



**ASIC**

Australian Securities & Investments Commission

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## **ASIC Corporations (Time-sharing Schemes) Instrument 2017/272**

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I, Stephen Yen PSM, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Dated: 21 March 2017

Stephen Yen

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## Part 1—Preliminary

### 1 Name of legislative instrument

This is the *ASIC Corporations (Time-sharing Schemes) Instrument 2017/272*.

### 2 Commencement

This instrument commences on the same day as the *ASIC Corporations (Repeal) Instrument 2017/273*.

### 3 Authority

This instrument is made under subsections 601QA(1), 926A(2) and 1020F(1) of the *Corporations Act 2001*.

### 4 Definitions

*Act* means *Corporations Act 2001*.

*registered time-sharing scheme* means a time-sharing scheme:

- (a) registered in accordance with section 601ED; and
- (b) that has not at any time been promoted by its operator as a means of generating a financial return other than by way of a rental pool.

*rental pool*, in relation to a time-sharing scheme, means an arrangement conducted by the operator of the scheme whereby owners of interests in the scheme authorise the operator to manage and rent to third parties the rights of use of owners under the scheme and to pool the rental income received for pro-rata distribution to each owner.

## Part 2—Exemptions

### 5 Exemption for forfeited time-sharing interests

- (1) A responsible entity of a registered time-sharing scheme does not have to comply with paragraph 601FG(1)(a) of the Act in relation to the acquisition and holding by the entity of an interest (*forfeited interest*) in the scheme that is forfeited to the responsible entity in accordance with the constitution of the scheme.

*Circumstances to which the relief applies*

- (2) The exemption in subsection (1) applies where subsections (3) and (4) apply.
- (3) The constitution of the scheme provides for the following:

- (a) the forfeiture occurs as a result of a member (*defaulting member*) not paying:
  - (i) amounts payable to the responsible entity as scheme property, including, without limitation, amounts payable to acquire the forfeited interest or amounts payable for on-going periodic maintenance of scheme property; or
  - (ii) amounts payable to a person with respect to financial accommodation provided by the person in connection with the acquisition of the forfeited interest;
- (b) the responsible entity must use reasonable endeavours to sell the forfeited interest:
  - (i) if a Product Disclosure Statement has been given in accordance with Part 7.9 of the Act during the last 12 months for interests in the scheme in the same class as the forfeited interest—at the price shown in the Statement most recently given; or
  - (ii) if no such Product Disclosure Statement has been given during the last 12 months—at a fair market price obtained by the responsible entity using reasonable endeavours;
- (c) the responsible entity must apply any proceeds of sale or of other exploitation by it of the forfeited interest (including, without limitation, any proceeds of rental of, or licensing to use, the scheme property that relates to the interest of the defaulting member) in the following order:
  - (i) in payment of reasonable costs of the sale or exploitation;
  - (ii) in payment of any reasonable administrative costs arising from the forfeiture;
  - (iii) in payment of any outstanding amounts due from the defaulting member as scheme property;
  - (iv) in payment of any outstanding amounts due from the defaulting member to the responsible entity (other than as scheme property) or any other person in relation to that member's participation in the scheme (other than amounts referred to in subparagraph (v));
  - (v) in payment of any amounts payable by the defaulting member or the responsible entity to a person in relation to a liability of the member to the person for amounts with respect to financial accommodation provided by the person in connection with the acquisition of the forfeited interest;

- (vi) by paying any remaining amount to the defaulting member.
- (4) Both of the following apply:
  - (a) each Product Disclosure Statement for interests in the scheme given at any time sets out the circumstances in which forfeiture of the interest may occur and of the procedures for dealing with forfeiture; and
  - (b) before a person acquires an interest in the scheme at a time when no Product Disclosure Statement for the interests is in use, the person has been given the information referred to in paragraph (a) in writing.

## **6 Valuation of property of registered time-sharing schemes**

- (1) The responsible entity of a registered time-sharing scheme does not have to comply with paragraph 601FC(1)(j) of the Act in relation to the scheme.

### *Condition*

- (2) A responsible entity that relies on the exemption in subsection (1) must ensure that an item of scheme property of the scheme is valued as soon as practicable after the responsible entity has reasonable grounds to believe that a valuation of the item is in the best interests of members or is needed for the scheme to operate in a manner that is fair to all members.
- (3) A responsible entity that has not complied with the condition in subsection (2) cannot rely on the exemption in subsection (1).

## Part 3—Declarations

### 7 Disclosure of prices for the purchase of time-sharing interests

Chapter 5C of the Act applies to a responsible entity of a registered time-sharing scheme as if section 601GA were modified or varied as follows:

- (1) in subsection (1) (introductory words), omit “The”, substitute “Subject to subsection (1A), the”;
- (2) after subsection (1) insert:

“(1A) The constitution of a registered scheme that is a time-sharing scheme need not make adequate provision for the consideration that is to be paid to acquire an interest in the scheme to the extent that the constitution contains provisions to the effect that interests in the scheme may be issued at a price set out in the Product Disclosure Statement for the interests that is in use at the time and provided that all of the following requirements are satisfied:

- (a) the responsible entity (*operator*) operating the time-sharing scheme must ensure that any application for an interest in the scheme is voidable at the option of the applicant during a period of:
  - (i) if the operator is a member of the Australian Timeshare & Holiday Ownership Council Limited ACN 065 260 095 and has not been notified in writing by ASIC that it cannot rely on this subparagraph—not less than 7 days; or
  - (ii) otherwise—not less than 14 days,  
  
commencing on the date on which the applicant acknowledges receipt of the Product Disclosure Statement (including, where applicable, a loose-leaf price list) and the cooling-off statement referred to in paragraph (c);
- (b) the operator must not issue or sell any interest in the time-sharing scheme to an applicant, or allow any other person to do so, unless the applicant has provided the acknowledgment of receipt referred to in paragraph (a);
- (c) each application form relating to an interest in the time-sharing scheme must be accompanied by a

separate statement in a form approved by ASIC which:

- (i) describes the effect of the cooling-off period referred to in paragraph (a); and
  - (ii) states that a signed application form will be of no effect unless the applicant also signs an acknowledgment of receipt of such a cooling-off statement;
- (d) the rights referred to in paragraph (a) must be disclosed prominently in the Product Disclosure Statement and application form which relate to the offer of interests in the time-sharing scheme;
- (e) the operator must ensure that the rights referred to in paragraph (a) are provided to the applicant, and the obligations in paragraphs (c) and (d) are complied with, by any other person who:
- (i) offers an interest in the time-sharing scheme for issue; or
  - (ii) offers an interest in the time-sharing scheme for sale where the offer needs disclosure because of section 1012A or 1012C;
- (f) the operator must maintain written records relating to the issue by it of all cooling-off statements referred to in paragraph (c), which include:
- (i) each person's signed acknowledgment of receipt of such a statement; and
  - (ii) the date of issue of each statement; and
  - (iii) the identity of persons to whom each statement has been issued;
- (g) the operator must keep a written record in relation to a cooling-off statement referred to in paragraph (f) for 7 years after the relevant cooling-off statement is issued;
- (h) the operator must pay any continuing charges and levies payable with respect to any interests it holds and interests that are unissued calculated on the same basis that applies to members of the time-sharing scheme;

- (i) the operator must provide members of the time-sharing scheme, at least annually, a statement containing full details of the composition and calculation of the continuing charges and levies to be imposed on members;
- (j) if the operator receives a deposit for an interest in the time-sharing scheme and that interest relates to a property development or a part of a property development that has not been completed to the stage at which it is ready for occupation, the operator must:
  - (i) immediately refund to the applicant any part of the deposit money in excess of 30% of the price payable for the interest; and
  - (ii) hold the balance of the deposit money in a trust account on trust for the applicant until the operator complies with subparagraph (iii); and
  - (iii) if the relevant property development or part of the property development has not been completed to the stage at which it is ready for occupation by the date specified in the Product Disclosure Statement—return to the applicant the deposit money and any income earned on the deposit money (less any fees and disbursements properly chargeable against the income).”.

## **8 Consequential modification of compliance plan requirements**

Chapter 5C of the Act applies to a responsible entity of a registered time-sharing scheme as if paragraph 601HA(1)(c) were modified or varied by after “valued” inserting “in accordance with the conditions of any exemption under paragraph 601QA(1)(a) that exempts the responsible entity from paragraph 601FC(1)(j) or, if the responsible entity is not covered by such an exemption,”.

Note: Subsection 6(1) is an exemption of this kind.



## Part 4—Transitional

### 9 Rental pools covered by ASIC Class Order [CO 02/237]

- (1) This section applies in relation to a person that operates or provides financial services in relation to an interest in a rental pool that was operated or purportedly was operated in reliance on ASIC Class Order [CO 02/237] (the *old class order*) immediately before the repeal of that class order.
- (2) The old class order as in force immediately before its repeal continues to apply to the person despite its repeal. The exemption (including any related conditions) in the old class from the requirement to hold an Australian financial services licence that is expressed to be made under paragraph 911A(2)(1) has effect under section 926A of the Act instead.