, decline to provide the advice;
- (e) if, in considering the subject matter of the advice sought, it would be reasonable to consider recommending a financial product (such as an interest in a time-sharing scheme):
 - (i) conduct a reasonable investigation into the financial products that might achieve the objectives and meet the needs of the consumer that would reasonably be considered relevant to advice on that subject matter; and
 - (ii) assess the information gathered in the investigation;
- (f) base all judgements in advising the consumer on the consumer's relevant circumstances; and
- (g) take any other step that, at the time the advice is provided, would reasonably be regarded as being in the best interests of the consumer, given the consumer's relevant circumstances.

Note: For more information on how we assess compliance with the best interests duty, see Section E of [RG 175](#).

Identify the subject matter of the advice

- RG 160.134 An advice provider must identify the subject matter of the advice sought by the client (whether the subject matter is explicitly or implicitly described). This is relevant to determining the scope of advice.
- RG 160.135 An advice provider can determine the scope of the advice only after identifying the subject matter of the advice sought by the client. An advice provider must use their judgement when deciding on the scope of the advice and define the scope in a way that is still in the consumer's best interests—that is, in a way that is consistent with the consumer's relevant circumstances and the subject matter of the advice they are seeking.
- RG 160.136 It is important that an advice provider makes it clear to the consumer, from the outset, the scope of the advice they are providing.

- RG 160.137 In our experience, advice on time-sharing schemes is often scaled or limited in scope. For example, an advice provider may scale or limit the scope because their AFS licence authorisations only allow them to provide advice on time-sharing schemes. If an advice provider can only give personal advice on interests in a specific time-sharing scheme, the advice is even more limited in scope.
- RG 160.138 If the consumer's relevant circumstances indicate a need for broader advice than the advice provider can give, we expect the advice provider to decline to provide advice. For example, if a consumer wants to know whether they should sell an asset, access their superannuation money or withdraw money from their mortgage to pay for an interest in a time-sharing scheme, and the advice provider does not have the appropriate AFS licence authorisation and expertise to undertake this analysis, the advice provider should decline to provide advice to the consumer.
- RG 160.139 If the advice provider does decline to provide advice, they may refer the consumer to another advice provider who has the authorisation and expertise to provide advice—as long as this referral is not, in itself, personal advice.
- RG 160.140 We consider that the more limited the authorisation and expertise of an advice provider, the greater the likelihood the adviser will have to decline to provide advice. If an advice provider can only advise on one product, then the advice provider will have to turn away any consumer who wants advice that is broader than the single product. In our experience, it is much more difficult to give compliant personal advice if there is only one product an advice provider is able to recommend.

Identify the consumer's relevant circumstances

- RG 160.141 To comply with the best interests duty, we expect the advice provider to identify the consumer's relevant circumstances and consider whether it would be reasonable to consider recommending a financial product.
- RG 160.142 When providing advice on an interest in a time-sharing scheme, we expect the advice provider to identify and document:
- (a) the consumer's financial situation (i.e. income and expenses, assets and liabilities, and existing and future financial commitments);
 - (b) the consumer's holiday preferences, now and into the future (i.e. location, duration, accommodation, who they like to travel with, when they like to travel and how far in advance they tend to book holidays);
 - (c) the personal circumstances of the consumer (i.e. age, relationship status, family situation, health, and any restrictions or barriers to travel);
 - (d) any reasonably foreseeable changes to the consumer's relevant circumstances over the duration of the time-sharing scheme (i.e. starting

a family, buying a house, proximity to retirement, redundancy, job or career changes, or plans to transfer the membership to another person).

Note: We have provided the examples in this list as guidance. This list is not intended to be a complete list of factors to be considered.

- RG 160.143 If a consumer's circumstances relevant to the subject matter of the advice are complex, the advice provider will generally need to expand the scale of their inquiries: see RG 244.72. Factors relevant to the level of the inquiries required include the nature of the advice given, the capacity of the consumer to understand the advice they are receiving and the potential impact on the consumer if the advice is inappropriate: see Table 3 of [RG 244](#).

Reasonable investigation into other products

- RG 160.144 At RG 175.336, we state that one way an advice provider can conduct a reasonable investigation into financial products, for the purpose of s961B(2)(e)(i), is by benchmarking the product at appropriate intervals against the market for similar products to establish its competitiveness on key criteria, such as:
- (a) performance history over an appropriate period;
 - (b) features;
 - (c) fees; and
 - (d) risk.
- RG 160.145 We have set out examples of the key criteria advice providers might consider in the context of time-sharing schemes in Table 4.

Table 4: Key criteria for market benchmarking

Criteria	Examples
Features	What accommodation is offered Any unique benefits of the scheme
Fees	The upfront cost of the membership (i.e. establishment fee and purchase price) Ongoing fees (including fees relating to usage) Cancellation fees
Key terms and conditions	How points can be used (e.g. if they can be transferred or rolled over) The term of the membership The notice periods for booking accommodation

Criteria	Examples
Risks	<p>The ability to exit the scheme (including limitations on selling interests on a secondary market)</p> <p>Any restrictions on membership</p> <p>Any limitations on access to desired accommodation</p>
RG 160.146	To meet the best interests duty, an advice provider can limit or expand their inquiries. This will depend on the subject matter of the advice sought and the consumer's relevant circumstances.
RG 160.147	Our experience is that consumers nearly always want to know whether the time-share membership will save them money on their holiday costs. In these circumstances, we expect the advice provider to make reasonable inquiries to determine whether the time-share membership is likely to be cost effective compared to other common approaches to funding regular holidays (e.g. booking holidays using an online comparison site or buying a holiday house). This investigation and comparison should be robust and provide a high degree of reliability that the consumer's objective will be achieved.
RG 160.148	To meet the best interests duty, advice providers also need to consider the risks for consumers associated with the financial products.
RG 160.149	<p>We consider that the long membership terms of time-sharing schemes are a significant risk for many consumers. Many factors can affect a consumer's ability to take holidays, such as:</p> <ul style="list-style-type: none"> (a) health changes; (b) divorce; (c) redundancy; (d) economic changes; (e) family or work commitments; and (f) additional debt.
RG 160.150	The longer the membership term, the greater the probability of an event affecting the consumer's use of their membership. Memberships involve considerable upfront and ongoing costs. If a consumer is unable to use their membership, it does not provide good value for money. A consumer may also find it difficult to sell their interest in the time-sharing scheme, even at a heavily reduced price, because there is only a limited secondary market.
RG 160.151	Advice providers need to consider these risks of time-sharing schemes to determine whether the consumer is likely to be in a better position after purchasing an interest.

Other reasonable steps

- RG 160.152 An advice provider needs to take ‘any other step that, at the time the advice is provided, would reasonably be regarded as being in the best interests of the consumer, given the consumer’s relevant circumstances’: see s961B(2)(g).
- RG 160.153 What advice providers need to do to comply with this part of the best interests duty will vary, depending on the surrounding circumstances: see RG 175.358–RG 175.360. Advice providers need to exercise their judgement in considering whether any additional safe harbour steps are required.
- RG 160.154 It can be difficult for consumers to assess the value of an interest in a time-sharing scheme. This is exacerbated by the fact that time-sharing schemes are illiquid and involve a long-term contract with significant upfront and ongoing costs. Informing consumers about the risks associated with an interest in a time-sharing scheme, as well as the benefits, is important. A misinformed decision by the consumer could result in significant financial and emotional consequences.
- Note: For more information on consumers’ experiences with time-sharing schemes, see [Report 642](#) *Timeshare: Consumers’ experiences* (REP 642). This report sets out the findings of qualitative research commissioned by ASIC.
- RG 160.155 For the same reason, providing the consumer adequate time to consider the advice is also important. The consumer’s circumstances (e.g. if they are on holidays, have low financial literacy, or want to discuss with family or friends) may affect their ability to properly consider the advice.
- RG 160.156 Example 4 and Example 5 illustrate how persons providing personal advice to consumers about interests in time-sharing schemes might comply with the best interests duty.

Example 4: Best interests duty not complied with**Scenario**

A 70-year-old consumer tells an advice provider (who works for XYZ Time-share Scheme Ltd and is only authorised to give advice about interests in the XYZ time-sharing scheme) that his objective is to go on an overseas holiday every year.

The interest in the XYZ time-sharing scheme would allow the consumer to access overseas accommodation every year, has a 40-year term and has a purchase price of \$20,000. The scheme has a levy payable each year for the entire 40-year term, and the initial levy is \$1,000.

The advice provider does not carry out any other investigations and recommends that the consumer purchases an interest in the XYZ time-

sharing scheme solely because it will enable the consumer to go on an overseas holiday each year.

Commentary

The advice provider has not complied with the best interests duty.

To meet the best interests duty, we would expect the advice provider to identify the consumer's relevant circumstances (including the consumer's financial situation) to assess whether recommending the XYZ time-sharing scheme is in his best interests and appropriate. For example, the advice provider needs to identify, discuss and document:

- the consumer's financial situation;
- his personal circumstances;
- his holiday preferences; and
- any potential changes to these circumstances.

In this example, the consumer is 70 years old and it is reasonably foreseeable that his personal circumstances (i.e. health, financial situation) will change over the short to medium term, and before the 40-year contract term ends. The advice provider must make further inquiries where it is reasonably foreseeable that personal circumstances may change: see RG 160.142(d).

The advice provider also does not appear to have conducted any reasonable investigation into the other relevant financial products that might meet the consumer's needs and objectives.

Example 5: Best interests duty complied with

Scenario

A consumer tells an advice provider (who works for QRS Time-share Scheme Ltd and is only authorised to give advice about interests in the QRS time-sharing scheme) that her objective is to go on an overseas holiday every year, and that she would like more cost-effective holidays so she can save money over time. She is particularly interested in Thailand next year for her 30th birthday. She is very organised and likes to book her holidays well in advance. She also likes to holiday with friends and family. She asks whether the QRS time-sharing scheme would be right for her.

The interest in the QRS time-sharing scheme would allow the consumer to access overseas accommodation every year and there is availability in one of the scheme's Thai properties, as long as she books 12 months in advance. The interest has a 30-year term and the purchase price is \$30,000. There is a levy payable each year for the entire 30-year term and the initial levy is \$2,000.

The advice provider asks the consumer about her income, living expenses and debt, to understand her financial situation. The advice provider also makes inquiries into her relevant personal circumstances and any potential changes to these circumstances.

The advice provider finds out that the consumer is in good health, has a stable job at which she currently earns an income of \$150,000 (but which she expects to rise) and is planning to work full time for at least the next 20–30 years. She does not foresee any significant changes to her job or career in the future, and expects to be able to take at least two weeks holiday every year. Her income consistently exceeds her living expenses.

The consumer tells the advice provider that she intends to hold the interest in the QRS time-sharing schemes for the 30-year term for her own use, but the advice provider asks her what she would do if she needed to sell the interest. The advice provider points out that if her circumstances were to change and she wanted to sell the interest in the QRS time-sharing scheme, she may receive significantly less than the \$30,000 purchase price, but the consumer does not believe she will need this money.

The advice provider reviews the recent benchmarking report that QRS Time-share Scheme Ltd produced about the QRS time-sharing scheme, and finds that the scheme has one of the highest upfront fees on the market, but that it has the most overseas properties available. It also has the most flexibility in terms of making bookings for friends and family, compared to other schemes.

The advice provider also assesses what the consumer would likely spend if she took overseas holidays every year with comparable accommodation and paid for each one individually. This assessment suggests that the time-sharing scheme would create cost savings for the consumer, if she were to hold membership for more than 10 years. The consumer intends to hold membership for more than 10 years, and there is nothing in her relevant circumstances that suggests this will not happen.

The advice provider tells the consumer that he is only authorised to give advice about the QRS time-sharing scheme. The advice provider recommends that the consumer purchase an interest in the QRS time-sharing scheme.

Commentary

The advice provider has complied with the best interests duty.

The advice provider has identified the consumer's relevant circumstances and, based on those circumstances, has agreed with the consumer on the scope of advice to be provided—addressing only the consumer's holiday needs and objectives. The advice provider has also compared the QRS time-sharing scheme against other relevant financial products and, while it is more expensive, it offers the most overseas properties and flexibility of booking for friends and family.

Provide appropriate advice

RG 160.157 Personal advice must only be provided if it would be reasonable to conclude that the advice is appropriate to the consumer, assuming that the best interests duty had been complied with: see s961G.

RG 160.158 We consider that advice is appropriate if it would be reasonable to conclude, at the time the advice is provided, that:

- (a) it is fit for its purpose—that is, following the advice is likely to satisfy the consumer’s relevant circumstances; and
- (b) the consumer is likely to be in a better position if they follow the advice.

RG 160.159 Whether the consumer is likely to be in a better position depends on the circumstances, and includes the following factors:

- (a) the position the consumer would have been in if they did not follow the advice, which is to be assessed at the time the advice is provided;
- (b) the facts at the time the advice is provided that the advice provider had, or should have had, if they complied with their obligations;
- (c) the subject matter of the advice sought by the consumer;
- (d) the consumer’s objectives, financial situation and needs;
- (e) where relevant, product features that the consumer particularly values, provided that the consumer understands the cost of, and is prepared to pay for, those features; and
- (f) that the consumer receives a benefit that is more than trivial.

Note: For more information on the obligation to provide appropriate advice, see Section E of [RG 175](#), particularly RG 175.246.

RG 160.160 We consider that long-term interests in time-sharing schemes will not be appropriate for every consumer, due to the risks involved and availability of alternative holiday options that do not have those same risks.

Warn if advice is based on incomplete or inaccurate information

RG 160.161 An advice provider must make reasonable inquiries to obtain complete and accurate information about a consumer’s relevant circumstances when providing personal advice. If, after making these inquiries, it is reasonably apparent that the advice provider has based their advice on incomplete or inaccurate information about the consumer’s relevant circumstances, the advice provider must warn the consumer: see s961H.

RG 160.162 The warning must say that:

- (a) the advice is, or may be, based on incomplete or inaccurate information relating to the consumer’s personal circumstances; and
- (b) because of this, the consumer should consider the appropriateness of the advice—taking into account their objectives, financial situation and needs—before acting on it.

Note: For more information on the obligation to give a warning if advice is based on incomplete or inaccurate information, see Section E of [RG 175](#).

Give priority to the consumer's interests

- RG 160.163 An advice provider must prioritise a consumer's interests if the advice provider knows, or reasonably ought to know, when they give the advice that there is a conflict of interest. The conflict can be between the interests of the consumer and the interests of:
- (a) the advice provider;
 - (b) an associate of the advice provider;
 - (c) the advice provider's AFS licensee;
 - (d) an associate of the advice provider's AFS licensee;
 - (e) an authorised representative who has authorised the advice provider to provide financial services (or a financial service) on behalf of an AFS licensee; or
 - (f) an associate of an authorised representative who has authorised the advice provider to provide financial services (or a financial service) on behalf of an AFS licensee (see s961J(1)).
- RG 160.164 An interest includes any benefits that the advice provider or their associates may receive if the consumer adopts their advice. For example, if an advice provider advises a consumer to acquire an interest in a time-sharing scheme and receives a payment for providing this advice from the operator or promoter of the time-sharing scheme, this would be an interest of the advice provider that conflicts with the consumer's interests.
- RG 160.165 The obligation to prioritise the interests of the consumer when giving advice does not prevent an advice provider from having these interests. However, an advice provider must ensure that they do not act to further their interests or those of their associates over those of the consumer when giving the advice. In complying with this obligation, an advice provider should consider what a reasonable advice provider without a conflict of interest would do.

Note: For more information on how we will administer the obligation to prioritise clients' interests, see Section E of [RG 175](#).

Provide a Statement of Advice (SOA)

- RG 160.166 The purpose of an SOA is to help consumers understand and decide whether to rely on the personal advice. We expect the SOA to clearly and unambiguously set out the personal advice and the reasoning that led to the advice, including:
- (a) why the advice and recommendation were considered appropriate in light of the alternative options considered; and
 - (b) the advantages and disadvantages for the consumer if they follow the advice.

Note: This includes clearly explaining the significant risks, relevant to the consumer's circumstances, that a consumer will bear if they buy an interest in the time-sharing scheme.

- RG 160.167 We also expect the SOA to include a statement of how the advice provider has acted in the consumer's best interests. This includes consideration of the consumer's relevant circumstances after making the inquiries required by s961B. We consider that it is good practice to set out the basis on which an advice provider would believe that the advice is likely to leave the consumer in a better position if the consumer follows the advice.
- RG 160.168 An SOA will not be effective if it is heavily templated and not tailored to a consumer's relevant circumstances. It will not provide the consumer with the level of detail reasonably required to make a fully informed decision. The SOA should not contain any irrelevant information, such as generic research or educational materials that are not relevant to the advice given.

Note: For more information on preparing and providing an SOA, see Section D of [RG 175](#).

Record-keeping obligations

- RG 160.169 We expect AFS licensees to keep records of how their advice providers have acted when providing personal advice.

Note: For more information on the record-keeping obligations for AFS licensees in relation to personal advice, see [RG 175](#) at RG 175.208–RG 175.213 and RG 175.432 and [Class Order \[CO 14/923\]](#) *Record-keeping obligations for Australian financial services licensees when giving personal advice*.

Financial Planners and Advisers Code of Ethics 2019

- RG 160.170 Advice providers must comply with the [Financial Planners and Advisers Code of Ethics 2019](#), set by the Financial Adviser Standards and Ethics Authority (FASEA). AFS licensees are required to take reasonable steps to ensure that their advice providers comply with the code.

Note 1: For information about the reasonable steps that we expect AFS licensees to take to ensure that their financial advisers comply with the code, see [Media Release \(19-319MR\)](#) *ASIC outlines approach to advice licensee obligations for the financial adviser code of ethics* (26 November 2019).

Note 2: In October 2019, FASEA issued [FG002](#) *Financial Planners and Advisers Code of Ethics 2019 guidance*, which outlines how it interprets the code. After consulting FASEA, we announced that we would take a facilitative approach to compliance with Standards 3 and 7 of the code until the new single disciplinary body for financial advisers (as recommended by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry) is operational: see [19-319MR](#). FASEA consulted on the code guidance in November and December 2019, and on 20 December 2019 it released its [Preliminary response to submissions: FG002 Financial Planners and Advisers Code of Ethics 2019 guidance](#) (PDF 807 KB). FASEA consulted on an [update to the code guidance in October 2020](#). As at the date of this guide, FASEA has not yet published the final guidance for the code.

E Relief for time-sharing schemes

Key points

We have also provided some other relief from provisions of the Corporations Act, to take into account the fact that time-sharing schemes operate differently to many other managed investment schemes.

The relief is from:

- the requirement to treat members who hold the same class of interests equally (but only to the extent such relief is required to facilitate hardship withdrawals);
- the restrictions on acquiring and holding forfeited interests in a time-sharing scheme;
- the requirement to have scheme property valued at regular intervals; and
- the managed investment, licensing and product disclosure provisions for rental pools.

This section also explains our policy on giving individual relief from the managed investment and licensing provisions to:

- time-sharing schemes exempt under state law and title-based time-sharing schemes;
- member-controlled clubs; and
- non-accommodation based time-sharing schemes.

We will consider applications for other relief on a case-by-case basis.

Our general approach to relief

RG 160.171 We have granted operators and promoters of time-sharing schemes technical relief from the licensing, managed investment and product disclosure provisions, and modified the Corporations Act, in some circumstances. These circumstances are outlined in RG 160.176–RG 160.228.

RG 160.172 Any operator or promoter of a time-sharing scheme relying on our relief should ensure ongoing compliance with the conditions of relief and the provisions of the modified Corporations Act, as applicable.

RG 160.173 We will not generally give relief from the Hawking Prohibitions, because we consider they are important mechanisms to prevent pressure selling of interests in time-sharing schemes.

RG 160.174 Also, we will not generally give relief from the requirement to give a PDS, because we consider it is important consumers are given sufficient

information to make an informed decision about whether to acquire an interest in time-sharing scheme.

RG 160.175 We are also unable to grant relief where there is no legislative power to grant relief. For example, we are unable to grant relief from the obligation to comply with the best interests duty and related obligations for financial advisers: see Section D.

Technical relief for time-sharing schemes

RG 160.176 We have given technical relief from certain provisions of the Corporations Act in [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#). The relief:

- (a) modifies the requirement to specify the price to purchase an interest in the constitution of a registered time-sharing scheme by permitting the price to be set out in the PDS; and
- (b) exempts responsible entities from:
 - (i) the restrictions on acquiring and holding forfeited interests in a time-sharing scheme;
 - (ii) the requirement to treat members who hold the same class of interests equally (but only to the extent such relief is required to facilitate hardship withdrawals); and
 - (iii) the requirement to have scheme property valued at regular intervals (subject to conditions).

Note: See Table 6 in the appendix for a summary of the relief that will apply from the release of this guide and the relief that will apply from 30 September 2021.

RG 160.177 We have also given relief from the managed investment, licensing and product disclosure provisions for rental pools, but only for those people who relied on Superseded Class Order [SCO 02/237] *Time-sharing schemes—Operation of rental pool* before its repeal. We will assess any new applications for rental pool relief on a case-by-case basis.

Note: See RG 160.234RG 160.235 for a summary of the relief that will apply from the release of this guide.

RG 160.178 We consider it is appropriate to provide relief from or to modify certain obligations imposed under the Corporations Act, given the nature of time-sharing schemes. Unlike other types of managed investment schemes, time-sharing schemes are aimed at producing ‘lifestyle’ or ‘recreational’ benefits to its members. Members who purchase interests in time-sharing schemes are not generally acquiring a financial product for the purposes of a financial investment.

RG 160.179 All the relief we have provided applies only to time-sharing schemes that are not being promoted as a means of generating a financial return (other than by way of a rental pool). We have also imposed additional conditions on the relief to protect consumers, such as disclosure and audit requirements.

Specifying the purchase price in the constitution

RG 160.180 The constitution of a registered scheme must make adequate provision for the consideration that is to be paid to acquire an interest in the scheme: see s601GA(1)(a).

RG 160.181 Notional s601GA(1A) enables the acquisition price to be:

- (a) the purchase price set out in the PDS in use at the time (which may involve the use of a separate price list); or

Note: When a responsible entity relies on a loose-leaf price list, we expect that the responsible entity or promoter will provide it at the same time they provide the PDS. The responsible entity or promoter can give the price list as a separate document with a PDS that complies with s1013L of the Corporations Act, or as a supplementary PDS. We consider that a loose-leaf price list for time-sharing interests is an effective way of advising consumers of the price to purchase an interest. We also consider that these price lists should be easy to access and update.

- (b) when the responsible entity is selling the interest of a member (under a power of sale or due to forfeiture to the scheme or responsible entity):
 - (i) at the price shown in the most recent PDS given in the 12 months before the sale; or
 - (ii) if the responsible entity has not given a PDS during the previous 12 months, the fair market price obtained by the responsible entity using reasonable endeavours.

Note: For the meaning of 'given' in relation to a PDS, see Pt 7.9 of the Corporations Act.

RG 160.182 Notional s601GA(1A) contains additional provisions that must be included in the constitution of a registered time-sharing scheme if an acquisition price is not specified in the scheme's constitution. These additional provisions relate to hardship withdrawals, forfeiture and sale circumstances, and the sale process for defaulting and hardship members. However, if a responsible entity is prevented from modifying the constitution to comply with notional s601GA(1A) in the circumstances outlined in RG 160.242, the responsible entity may continue to rely on the provisions of ASIC Corporations (Time-Sharing Schemes) Instrument 2017/272 in effect immediately before the commencement of ASIC Corporations (Amendment) Instrument 2020/1064 and ASIC Corporations (Amendment) Instrument 2020/1065.

RG 160.183 We consider that it would be disproportionately burdensome for the responsible entity to set out the purchase price of an interest in a time-sharing scheme in the constitution. The price paid for an interest does not

affect other members of the time-sharing scheme, but is used to acquire additional rights to cover the potential use by the purchaser and pay any fees. For points-based programs, the responsible entity has obligations to consider the impact of further issues of interests on the benefits of existing members: see RG 160.84–RG 160.86.

- RG 160.184 The price will be set by the responsible entity from time to time, taking into account commercial factors such as the demand for interests. It would be burdensome to have to amend the constitution whenever the price is changed. If there is a PDS, the responsible entity or promoter will be able to specify the price in the PDS.
- RG 160.185 If a PDS has not been given in the 12 months before the sale of a forfeited interest of a defaulting member or the interest of an approved hardship member, a responsible entity may sell the interest at a fair market price. The responsible entity must obtain the fair market price using reasonable endeavours. We expect that, in using reasonable endeavours to arrive at a fair market price, the responsible entity will consider whether a public auction is appropriate. We acknowledge that public auctions may not be appropriate in all cases, especially when there is limited demand and an auction is not cost effective.
- RG 160.186 Our relief covers the sale of interests under a power of sale or forfeiture when the consumer has:
- (a) not made the payments required as a member of the time-sharing scheme; or
 - (b) withdrawn on the basis of hardship.
- RG 160.187 We consider that a sale procedure, implemented in accordance with the requirements of the provisions of notional s601GA(1A), can help in the effective management of the time-sharing scheme for the benefit of all members

Requirements of relief

- RG 160.188 If a responsible entity wants to rely on our relief, they can either:
- (a) include provisions in the constitution that reflect the content of notional s601GA(1A); or
 - (b) incorporate the content of notional s601GA(1A) by stating in the constitution that these provisions are taken to be incorporated in the constitution.
- RG 160.189 We have also provided relief from the requirements in s601GC to allow for these changes to be made to the constitution of a registered time-sharing scheme without a special resolution of members.

RG 160.190 The purpose of the requirements in notional s601GA(1A) is to:

- (a) ensure the price at which interests are sold is available to purchasers and members when there is a current PDS;
- (b) assist members of time-sharing schemes who meet the hardship criteria and whose applications are approved by the responsible entity to withdraw from the scheme without the need to make any further payments in relation to the scheme;

Note 1: The responsible entity should consider its general duties under section 601FC to act in the best interests of the members of the scheme when considering whether to exercise its discretion to approve a hardship application.

Note 2: For further information on hardship withdrawals, see RG 160.188–RG 160.201.

- (c) protect members from unfair methods of acquiring interests in a time-sharing scheme through sale from forfeiture or a hardship withdrawal;
- (d) ensure that the interest of a defaulting member or a member suffering hardship is sold at a fair market price;
- (e) ensure responsible entities implement procedures for forfeiture and hardship withdrawals in a way that is fair to all members, including defaulting members and members making a hardship withdrawal; and
- (f) ensure members are informed about their rights and obligations, and those of the responsible entity, regarding forfeiture and hardship withdrawals (see RG 160.50(d) and RG 160.69–RG 160.70).

Note: The amounts paid from the sale proceeds for the interests of the defaulting member or member who withdraws due to hardship must be disclosed to the member in the periodic statements (under s1017D), as this is information that enables members to understand their interest in the scheme—see RG 160.41 and RG 160.45.

Hardship withdrawals

RG 160.191 Generally, the acquisition of an interest in a time-sharing scheme involves an upfront payment and a commitment to pay ongoing amounts associated with the member's participation in the scheme (such as maintenance and special levies) for the term of the scheme.

RG 160.192 A member's circumstances may change over time and make it unlikely they will be able to use their membership in the long term—for example, if the member experiences severe long-term or permanent financial hardship. Unless there is a right of withdrawal on the basis of hardship, a member experiencing hardship may remain liable for ongoing amounts for the duration of the scheme or up to the time the member's interest is sold to another person.

RG 160.193 When a responsible entity relies on notional s601GA(1A) for acquisition prices, the constitution must specify a hardship withdrawal right for members who satisfy the hardship criteria and whose applications are

approved. The constitution must also have certain procedures for how the responsible entity will deal with hardship withdrawal requests.

RG 160.194 A member will meet the hardship criteria if:

- (a) they or their dependant are suffering severe long-term or permanent financial hardship;
- (b) they or their dependant are suffering life-threatening illness or injury, chronic pain, or a severe, long-term chronic mental disturbance. A registered medical practitioner must provide a certified statement confirming the medical condition is of this nature; or
- (c) they have ceased gainful employment because of mental or physical ill health. The responsible entity must be satisfied, acting reasonably, that they are unlikely to ever again engage in gainful employment of the type for which they are reasonably qualified by education, training or experience.

As a consequence, the member must be unlikely to be able to use their interest in the scheme for the remainder of their membership.

Note: Where couples hold interests in a time-sharing scheme jointly, it is sufficient for one joint member to meet the hardship criteria, so long as both joint members make the hardship application.

RG 160.195 Responsible entities must approve a hardship application if they decide that:

- (a) the member has met the hardship criteria; and
- (b) it is in the interests of members of the scheme to approve the withdrawal.

RG 160.196 Once the application is approved, the member can withdraw from the scheme without any further obligation to pay the responsible entity any amount. The obligation ceases from the date of the hardship application.

RG 160.197 The amounts that a member will not have to pay if their hardship application is approved include:

- (a) any shortfall if the sale price of an interest is not sufficient to meet the amount owing by the member; and
- (b) any amounts due for payment at or after the date of a hardship notice.

RG 160.198 A member who satisfies the hardship criteria and who is approved to withdraw from the scheme will not cease to be a member until the member's interest is sold. Once a member applies for hardship, their liabilities and rights to benefits as members are suspended pending the outcome of the application. If the hardship application is not approved the members liabilities and rights to benefits will be reinstated.

RG 160.199 As a time-sharing scheme is a non-liquid scheme under Pt 5C.6, we have modified the right of withdrawal requirements under Pt 5C.6 and in s601GA(4). We have also given relief from the equal treatment provisions in s601FC(1)(d) in these circumstances. Although members that are given a hardship withdrawal right are not treated equally to other members, we consider it fair for responsible entities to take into account the personal circumstances of members that affect their ability to use the interest on a long-term basis, given usage is intended to be on that basis.

Forfeiture involving the transfer of the member's interest to the responsible entity

RG 160.200 The forfeiture procedures in a constitution for a registered time-sharing scheme may involve a transfer of interests to the responsible entity, rather than a right enabling the responsible entity to sell the interests on behalf of the member and/or the credit provider who takes security over the interest. This means that the responsible entity acquires and holds the interest and, without our relief, may breach s601FG(1). This section states that the responsible entity can only acquire and hold an interest in the scheme if they acquire it at the same consideration (or more) that another person would pay to acquire the interest.

RG 160.201 We have granted relief from s601FG(1) where the constitution includes the provisions for forfeiture and withdrawals in accordance with notional s601GA(1A).

Valuation at regular intervals

RG 160.202 We have granted conditional relief to responsible entities from the requirement that scheme property be valued at regular intervals under s601FC(1)(j) and 601HA(1)(c).

RG 160.203 As a condition of the relief, scheme property must be valued as soon as practicable after the responsible entity has reasonable grounds to believe a valuation is:

- (a) in the best interests of members; or
- (b) needed for the scheme to operate in a manner that is fair to all members.

RG 160.204 Unlike interests in most other registered schemes, an interest in a time-sharing scheme is not an investment and time-sharing schemes are not operated for the purpose of generating profits for members. Instead, members of a time-sharing scheme have purchased an interest in a time-sharing scheme for recreational enjoyment over many years. Changes in the value of scheme property do not affect the price of an interest in a time-sharing scheme in the same way as for registered schemes that invest in assets for a financial benefit.

RG 160.205 Taking into account the nature of a time-sharing scheme, we consider that it may be disproportionately burdensome to require a responsible entity to revalue scheme property on a regular basis, as is required of most other registered schemes.

Rental pools

RG 160.206 A rental pool involves the pooling of members' unused time-sharing entitlements for the purpose of renting those entitlements to other persons. The proceeds of the rental pool (after related expenses are deducted) are then distributed among members of the rental pool. A rental pool allows the member to receive an income if they do not choose to use their allocated time during any particular year.

RG 160.207 A rental pool falls within the definition of a managed investment scheme. We have previously given relief, under [SCO 02/237], from the managed investment, licensing and product disclosure provisions for rentals pools that:

- (a) form part of a new time-sharing scheme; and
- (b) are formed after interests in a time-sharing scheme have been issued.

RG 160.208 [SCO 02/237] was repealed by [ASIC Corporations \(Repeal\) Instrument 2017/273](#). Under [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#), we have continued this relief for those persons who relied on [SCO 02/237] to operate a rental pool immediately before its repeal.

RG 160.209 The relief is conditional on the operator:

- (a) maintaining a trust account and only disbursing money from the account in accordance with the contractual agreement that governs members' participation in the rental pool;
- (b) ensuring the trust account is audited at least annually;
- (c) ensuring a copy of the auditor's report is given to all members within three months after each audit;
- (d) keeping a copy of the contractual agreement that governs members' participation in the rental pool. The copy must be kept for seven years; and
- (e) complying with s1017D, by providing periodic statements to members.

RG 160.210 We have granted this relief because:

- (a) of the small amounts involved, compared to the costs of obtaining an AFS licence and registering the rental pool; and
- (b) the rental pool is generally an incidental part of the business associated with the time-sharing scheme.

- RG 160.211 We will consider any applications for relief to facilitate the operation of a rental pool, and the terms of any relief granted, on a case-by-case basis. For information on how to apply for individual relief, see RG 160.229–RG 160.233.

Individual relief for certain closed or member-run time-sharing schemes

Our approach to relief

- RG 160.212 It may not be appropriate for the managed investment provisions to apply to certain closed or member-run time-sharing schemes, given the way these schemes operate and the compliance costs involved. The types of time-sharing schemes to which we will generally give relief are legacy schemes. These include:

- (a) time-sharing schemes exempt under state law;
- (b) title-based time-sharing schemes; and
- (c) member-controlled clubs.

- RG 160.213 We previously granted individual relief to legacy schemes based on PF 205, PF 206 and PF 207. We have revoked these pro formas and are continuing the relief in the existing individual relief instruments, with amendments as appropriate.

- RG 160.214 However, legacy schemes must still comply with the condition to provide consumers with cooling-off rights and the cooling-off statement in [Pro Forma 208](#) *Time-sharing schemes: Cooling-off statement* (PF 208).

Note: PF 208 provides the prescribed cooling-off statement for legacy schemes in its current form. The cooling-off requirements in ASIC Corporations (Time-sharing Schemes) Instrument 2017/272 do not apply to legacy schemes, because they are not registered schemes. However, cooling off requirements are incorporated into individual relief granted to legacy schemes.

- RG 160.215 We have set out the types of relief we may consider granting to closed or member-controlled schemes: see RG 160.216–RG 160.221. We will consider applications for relief from the managed investment provisions on a case-by-case basis. For information on how to apply for individual relief, see RG 160.229–RG 160.233.

Exempt under state law and title-based schemes

- RG 160.216 We have previously given relief from the managed investment provisions for time-sharing schemes that were:
- (a) not required to comply with the prescribed interest provisions in the old Corporations Law (now repealed) because of state legislation; or

- (b) title-based time-sharing schemes that are substantially sold. Generally, in a title-based time-sharing scheme a member becomes a tenant in common with a right to a share of the real property.

Note: The relief granted was based on PF 205 and PF 207, which have been revoked. The relief granted continues in individual relief granted to these schemes. We consider it unlikely that we will now receive any new applications for relief for these types of time-sharing scheme. We will consider any applications for relief and terms of any relief granted on a case-by-case basis.

RG 160.217 If we receive an application for relief where members essentially control the time-sharing scheme, we will apply our policy for member-controlled clubs, including similar conditions of relief (such as the cooling-off requirements): see RG 160.218–RG 160.221.

Member-controlled club

RG 160.218 A member-controlled club is one where the members of the time-sharing scheme control the management of the scheme's property.

RG 160.219 We consider that:

- (a) when the interests in a time-sharing scheme are substantially sold and its members are in a position to control the entity that runs the time-sharing scheme, there is less risk to members; and
- (b) it would be unreasonably costly for the time-sharing scheme to comply with the managed investment provisions.

RG 160.220 We have previously given individual relief from the managed investment provisions for time-sharing schemes that meet the criteria of member-controlled clubs. We will consider any new applications for relief for a member-controlled club on a case-by-case basis.

Note: The relief granted was based on PF 206, which has been revoked.

RG 160.221 We will assess the conditions that will apply to any relief we give on a case-by-case basis, but will generally require that:

- (a) the time-sharing scheme managed by the member-controlled club is not promoted by the developer, promoter or former responsible entity as a means of generating a financial return;
- (b) the club manages the scheme property;
- (c) the club makes, or has a veto over, all decisions that materially affect the best interests of members;
- (d) the club must only spend money under a budget that is notified at least annually to club members and approved by the club;
- (e) the club is a public company;

- (f) the scheme property is either held on trust for the members, or members hold title to the scheme property and have all received their share or membership certificates in the club;
- (g) members have received their certificates or copies of their certificates of title to the real property in the time-sharing scheme;
- (h) when copies of certificates of title are provided to members:
 - (i) the copies are certified by a Justice of the Peace or lawyer;
 - (ii) the club acknowledges that it is holding the member's certificate of title in safe custody for the member, to be dealt with in accordance with provisions in the club's constitution; and
 - (iii) the constitution only allows the certificate to be used to facilitate a transfer authorised by the member, or on forfeiture of the interest;
- (i) any buildings that the PDS said would be built have been substantially completed (i.e. to the extent that members will not be materially affected if no further construction occurs) or, if not substantially completed, the club gives ASIC a written notice that the members will not be materially affected;
- (j) at least 90% of the interests in the time-sharing scheme have been issued and are held by a person other than the time-sharing scheme developer, manager or promoter (or an associate of any of them). If there is any further issue or sale of new interests in the time-sharing scheme by any time-sharing scheme developer, manager, promoter or operator, that person must operate as if the scheme was a registered time-sharing scheme and ensure that:
 - (i) Pt 7.9 is complied with as far as practicable;
 - (ii) they hold a licence with authorisations relating to sales of interests in time-sharing schemes; and
 - (iii) they comply with the conditions of the licence;

Note: We will consider changes to the above percentage on a case-by-case basis.

- (k) at least 90% of the votes that may be cast on a resolution by members are held by members that are not the time-sharing scheme developer, manager or promoter (or an associate of any of them);

Note: We will consider changes to the above percentage on a case-by-case basis.

- (l) the club, or a person or entity engaged by the club for management, maintains a trust account audited yearly (by a registered company auditor) and provides a copy of the auditor's report to all members within three months after each audit;
- (m) any agreement between the club and a person to supply management services to the time-sharing scheme must include a provision for

dismissing the manager (without triggering any additional payment) in at least one of the following cases:

- (i) 50% of all members vote for dismissal;
- (ii) members holding 50% by value of the interests in the time-sharing scheme vote for dismissal;
- (iii) 75% of voting members, whether in person or by proxy, vote for dismissal when at least 25% of voting members vote; or
- (iv) voting members holding 75% by value of the interests in the time-sharing vote for dismissal, whether in person or by proxy, where voting members holding at least 25% by value of the interests vote;

Note: 'Voting members' are members who are eligible to vote based on the dollar value of the interests they hold.

- (n) no manager, including the club, may facilitate the sale of an interest in a time-sharing scheme unless the sale is subject to cooling-off requirements;
- (o) the club complies with s1017D, by providing periodic statements to members; and
- (p) the club has IDR procedures that meet s912A(2)(a).

Individual relief from licensing provisions for resales of interests in a time-sharing scheme

RG 160.222 We may grant relief from the licensing provisions for an operator or promoter that resells interests in a time-sharing scheme when relief from the managed investment provisions has been given, or is being considered, because the scheme is:

- (a) exempt under state law;
- (b) an exempt title-based time-sharing scheme; or
- (c) a member-controlled club.

Note: Operators and promoters that want to resell an interest in a time-sharing scheme and do not have relevant ASIC relief will generally be required to hold an AFS licence.

RG 160.223 We will assess the conditions that will apply to any relief we give on a case-by-case basis, but will generally require that:

- (a) no more than 5% of the interests in the time-sharing scheme are resold in one calendar year;
- (b) cooling-off rights apply to the resale;
- (c) all money received for the resold interest in a time-sharing scheme is:
 - (i) paid into an account that is held with an Australian ADI;

- (ii) paid into an account that only has money paid into it that is money received from consumers who purchase the resold interests in the time-sharing scheme and interest on that amount;
 - (iii) paid into the account on the day it is received or the next business day; and
 - (iv) held in trust for the benefit of the consumer who paid the money until any cooling-off period has expired; and
- (d) the operator of the time-sharing scheme belongs to AFCA.

Note: For guidance on AFCA, see [Regulatory Guide 267 Oversight of the Australian Financial Complaints Authority](#) (RG 267).

RG 160.224 The relief will only apply when resales are a small proportion of the activity associated with the time-sharing scheme.

RG 160.225 In these cases, we think that the initial and ongoing costs of complying with the licensing provisions are likely to be disproportionate to any risks to consumers from these schemes.

Individual relief for non-accommodation based time-sharing schemes

RG 160.226 Some time-sharing schemes that do not involve accommodation may have special features that are a basis for relief. Relief may be appropriate because:

- (a) compliance with the managed investments and licensing provisions may be disproportionately burdensome, particularly where the time-sharing operator has limited duties; and
- (b) the likelihood and extent of potential consumer detriment may be minimal.

RG 160.227 When considering applications for relief we will take into account factors such as:

- (a) whether members in the time-sharing scheme enjoy exclusive possession of a portion of the scheme property;
- (b) whether interests in the time-sharing scheme are transferable;
- (c) the price to obtain an interest in the time-sharing scheme;
- (d) the degree of management necessary to run the time-sharing scheme;
- (e) the complexity of the time-sharing scheme;
- (f) whether the governing body of the time-sharing scheme is elected by the members;
- (g) whether the time-sharing scheme is incidental to other rights (e.g. real estate);
- (h) how the time-sharing scheme is promoted; and
- (i) whether there is a cash return on the purchase price or enjoyment in kind.

- RG 160.228 We will assess the conditions that will apply to any relief we give on a case-by-case basis, but will generally require that:
- (a) the scheme must not be promoted as a means of generating a financial return;
 - (b) the operator or promoter must provide a PDS, with specified content about how the scheme operates;
 - (c) consumers must have cooling-off rights;
 - (d) the responsible entity must hold money on trust with an Australian ADI; and
 - (e) the operator or promoter must belong to AFCA.

How to apply for relief

- RG 160.229 We will consider applications for relief for time-sharing schemes on a case-by-case basis, taking into account:
- (a) ASIC's general exemption and modification powers in Chs 5C and 7;
 - (b) our general policy on giving relief, set out in [Regulatory Guide 51 Applications for relief](#) (RG 51);
 - (c) our policy on giving relief from the:
 - (i) managed investment provisions, set out in [Regulatory Guide 136 Funds management: Discretionary powers](#) (RG 136); and
 - (ii) licensing provisions, set out in [Regulatory Guide 167 Licensing: Discretionary powers](#) (RG 167); and
 - (d) our policy set out in this regulatory guide.
- RG 160.230 You must make sure the application:
- (a) addresses all the issues in this regulatory guide;
 - (b) complies with the requirements in RG 51 and, where relevant, RG 136 and RG 167.
- RG 160.231 We will only be able to determine applications for relief that are complete, provide sufficient detail and are within ASIC's power to grant relief.
- RG 160.232 You should submit your application for relief through the [ASIC Regulatory Portal](#). You will need to pay fees for your application. We have provided details about payment options in the portal. For more information, see [Changes to how you apply for relief](#).
- Note: For details of fees, see [Regulatory Guide 21 How ASIC charges fees for relief applications](#) (RG 21).
- RG 160.233 You can also contact ASIC on 1300 300 630 for information and assistance.

Appendix: Transitional arrangements

Relief that applies immediately

RG 160.234 Under the amended rental pool relief in [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#) (as amended by ASIC Corporations (Amendment) Instrument 2020/1064), the frequency of audits has been reduced from twice to once a year: see RG 160.206–RG 160.211.

RG 160.235 Operators who rely on conditional relief from the managed investment, licensing and product disclosure provisions provided under ASIC Corporations (Time-sharing Schemes) Instrument 2017/272 to operate a rental pool may rely on the amended relief immediately.

Transitional arrangements for obligations and requirements that can be opted into by written election

RG 160.236 Table 5 sets out the transitional arrangements for:

- (a) the fees and costs disclosure requirements. The new requirements and obligations made under [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#) (as amended by ASIC Corporations (Amendment) Instrument 2020/1065) apply to:
 - (i) any PDS dated and given on or after 30 September 2022;
 - (ii) any periodic statements (ongoing or on exit) for reporting periods that commence on or after 30 September 2021; and
- (b) the definition of ‘special custody assets’ and the audit requirements in [\[CO 13/760\]](#). The expanded definition of ‘special custody assets’ under [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#) (as amended by ASIC Corporations (Amendment) Instrument 2020/1064) will apply from 30 September 2021.

RG 160.237 The responsible entity or promoter can elect in writing to apply:

- (a) the new special custody assets arrangements during the first transition period; and

Note: The responsible entity makes an election to apply the new special custody assets arrangement when it makes a written record that the amendments will apply to the licensee on and from a specified date (not being a date before the record is made) and that records the date the record is made.

- (b) the new fees and costs requirements and obligations for:
 - (i) periodic statements (ongoing or on exit) during the first transition period for reporting periods that commence on or after 14 December 2020; and

- (ii) PDSs during the second transition period for PDSs given on or after 14 December 2020.

Note: The responsible entity elects to apply the modified enhanced fees and costs disclosure requirements if the responsible entity makes a written record that identifies the PDS to which the election relates and the date or dates the election is made.

- RG 160.238 If an AFS licensee elects to apply the new special custody arrangements, that election will apply to all registered time-sharing schemes for which the licensee is the responsible entity. An election to apply the new fees and costs requirements and obligations for periodic statements or PDSs will also apply to subsequent periodic statements and PDSs. Any of these elections, once made, cannot be withdrawn.
- RG 160.239 If no election in writing is made, the responsible entity or promoter must comply with the transitional requirements for:
- (a) the financial requirements that apply until 30 September 2021 (see [RG 166](#) and [\[CO 13/760\]](#)); and
 - (b) fees and costs disclosure requirements in Sch 10 of the Corporations Regulations, as amended by either [ASIC Corporations \(Disclosure of Fees and Costs\) Instrument 2019/1070](#) or [\[CO 14/1252\]](#) (as applicable). They must comply with these requirements until:
 - (i) 30 September 2021 for periodic statements' and
 - (ii) 30 September 2022 for PDSs.

Table 5: Transitional arrangements for obligations and requirements that can be opted into by written election

Requirement or obligation	Transitional requirements and obligations	New requirements and obligations
Fees and costs disclosure	The relevant enhanced fees and costs disclosure requirements, set out in Sch 10 to the Corporations Act: see RG 160.42–RG 160.43.	The modified enhanced fee and costs disclosure requirements require disclosure using: <ul style="list-style-type: none"> • adapted fees and costs summaries; • tailored terminology and explanation of fees and costs; • adapted examples of annual fees and costs; • adapted cost-of-product information; • an adapted consumer advisory warning; • additional explanation of fees and costs; and • modified requirements for the periodic statement. See RG 160.42–RG 160.47.

Requirement or obligation	Transitional requirements and obligations	New requirements and obligations
'Special custody assets' under [CO 13/760]	<p>The definition of 'special custody assets' includes:</p> <ul style="list-style-type: none"> land and other real property of a time-sharing scheme; and levies of a time-sharing scheme that are held in an account with an Australian ADI, styled as a trust account. <p>The trust account must be audited at least once every six months by a registered company auditor, and the report from the auditor must be provided to the responsible entity's board or compliance committee. The report must state that, in the auditor's opinion, the account has been operated in accordance with the trust.</p>	<p>The modified requirements include:</p> <ul style="list-style-type: none"> a reduction in the frequency of trust account audits, to annually; and an expanded definition of 'special custody assets'. <p>See RG 160.90–RG 160.94.</p>

Transitional arrangements for pricing and forfeiture relief

RG 160.240 The transitional arrangements for pricing and forfeiture relief are contained in ASIC Corporations (Time-sharing Schemes) Instrument 2017/272 in effect immediately before the commencement of ASIC Corporations (Amendment) Instrument 2020/1064. The new relief is outlined in [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#) (as amended by ASIC Corporations (Amendment) Instrument 2020/1064). See Table 6 for a summary of this relief.

RG 160.241 Responsible entities may choose to comply with the new relief by modifying their scheme's constitutions to comply with notional s601GA(1A). The new relief applies from the date that the constitution is modified. Responsible entities have until 30 September 2021 to modify their constitutions.

Note: Section 601GCD (as modified by ASIC Corporations (Time-sharing Schemes) Instrument 2017/272) permits a responsible entity to modify its constitution to comply with notional s601GA(1A). The responsible entity must give its members written notice of the meeting and publish on its website a summary of the proposed modification and the reasons for it. The responsible entity can then implement the modifications without holding a meeting of members. However, if it receives requests for a meeting from members carrying at least 5% of the votes that may be cast on the resolution, it must hold the meeting.

RG 160.242 A responsible entity that does not modify its constitution to comply with notional s601GA(1A) may continue to rely on the provisions of ASIC Corporations (Time-Sharing Schemes) Instrument 2017/272 in effect

immediately before the commencement of ASIC Corporations (Amendment) Instrument 2020/1064. The responsible entity may only continue to do so after 30 September 2021 if it is prevented from modifying the constitution because it:

- (a) holds a meeting requested by members holding 5% of votes and the members do not pass a special resolution enabling modification of the constitution; or
- (b) believes on reasonable grounds that it would not be acting in the best interests of members to modify the constitution to comply with notional s601GA(1A). In this instance, the responsible entity must give the members notification of this decision.

RG 160.243 After 30 September 2021, the relief in Table 6 will not be available to a responsible entity if they have not modified the scheme's constitution to comply with notional s601GA(1A) and none of the circumstances referred to in RG 160.242 apply. If this is the case, a responsible entity must modify the scheme's constitution to comply with notional s601GA(1A) to have the benefit of the new relief after 30 September 2021.

Table 6: Transitional arrangements for pricing and forfeiture relief

Relief topic	Transitional relief	New relief
Disclosure of prices for purchase of an interest in a time-sharing scheme	Modifies the requirement in s601GA(1)(a) to specify the price to purchase an interest in a time-sharing scheme in the constitution. Responsible entities may set out the price in the PDS.	<p>We have removed the conditions for relief that duplicated the AFS licence conditions in PF 209 for time-sharing schemes, and incorporated these into ASIC Corporations (Time-sharing Schemes) Instrument 2017/272.</p> <p>We have continued relief to allow responsible entities to sell interests at a fair market price when there is no current PDS. The responsible entity must use reasonable endeavours to determine this price. The scheme's constitution must include the provisions for forfeiture and withdrawals, in accordance with notional s601GA(1A): see RG 160.180–RG 160.199.</p> <p>We have also granted other relief to facilitate hardship withdrawals made in accordance with notional s601GA(1A): see RG 160.191–RG 160.199.</p>
Acquisition and holding of forfeited interests in a time-sharing scheme	Relief to enable responsible entities to acquire, hold and dispose of forfeited interests in time-sharing scheme	<p>We have continued this relief, but the constitution must include provisions for forfeiture and withdrawals in accordance with notional s601GA(1A).</p> <p>See RG 160.200–RG 160.201.</p>

Note: Transitional relief will not be available to new time-sharing schemes registered after the commencement of the [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#) (as amended by ASIC Corporations (Amendment) Instrument 2020/1064). These schemes must have constitutions that comply with notional s601GA(1A) to rely on the new relief.

Transitional arrangements for s912AJ AFS licensee obligations

RG 160.244 Table 7 sets out the transitional arrangements for the AFS licensee obligations. Until 30 September 2021, responsible entities and promoters can continue to comply with the transitional requirements and obligations that were contained in the Corporations Act and PF 209. The new requirements and obligations are contained in [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#) (as amended by ASIC Corporations (Amendment) Instrument 2020/1064).

RG 160.245 Responsible entities and promoters must comply with the s912AJ AFS licensee obligations either:

- (a) by 30 September 2021; or
- (b) from the date the constitution of the scheme is modified to comply with notional s601GA(1A).

They must comply by whichever date occurs earlier.

Note: The transitional arrangements operate on a scheme-by-scheme basis. Accordingly, a responsible entity or promoter may be subject to different obligations for each registered time-sharing scheme they operate or promote interests in. The obligations they must comply with will depend on the date each scheme's constitution is modified to comply with notional s601GA(1A).

Table 7: Transitional arrangements for s912AJ AFS licensee obligations

Requirement or obligation	Transitional requirements and obligations	New requirements and obligations
'Subject to finance' rights	Not applicable. This condition did not exist in the previous requirements, so it does not need to be complied with until 30 September 2021.	New 'subject to finance' rights apply to the issue or sale of an interest in a time-sharing scheme: see RG 160.54–RG 160.59.
Verbal consumer warning	Not applicable. This obligation did not exist in the previous requirements, so it does not need to be complied with until 30 September 2021.	A responsible entity, or promoter must ensure that, as part of any seminar or sales presentation promoting a time-sharing scheme—whether conducted in person or by telephone or by electronic communication—consumers are provided with a verbal consumer warning. This requirement does not apply where further interests in a time-sharing scheme are issued to an existing member. See RG 160.62–RG 160.64.

Requirement or obligation	Transitional requirements and obligations	New requirements and obligations
Written consumer warning and prominent summary of the key features	Not applicable. This obligation did not exist in the previous requirements, so it does not need to be complied with until 30 September 2021.	<p>A responsible entity or promoter must ensure that the PDS for the interest in the time-sharing scheme contains:</p> <ul style="list-style-type: none"> • a consumer warning on the cover of the PDS; and • a prominent summary of the key features in the first seven pages of the PDS. <p>See RG 160.65–RG 160.68.</p>
Disclosure obligations about hardship and forfeiture	<p>It is a condition of relief from s601FG(1)(a) that a responsible entity must provide consumers with a PDS setting out:</p> <ul style="list-style-type: none"> • the circumstances in which forfeiture of the interest may occur; and • the procedures for dealing with forfeiture. <p>If there is no PDS in use before a consumer acquires an interest in the scheme, this information must be provided in writing.</p>	<p>A responsible entity of a registered managed investment scheme must provide consumers with a PDS setting out:</p> <ul style="list-style-type: none"> • whether the hardship arrangements in notional s601GA(1A) apply to the scheme. If they do provide hardship arrangements, they must explain that a member may lodge a hardship application and set out the hardship criteria. If they do not, they must explain the reason why; and • the provisions and procedures for forfeiture and exercising a power of sale. <p>If there is no PDS in use before a consumer acquires an interest in the scheme, this information must be provided in writing.</p> <p>A responsible entity must also provide this information on its website.</p> <p>See RG 160.50(d), RG 160.69–RG 160.70 and Table 3</p>
Fees and charges	<p>AFS licensees must pay the same continuing charges as members for any interests they or their associates hold in a time-sharing scheme.</p> <p>AFS licensees must annually give members full details of the composition and calculation of continuing charges and levies to be imposed on members.</p>	<p>The modified fees and charges include requirements that the responsible entity:</p> <ul style="list-style-type: none"> • must pay and ensure that any of its associates pay the same continuing charges and levies (such as maintenance levies and special levies) as a member would be required to pay in relation to the same interest held in that scheme; and • gives members a levy notice with a copy of the annual budget. The budget must include the estimated and itemised material expected income and expenditure for the following financial year. New members must be provided details for the current financial year if their levies are pro-rated based on the current financial year. These details can be provided electronically or published on the licensee's website if the notification requirements are satisfied. <p>See RG 160.71–RG 160.74.</p>

Requirement or obligation	Transitional requirements and obligations	New requirements and obligations
Deposit limits	Any deposit for the purchase or issue of an interest in a time-sharing scheme must be less than 30% of the value of the total purchase or issue price.	This obligation for deposit limits is substantially unchanged but has become an AFS licensee obligation. See RG 160.75–RG 160.83.
Points-based program	Not applicable. This obligation did not exist in the previous requirements, so it does not need to be complied with until 30 September 2021.	A responsible entity of a points-based program must ensure that: <ul style="list-style-type: none"> • further issues of interests only occur where the responsible entity is satisfied on reasonable grounds that existing members will continue to have access to the benefits of the scheme; and • there are additional compliance measures covering the matters in RG 160.84–RG 160.86.

Note: Responsible entities and promoters may choose to comply with the new requirements and obligations before 30 September 2021, by modifying the scheme's constitution to comply with notional s601GA(1A). Once they elect to comply with the new requirements and obligations in Table 7, they must comply with all of these requirements and obligations.

Key terms

Term	Meaning in this document
19-319MR (for example)	An ASIC media release (in this example numbered 19-319MR)
ADI	An authorised deposit-taking institution—a corporation that is authorised under the <i>Banking Act 1959</i> . ADIs include: <ul style="list-style-type: none"> • banks; • building societies; and • credit unions
advice provider	A person to whom the obligations in Div 2 of Pt 7.7A of the Corporations Act apply when providing personal advice to a client. This is generally the individual who provides the personal advice. However, if there is no individual that provides the advice, which may be the case if advice is provided through a computer program, the obligations in Div 2 of Pt 7.7A apply to the legal person that provides the advice (e.g. a corporate licensee or authorised representative)
AFCA	Australian Financial Complaints Authority—AFCA is the operator of the AFCA scheme, which is the external dispute resolution scheme for which an authorisation under Pt 7.10A of the Corporations Act is in force
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carried out a financial services business to provide financial services <p>Note: This is a definition contained in s761A.</p>
AFS licensee	A person who holds an Australian financial services licence issued under s913B of the Corporations Act
allocation points-based program	A time-sharing scheme in which members are entitled to a periodic allocation of points that can be exchanged for the right to use scheme property
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ATHOC	Australian Timeshare and Holiday Ownership Council
Australian ADI	An Australian authorised deposit-taking institution—has the meaning given in s9 of the Corporations Act

Term	Meaning in this document
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.
base level financial requirements	The requirements set out in Section B of RG 166
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
[CO 13/760] (for example)	An ASIC class order (in this example numbered 13/760) Note: Legislative instruments made from 2015 are referred to as ASIC instruments.
consumer	In the context of: <ul style="list-style-type: none"> • a <i>credit product</i>—means a natural person or strata corporation (see s5 of the National Credit Act); and • a <i>financial product</i>—means a retail client (see s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations)
consumer protection provisions	Provisions in the Corporations Act and ASIC Act that prohibit certain conduct, including: <ul style="list-style-type: none"> • hawking (s992AA of the Corporations Act); • misleading or deceptive conduct (s1041E–1041H of the Corporations Act and s12DA–12DB of the ASIC Act); • unconscionable conduct (s991A of the Corporations Act and s12CA–12CC of the ASIC Act); and • harassment or coercion (s12DJ of the ASIC Act).
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
cooling-off rights	A consumer's right to return an interest in a time-sharing scheme during the specified cooling-off period and have the money they paid for the interest repaid.
cooling-off statement	A statement in a prescribed form about the cooling-off rights that must be provided to a consumer
credit	Credit to which the National Credit Code applies Note: See s3 and 5–6 of the National Credit Code.
credit assistance	Has the meaning given in s8 of the National Credit Act

Term	Meaning in this document
credit assistance provider	A person who provides credit assistance to a consumer in relation to a credit contract or a consumer lease and who is not the credit provider (for a credit contract) or the lessor (for a consumer lease)
credit contract	Has the meaning given in s4 of the National Credit Code
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit licensee	A person who holds an Australian credit licence under s35 of the National Credit Act
credit provider	Has the meaning given in s5 of the National Credit Act
credit representative	A person authorised to engage in specified credit activities on behalf of a credit licensee or under s64(2) or 65(2) of the National Credit Act
deal	Has the meaning given in s766C of the Corporations Act
FASEA	Financial Advisers Standards and Ethics Authority
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 or statement</p> <p>Note: This is the definition contained in s766B of the Corporations Act.</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 prohibitions	The prohibitions set out in Div 8 of Pt 7.8 of the Corporations Act and the Corporations Regulations

Term	Meaning in this document
IDR procedures	<p>The internal dispute resolution procedures that meet the requirements and standards made and approved by ASIC under Regulatory Guide 271 <i>Internal dispute resolution</i> (RG 271) and ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98</p> <p>Note: RG 271 comes into effect on 5 October 2021. For complaints received before that date, Regulatory Guide 165 <i>Licensing: Internal and external dispute resolution</i> (RG 165) applies. We will withdraw RG 165 on 5 October 2022.</p>
interval-based program	A time-sharing scheme where members have the right to use property of the scheme for either a fixed or floating period each calendar year
legacy schemes	State-exempt time-sharing schemes, title-based time-sharing schemes and member-controlled clubs that still rely on the individual relief based on PF 205, PF 206 and PF 207
levies	An amount paid or payable for the maintenance of scheme property, operating the scheme and other services relating to a time-sharing scheme
licensing provisions	The Australian financial services licensing regime under Pts 7.6–7.8 of the Corporations Act, including regulations made for the purposes of those parts
linked credit provider	Has the definition given in s127 of the National Credit Code
managed investment provisions	The provisions set out in Ch 5C of the Corporations Act and the Corporations Regulations
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
National Credit Code	National Credit Code at Sch 1 to the National Credit Act
notional s601GA(1A)	Section 601GA(1A) of the Corporations Act, as notionally inserted by ASIC Corporations (Time-sharing Schemes) Instrument 2017/272
NTA	Net tangible assets
old Corporations Law	Has the meaning given in s1371 of the Corporations Act
operator	An entity that operates a registered time-sharing scheme or exempt time-sharing scheme
PAYG points	Pay as you go points that can be purchased by members of a PAYG points-based program to use scheme property
PAYG points-based program	A time-sharing scheme in which members have the right to purchase PAYG points

Term	Meaning in this document
PDS	<p>A Product Disclosure Statement—a document that must be given to a retail client for 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>
periodic statement	A statement required to be sent to certain persons who acquired financial products as a retail client under s1017D of the Corporations Act on an annual basis and after they cease to hold the financial product
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 person'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 the definition contained in s766B(3) of the Corporations Act.</p>
PF 209 (for example)	An ASIC pro forma (in this example numbered 209)
points	A unit of measurement for the amount payable for the use of the time-sharing scheme property
points-based program	Where members of a time-sharing scheme exchange points for the right to use the time-sharing scheme property. It includes allocation-points programs and PAYG points-based programs
product disclosure provisions	The provisions set out in Pt 7.9 of the Corporations Act and in the Corporations Regulations
promoter	An associate of a responsible entity of a registered time-sharing scheme that holds an AFS licence authorising it to advise and deal in interests in a registered time-sharing scheme and that provides such advice to consumers
Pt 7.9 (for example)	A part of the Corporations Act (in this example numbered 7.9), unless otherwise specified
registered time-sharing scheme	A time-sharing scheme registered in accordance with s601ED of the Corporations Act
related finance provider	A finance provider that is an associate of a responsible entity of a registered time-sharing scheme or promoter
rental pool	A feature of a time-sharing scheme that pools members' unused entitlements for the purpose of renting those entitlements to other persons. The proceeds of the rental pool (after related expenses are deducted) are then distributed among members of the rental pool

Term	Meaning in this document
representative of an AFS licensee	<p>Means:</p> <ul style="list-style-type: none"> • an authorised representative of the licensee; • an employee or director of the licensee; • an employee or director of a related body corporate of the licensee; or • any other person acting on behalf of the licensee <p>Note: This is a definition contained in s910A of the Corporations Act.</p>
responsible entity	A responsible entity of a registered scheme as defined in s9 of the Corporations
responsible lending obligations	<p>The obligations under Ch 3 of the National Credit Act</p> <p>Note: The Government has announced proposed reforms that will replace the current responsible lending obligations.</p>
retail client	A retail client, as defined in s761G and s761GA of the Corporations Act
RG 104 (for example)	An ASIC regulatory guide (in this example numbered 104)
s764A (for example)	A section of the Corporations Act (in this example numbered 764A), unless otherwise specified
scaled advice	Personal advice that is limited in scope
Sch 10 (for example)	A schedule to the Corporations Regulations (in this example numbered 10), unless otherwise specified
SOA	<p>A Statement of Advice—a document that must be given to a retail client for the provision of personal advice under Subdivs C and D of Div 3 of Pt 7.7 of the Corporations Act</p> <p>Note: See s761A for the exact definition.</p>
tied loan contract	Has the definition given in s127 of the National Credit Code
time-sharing scheme	<p>A scheme, undertaking or enterprise, whether in Australia or elsewhere:</p> <ul style="list-style-type: none"> • where participants are or may become entitled to use, occupy or possess property of the scheme, undertaking or enterprise for two or more periods; and • that is to operate for no less than three years <p>Note: See s9 of the Corporations Act for the exact definition.</p>

Related information

Headnotes

AFS licensee, Australian credit licence, Australian financial services licence, consumer protection provisions, credit licensee, financial advice, financial requirements, licensing conditions, licensing provisions, managed investment provisions, managed investment schemes, member-controlled clubs, operators, points-based programs, product disclosure provisions, promoters, registered time-sharing schemes, relief, rental pools, responsible entities, responsible lending obligations, time-sharing schemes, time-sharing schemes exempt under state law, titled-based time-sharing schemes

Legislative instruments and pro formas

[ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#)

[ASIC Corporations \(Repeal\) Instrument 2017/273](#)

ASIC Corporations (Amendment) Instrument 2020/1064

ASIC Corporations (Amendment) Instrument 2020/1065

[\[CO 13/760\]](#) *Financial requirements for responsible entities and operators of investor directed portfolio services*

[\[CO 13/1409\]](#) *Holding assets: Standards for responsible entities*

[\[CO 14/923\]](#) *Record-keeping obligations for Australian financial services licensees when giving personal advice*

[\[CO 14/1252\]](#) *Technical modifications to Schedule 10 of the Corporations Regulations*

[Financial Planners and Advisers Code of Ethics 2019](#)

[PF 208](#) *Time-sharing schemes: Cooling-off statement*

[PF 209](#) *Australian financial services licence conditions*

[\[SCO 02/237\]](#) *Time-sharing schemes—Operation of rental pool*

Regulatory guides

[RG 21](#) *How ASIC charges fees for relief applications*

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

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

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

[RG 76](#) *Related party transactions*

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

[RG 97](#) *Disclosing fees and costs in PDSs and periodic statements*

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

[RG 121](#) *Doing financial services business in Australia*

[RG 133](#) *Funds managements and custodial services: Holding assets*

[RG 136](#) *Funds management: Discretionary powers*

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

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

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

[RG 203](#) *Do I need a credit licence?*

[RG 205](#) *Credit licensing: General conduct obligations*

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

[RG 267](#) *Oversight of the Australian Financial Complaints Authority*

[RG 272](#) *Product intervention power*

Information sheets

[INFO 151](#) *ASIC's approach to enforcement*

Legislation

Acts Interpretation Act 1901, s36(2)

ASIC Act, Div 2 of Pt 2; s12BAA, 12CA–12CC, 12DA–12DB, 12DJ

Corporations Act, Chs 5C and 7; Pts 5C.1, 5C.5, 5C.6, 7.6, 7.7, 7.7A, 7.8, 7.9, 7.10; s9, 601ED, 601FC, 601FG(1), 601GA, 601GB, 601GC, 601HA, 601HG, 601JA(2), 761G, 764A, 766B, 912A, 912AA, 912AI, 912AJ(3), 912B, 912D, 949A, 961B, 961G, 961H, 961J, 991A, 992AA, 1012B(3), 1013C(3), 1013D, 1013E, 1017D, 1041E–1041F, 1041H

Corporations Regulations, Sch 10; reg 1.0.02(1)

National Credit Act, s47

National Credit Code, s127, 134, 135

Consultation papers and reports

[CP 272](#) *Remaking ASIC class orders on time-sharing schemes*

[REP 522](#) *Response to submissions on CP 272 Remaking ASIC class orders on time-sharing schemes*

[REP 632](#) *Disclosure: Why it shouldn't be the default*

[REP 642](#) *Timeshare: Consumers' experiences*