



## **CODE OF PRACTICE**

This Code of Practice establishes fair trading standards for the Australian Timeshare Industry.

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**AUSTRALIAN TIMESHARE & HOLIDAY OWNERSHIP COUNCIL LIMITED**  
**A.B.N. 58 065 260 095**

**CODE OF PRACTICE**

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**AUSTRALIAN TIMESHARE & HOLIDAY OWNERSHIP COUNCIL LIMITED**  
**A.B.N. 58 065 260 095**  
**("ATHOC")**

**CODE OF PRACTICE**

**1.0 PURPOSE OF THIS CODE OF PRACTICE**

- 1.1 This Code of Practice has been developed by ATHOC in consultation with various Regulatory Agencies and Consumer Agencies in Australia:
- 1.1.1 to enhance the objects for which ATHOC was established and its Constitution was modified; and
  - 1.1.2 to promote and maintain the highest standards of conduct by all participants in the Industry and to maintain and enhance public confidence in the Industry; and
  - 1.1.3 to provide a complaints handling system for Members.
- 1.2 Membership of ATHOC is divided into the following membership categories:
- 1.2.1 Promoter and/or Developer Members;
  - 1.2.2 Resort and Resort Management Members;
  - 1.2.3 Exchange Company Members;
  - 1.2.4 Large Promoter and/or Developer Members;
  - 1.2.5 Professional Advisor Members;
  - 1.2.6 Life Members;
  - 1.2.7 Honorary Members; and
  - 1.2.8 Associate Members.
- 1.3 This Code of Practice sets out the minimum standards of conduct and practice for all Members.
- 1.4 Acceptance and observance of this Code of Practice is a condition of membership and continuing membership of ATHOC and each Member agrees to submit to and to comply with both the letter and the spirit of the Code of Practice and to ensure that its dealings are consistent both with the highest standards in and the best practice of the Industry. Failure to comply with the Constitution or the Code of Practice will result in sanctions being applied. Compliance with this Code of Practice in no way diminishes the responsibility of Members to comply with Regulatory Requirements.
- 1.5 A Member:

- 1.5.1 acknowledges full responsibility for the actions of that Member's Representatives in the marketing and sale of Timeshares; and
- 1.5.2 must take reasonable steps to ensure that it and its Representatives are familiar with and understand the provisions of the Constitution, Code of Practice and the relevant Regulatory Requirements.
- 1.6 Specifically, this Code of Practice is to assist Members to:
  - 1.6.1 ensure that they possess a thorough knowledge of and have due regard for the requirements of consumers by responsibly informing consumers about the Product and the Industry; and
  - 1.6.2 ensure that all information is presented in a clear, accurate and balanced way and is based upon adequate data; and
  - 1.6.3 ensure that the highest standards consistent with best practice in the Industry are employed in dealings and relationships; and
  - 1.6.4 ensure that they are aware that commercially significant sanctions will apply for Members who are in breach of this Code of Practice; and
  - 1.6.5 ensure that whenever a Promotional Claim is made for a Product, it must be accompanied by appropriate Product Information; and
  - 1.6.6 as far as disputes and complaints are concerned and having regard to the Regulatory Requirements:
    - 1.6.6.1 become and remain a member of one or more external disputes resolution schemes approved by ASIC which cover, or together cover, complaints made by retail clients in relation to the provision of all of the financial services authorised by the AFS Licence of or concerning that Member; and
    - 1.6.6.2 establish and maintain separate internal complaints handling procedures.
- 1.7 Without limiting the power of the Board, this Code of Practice shall be supervised and administered by the CAC which may issue determinations from time to time relating to the interpretation of certain parts of this Code of Practice.
- 1.8 This Code of Practice also deals with complaint and dispute resolution systems and procedures which should:
  - 1.8.1 increase the level of consumer satisfaction with the delivery of Products and enhance the consumer/provider relationships;
  - 1.8.2 recognise, promote and protect consumers' rights, including the right to comment and complain;
  - 1.8.3 encourage an efficient, fair and accessible mechanism for resolving consumer

- complaints;
- 1.8.4 provide information to consumers on the complaint handling process for the Products;  
and
- 1.8.5 monitor complaints in an endeavour to improve the quality of Products.
- 1.9 Without limitation, the Board's responsibilities include the following:
  - 1.9.1 supervising and monitoring the activity of Members, being responsible for Member Surveillance, ensuring compliance by Members with respect to Member Duties and Member Records and ensuring the independence of the dispute resolution process;
  - 1.9.2 appointing persons to the CAC;
  - 1.9.3 analysing statistical information in relation to Members and the complaint and dispute resolution process;
  - 1.9.4 preparing and providing appropriate reports to ASIC;
  - 1.9.5 satisfying itself that all promotional programmes or projects are adequately funded;
  - 1.9.6 identifying systemic problems and reporting serious misconduct or other matters as required by Regulatory Agencies;
  - 1.9.7 ensuring that any necessary modifications are made to the Constitution or the Code of Practice after consultation with all interested parties.
- 1.10 In Australia, timesharing schemes are primarily regulated as managed investment schemes under the Act. ASIC issues practice notes and Regulatory Guides and makes Class Orders from time to time, some of which are also relevant to timesharing schemes as are the provisions of consumer and trade practices legislation at Commonwealth, State and Territory level. Members should check their legal obligations for transactions involving the provision of credit which may be subject to the Uniform Consumer Credit Code. Exempt Members and Operator Members have obtained relief from ASIC in accordance with RG 160 from certain provisions of the Act. Timesharing schemes conducted by Regulated Members are generally subject to the Act, with limited modifications as set out in RG 160.
- 1.11 Timesharing schemes deal with both real and personal property. The major types of timesharing schemes include the following:
  - 1.11.1 title-based timesharing schemes where a Timeshare Owner becomes a tenant in common with the right to a share of the real property and ownership is evident by a certificate of title to the real property and share in or membership of a Club;
  - 1.11.2 company structured timesharing schemes where a Timeshare Owner holds a share in the company that owns and operates the Resort;
  - 1.11.3 "right to use" timesharing schemes where a Timeshare Owner acquires the right to occupy the Resort (under a lease, licence, share or by some other means) and the developer retains ownership of the property;

- 1.11.4 unit-trust or other trust based timesharing schemes where a property is acquired by a Trustee and held on behalf of members for a defined period;
- 1.11.5 points-based timesharing schemes in which different classes of members hold different numbers of points which are redeemed for accommodation or other benefits and which are generally renewed annually or for other specified intervals; and
- 1.11.6 other types of timesharing schemes.

Under the Act, a timesharing scheme must be registered by ASIC as a managed investment scheme and for that purpose, must have a constitution and compliance plan, each of which complies with the Act. The Responsible Entity of a registered timesharing scheme must be a public company that holds an AFS Licence authorising it to operate the registered timesharing scheme and to provide financial services regarding that registered timesharing scheme.

## **2.0 ATHOC'S ROLE**

- 2.1 Unless ASIC otherwise determines, each Exempt Member, Operator Member and Regulated Member must sign the ATHOC Agreement.
- 2.2 To give effect to this Code of Practice, ATHOC must:
  - 2.2.1 have adequate resources to undertake its proposed supervisory role, including financial and administrative resources to provide appropriate supervision;
  - 2.2.2 have adequate staffing in terms of number, qualifications and experience involved in supervision;
  - 2.2.3 have had adequate prior experience in supervising its Members;
  - 2.2.4 monitor and assess its own performance as a supervisor, including:
    - 2.2.4.1 the proposed frequency of routine supervisory visits;
    - 2.2.4.2 what staff will examine and assess on those visits;
    - 2.2.4.3 how ATHOC will identify and deal with emerging problems either with individual operators or more generally;
    - 2.2.4.4 what processes ATHOC will have for disciplining Members who breach the Constitution, Code of Practice or the Act;
  - 2.2.5 adopt adequate mechanisms to compel compliance with the Constitution and Code of Practice and demonstrate preparedness and commitment to enforce compliance;
  - 2.2.6 have provisions in the Constitution that are likely to ensure the Board is constituted in such a manner to ensure an adequate spread of representation of each category of membership and the geographic location of Members;

- 2.2.7 have mandatory rules of membership (contained in the Code of Practice, in the Constitution and elsewhere) that, amongst other things, comply with the requirements of ASIC from time to time;
- 2.2.8 provide ASIC with prompt written notification of:
  - 2.2.8.1 any suspected breaches of the Act or of Division 2 of Part 2 of the ASIC Act (consumer protection provisions) in relation to the operation of a Scheme;
  - 2.2.8.2 any breach of the Constitution and the Code of Practice by a Member, any adverse inspection report or the commencement of disciplinary proceedings against a Member;
- 2.2.9 forward to ASIC upon request written details of any breach by a Member, a report of any inspection of a Member, any complaint concerning a Member or particulars of disciplinary proceedings taken against a Member;
- 2.2.10 provide ASIC with a report on or before 31 August each year outlining the activities of ATHOC in relation to its supervisory activities during the previous Financial Year, including:
  - 2.2.10.1 the number of and particulars of Members subject to supervision;
  - 2.2.10.2 the number and type of inspections undertaken by ATHOC with a summary of major issues addressed;
  - 2.2.10.3 the number and particulars of complaints referred to ATHOC and how they were resolved. Without limitation, this includes the number of complaints regarding promotion, sales and marketing; and
  - 2.2.10.4 any disciplinary action taken against Members;
- 2.3 The Board is entitled in its absolute discretion to:
  - 2.3.1 at the cost of the Member, appoint any person by instrument in writing to be attorney or agent of ATHOC or the Board for such purposes and with such powers and authorities as the Board thinks fit (including the power of sub-delegation); and
  - 2.3.2 at the cost of the Member, appoint any Registered Company Auditor, accountant, lawyer, sub-contractor, expert, consultant or other person as it deems necessary to act for it or assist it with the performance of its obligations under the Constitution or the Code of Practice, or the ATHOC Agreement, if then in force.

### **3.0 MEMBER DUTIES**

#### **General Duties**

- 3.1 A Member must:

- 3.1.1 properly perform and comply with the Member Duties;
- 3.1.2 submit to the sanctions contained in the Constitution and the Code of Practice which, without prejudice to any other rights of ATHOC under the Constitution and Code of Practice or at law, will apply to all instances of breach or default by a Member;
- 3.1.3 not make any appeals under the Code of Practice and in particular, but without limitation, from any determination of the Board for any Member Complaint or Member Dispute and/or the sanction that has been imposed;
- 3.1.4 if it is a company, be a company validly existing under the laws of the place of its incorporation;
- 3.1.5 comply with the Regulatory Requirements,, except to the extent from any relief from ASIC;
- 3.1.6 have the power to perform its obligations under the Constitution and Code of Practice and obtain all necessary authorities, consents and approvals and the performance of such obligations must not violate in any respect any provision of:
  - 3.1.6.1 any treaty or law or any judgment, ruling, order or decree of any government agency or body or authority;
  - 3.1.6.2 its constitution; or
  - 3.1.6.3 any other document or agreement which is binding upon it or its assets;
- 3.1.7 indemnify ATHOC against any liability, demand, loss, costs, taxes, charges and expenses which may be incurred by ATHOC in connection with or as a result of:
  - 3.1.7.1 the wrongful or negligent act or omission of the Member;
  - 3.1.7.2 the failure by the Member to properly perform its duties and obligations under the Constitution and the Code of Practice.

Each such indemnity is a continuing obligation separate and independent from the other obligations of the Member and survives the cessation of membership of ATHOC by that Member.

### **Provision of Documents**

- 3.2 A Member, at its cost, must provide to ATHOC as a matter of course and in any event by no later than 14 days after written demand:
  - 3.2.1 for a Regulated Member, the constitution of the Scheme registered by ASIC;
  - 3.2.2 for an Exempt Member or an Operator Member, the approved trust deed of the Scheme or other constituent document of the Scheme;

- 3.2.3 the Compliance Plan;
  - 3.2.4 the current PDS, or if there is no current PDS, the last PDS issued with respect to the Scheme;
  - 3.2.5 the AFS Licence;
  - 3.2.6 evidence satisfactory to ATHOC that the Scheme is registered under the Act or that ASIC has provided relief from the MIA;
  - 3.2.7 true, correct and complete copies of any instruments of relief made by ASIC with respect to the Member or the Scheme;
  - 3.2.8 with respect to a Regulated Member, identification and contact particulars and the written consent to act of the auditor of the Scheme and the auditor of the Compliance Plan;
  - 3.2.9 with respect to an Exempt Member or an Operator Member, identification and contact particulars and the written consent to act of the trustee under the approved trust deed or other constituent document of the Scheme;
  - 3.2.10 true, correct and complete copies of any and all agreements entered into by a Member or any other documents with respect to the Scheme and which relate in any way to the proper performance by the Member of the Member Duties or the proper compliance by the Member with the obligations of the Member under the Constitution or the Code of Practice. Such agreements include, but are not limited to, agreements and other documents evidencing the appointment of an agent or the engagement of a person by the Regulated Member as responsible entity for the purposes of Section 601FB(2) of the Act;
  - 3.2.11 such other documents as ATHOC may reasonably require within such time as ATHOC may reasonably determine.
- 3.3 A Member, at its expense, must provide to ATHOC any and all modifications to any of the documents referred to in Clause 3.2 as soon as practicable, but no later than 14 days after any such modifications are made.
- 3.4 A Member must pay within 14 days of demand the reasonable costs of ATHOC in receiving, storing, reviewing, taking advice in relation to and otherwise acting upon any of the documents referred to in Clauses 3.2 and any modifications of these documents referred to in Clause 3.3.

### **Compliance Plan**

- 3.5 An Exempt Member or an Operator Member must, at its cost, prepare and provide to ATHOC the Compliance Plan by no later than one month after ATHOC so directs in writing.
- 3.6 A Member must report to ATHOC all breaches of the Compliance Plan within 30 days of the date upon which the Member became aware of any such breaches.

## **Financial and Administrative Records and Systems**

- 3.7 A Member must establish and maintain proper administrative records and books of account, including written financial records which correctly record and explain its transactions and financial position and performance and which would enable true and fair financial statements to be prepared and audited.
- 3.8 A Member must cause financial statements to be prepared by a qualified public or chartered accountant, including a profit and loss account and a balance sheet as at the end of each period of 6 months and as at the end of each Financial Year, certified by that accountant to be a true and fair statement of the affairs of the Scheme in accordance with the Act and with generally accepted accounting principles and, amongst other things, setting out all:
- 3.8.1 income of the Scheme;
  - 3.8.2 capital of the Scheme;
  - 3.8.3 costs and disbursements and other outgoings paid or payable out of the Scheme and chargeable against income;
  - 3.8.4 capital expenditure and liabilities chargeable to capital;
  - 3.8.5 investments and money comprised in the Scheme;
  - 3.8.6 amounts held in the accumulated income account; and
  - 3.8.7 amounts distributed by the Member to members of the Scheme.

Unless the Act or ASIC otherwise requires and in the absence of any other contrary Regulatory Requirement, the Board may determine, upon receipt of a written submission from a Member, that 6 monthly financial statements need not be maintained by that Member in relation to that Scheme.

- 3.9 A Member must prepare an Annual Report which must:
- 3.9.1 comply with the Act;
  - 3.9.2 include detailed particulars or such particulars as may otherwise be required by ATHOC of:
    - 3.9.2.1 number of members of the Scheme;
    - 3.9.2.2 number of members of the Scheme who have not paid outstanding maintenance fees, levies or other moneys required to be paid under the Scheme;
    - 3.9.2.3 complaints made, outstanding and resolved, as required under the Code of Practice;
    - 3.9.2.4 all matters required under the Code of Practice to be included;

- 3.9.2.5 all measures adopted by the Member in the discharge of its duties and obligations under the Code of Practice and the Constitution and the performance of the Scheme including the rental pool (if any) operated in relation to the Scheme;
- 3.9.2.6 the operation of the Trust Account(s) and the report of the auditor in relation to such Trust Account(s);
- 3.9.2.7 any fees and benefits derived by the Member or any associate of the Member (as defined in the Act) in relation to the Scheme

but only to the extent that such particulars are or are required or intended to be in the public domain or otherwise reasonably necessary for a Member to evidence compliance with any provision of the Code of Practice which requires compliance by that Member;

3.9.3 include such other matters as the Regulatory Requirements or ATHOC may require.

3.10 A Member must, at its cost, provide a true, correct and complete copy of each of the Financial Statements and the Annual Report within 2 months of the end of each period of 6 months and the end of each Financial Year (as the case may require) to:

3.10.1 ATHOC;

3.10.2 each member of the Scheme annually but only in respect of the Financial Statements for that Financial Year and the Annual Report for that Financial Year.

3.11 A Member must keep all financial and administrative records for no less than 7 years or such longer period as is required by law.

3.12 A Member must establish and maintain proper Systems to the satisfaction of ATHOC which are secure and which are capable of handling record keeping and transaction processing relating to the functions of the Member and the Scheme, including functions relating to any associated rental pool.

3.13 A Member must establish, maintain and operate Trust Accounts with respect to:

3.13.1 any rental pool;

3.13.2 the operation of the Scheme.

### **Member Surveillance**

3.14 A Member acknowledges and agrees that ATHOC is entitled to conduct Member Surveillance as ATHOC determines for any purpose relating to the Constitution or the Code of Practice including for the purpose of determining:

3.14.1 compliance with the Constitution, Code of Practice and any applicable laws, regulations or conditions of ASIC relief or any other Regulatory Requirement;

3.14.2 the adequacy of resources or personnel and equipment to comply with the

## Constitution, Code of Practice and Regulatory Requirements;

- 3.14.3 the adequacy of Systems, control procedures and management structures governing the Scheme.
- 3.15 A Member will upon demand pay or reimburse to ATHOC all reasonable costs, charges and expenses incurred by or on behalf of ATHOC with respect to any Member Surveillance.
- 3.16 A Member must, with respect to any Member Surveillance, give to and as required by ATHOC or any person authorised by ATHOC:
- 3.16.1 all access to and true, correct and complete copies or extracts of any of its Member Records, Systems and any other records that relate to the operation of the Scheme;
- 3.16.2 all assistance, information and documents reasonably necessary in the opinion of ATHOC or any person authorised by ATHOC for the conduct of the Member Surveillance including, without limitation, records and explanations.
- 3.17 In conducting Member Surveillance, ATHOC or any person authorised by ATHOC will, unless otherwise reasonably determined by ATHOC, give reasonable notice to the Member and will use reasonable endeavours to minimise inconvenience to or interference with the Member and its business.

### **Member Standards and Supervision**

- 3.18 A Member must ensure that each of its officers strive to be and remain informed and that they or the Member obtain regular and adequate legal and other advice as to the legal, compliance and other requirements applicable to the Industry.
- 3.19 A Member must reasonably familiarise itself and ensure that its authorised representatives are reasonably familiar and comply with the provisions of the regulatory guides of ASIC from time to time with respect to organisational competencies (RG105, as amended) and training of authorised representatives (RG146, as amended).
- 3.20 Without prejudice to any other means of compliance with Clause 3.19, a Member may comply by having adequate board or committee representation and/or adequate staff with appropriate Industry experience in the reasonable determination of ATHOC.
- 3.21 The extent to which a Member is required to comply with Clause 3.19 is partly determined by whether or not interests in the Scheme are then issued or sold, the number and nature of interests in the Scheme remaining to be issued or sold, whether the issue or sale is pursuant to a PDS and whether the Member is then the holder of an AFS Licence or has obtained relief from ASIC so that that Member need not hold an AFS Licence.
- 3.22 A Member must adequately supervise agents and representatives and assume liability for the conduct of such agents and representatives.
- 3.23 A Member shall comply at all times with the provisions of such other codes as may from time to time be developed and/or endorsed by ATHOC.
- 3.24 A Member will at no time make statements that may lead consumers to forego appropriate legal,

financial or other appropriate advice with respect to the Product or the Industry.

- 3.25 A Member shall refrain from any unfair, misleading or deceptive criticism of the conduct of other Members.
- 3.26 A Member shall fully co-operate with ATHOC in supplying to or on behalf of ATHOC factual, statistical or other information relating to the Product or the Industry when so requested by ATHOC or by any person duly authorised by ATHOC.
- 3.27 A Member shall not write, speak or act in such a way as to lead any person to reasonably believe that the Member is officially representing ATHOC, unless the Member has been duly authorised so to do by ATHOC.
- 3.28 A Member shall not misrepresent the credentials or affiliations which that Member purports to hold.
- 3.29 A Member may advertise that that Member is a Member of ATHOC and that that Member is bound by this Code of Practice.
- 3.30 A Member shall maintain adequate stocks of this Code of Practice and make a copy available to any consumer upon request.
- 3.31 A Member shall not make any media release or statement purporting to be on behalf of ATHOC unless so authorised by the Board or a person authorised by the Board.
- 3.32 A Member shall at all times be fair in any criticism of ATHOC and must not improperly denigrate the work or reputation of ATHOC.
- 3.33 A Member shall at all times promote the objects of ATHOC.
- 3.34 A Member must have at all times all necessary resources (including staff and equipment) to properly perform the Member Duties.
- 3.35 A Member must take all reasonable steps to assist ATHOC and ASIC when ASIC is conducting surveillance on the Member.
- 3.36 A Member must provide to ATHOC within a reasonable time after request and at the cost of the Member, all documents, information, instructions or assistance reasonably required by ATHOC to enable ATHOC to properly perform its obligations under the Constitution and the Code of Practice.
- 3.37 A Member shall not engage in any misleading, deceptive or unconscionable conduct or unfair commercial practice.

#### **Offer of Timeshare Interests**

- 3.38 A Member who offers interests in a Scheme for issue or sale must provide consumers with:
  - 3.38.1 adequate information to assist a consumer in making an informed assessment of the merits and risks associated with acquiring an interest in the Scheme;

- 3.38.2 complete disclosure of all fees, levies and charges that may be payable by the consumer in connection with the acquisition of an interest in the Scheme or continued participation in the Scheme or an associated rental pool; and
- 3.38.3 a description of the cooling-off rights of the consumer upon signing an agreement to purchase an interest in the Scheme.
- 3.39 A Member must not represent the suitability of an interest in a Scheme as an investment opportunity.
- 3.40 A Member must limit representations in relation to the potential resale value of an interest in the Scheme, or the capacity of an interest in the Scheme to generate rental income, to disclosure of verifiable historical data relating to the prior sale or rental of sufficiently comparable interests in the Scheme.
- 3.41 Without in any way limiting the Act and in particular Section 981B of the Act, a Member must make adequate provision for the receipt, handling and disbursement of funds paid by, or payable to consumers including, but not limited to, the maintenance of such funds in a Trust Account pending completion of the purchase by a consumer of an interest in the Scheme.

#### **4.0 PROMOTION, SALES AND MARKETING**

- 4.1 Promotional Claims, Product Information and other advertising and promotional material must be presented in a clear, accurate and balanced way and must be based upon adequate data. All such material must clearly identify the source of that material by specifying the Member's (or other relevant person's) name, address, telephone number, facsimile number and e-mail address. The source material must be retained for a reasonable period and produced upon ATHOC's request.
- 4.2 A Member shall ensure that it does not or that Member's Representatives do not misrepresent the nature, benefits, costs, limitations or suitability of any Product or of the Industry, whether the Product is offered by that Member or by any other person. The Member and that Member's Representatives must not make any misleading or deceptive statements about that Member.
- Note:** For example:
- (a) a Member and that Member's Representatives must not state that a product is not a timesharing scheme if that Product is a timesharing scheme under the Act;
- (b) a Member cannot represent itself to be a not-for-profit organisation if in fact that is not the case.
- 4.3 In recommending or making a statement about any Product or any part of the Industry to another person, a Member must ensure that it does not or that Member's Representatives do not misrepresent or conceal any material limitations on the perceived ability of the Product to meet the expressed or implied needs of that person.
- 4.4 A Member or that Member's Representatives selling or transferring Timeshares must provide cooling-off rights and cooling-off statements to all intending purchasers of Timeshares:
- 4.4.1 as required by RG 160 or otherwise required by the Act or ASIC or any other

Regulatory Requirement for all Primary Sales; and

4.4.2 for all Secondary Sales as though they were Primary Sales.

**Note:** Further details about what is required are set out as a condition of an AFS Licence.

4.5 In any offer or invitation for the sale or transfer of Primary Sales or Secondary Sales (and whether or not by way of disclosure document) the Member making or being responsible for the making of the offer or invitation must ensure that adequate disclosure is made:

4.5.1 as required by the Act;

4.5.2 of any commission payable and, if commission is payable, the amount of commission payable to representatives of the holder of an AFS Licence; and

4.5.3 of Levies.

4.6 Marketing by a Member or that Member's Representatives that includes an offer of Incentives to consumers must comply with the following requirements, to the extent that such requirements are not otherwise inconsistent with any Commonwealth, State or Territory law:

4.6.1 disclosure, either:

- in writing or verbally, at the first reasonable opportunity; or
- in writing, at the first reasonable confirmation opportunity, but prior to the consumer accepting any Incentive or participating in a sales presentation or tour of a Resort

of:

4.6.1.1 the purpose of the promotion;

4.6.1.2 the eligibility requirements to obtain the Incentive;

4.6.1.3 any restrictions on the right to receive the Incentive;

4.6.1.4 whether the purchase of a Timeshare or other product is necessary to receive the Incentive;

4.6.1.5 whether participation in a sales presentation or tour of a Resort is necessary to receive the Incentive and the approximate duration of any such sales presentation or tour;

4.6.1.6 the full name, address and contact particulars of both the Member and the promoter;

4.6.1.7 any relevant permit number and condition of the permit as applicable in the relevant State or Territory of Australia;

4.6.1.8 any other relevant disclosures reasonably required to fully inform the consumer;

**Note:** This clause applies to, amongst others, a telemarketer acting as an agent or contractor of a Member.

- 4.6.2 if Incentives are offered:
  - 4.6.2.1 such Incentives shall not be offered in any manner that is misleading or deceptive to the consumer as to the true nature, value, size or kind of the Incentives;
  - 4.6.2.2 if Incentives are substituted, this fact shall be disclosed and substitution shall be of an Incentive of equal or greater value;
  - 4.6.2.3 if the Incentives or their substitutes cannot be delivered at the time represented, they must be delivered within 30 days thereafter without any additional cost or obligation to the consumer;
  - 4.6.2.4 Incentives must include at least one of each type of Incentive offered;
  - 4.6.2.5 if Incentives include trading stamps or coupons, any law relating to the use of trading stamps and coupons must be complied with;
- 4.6.3 fictitious contests or similar schemes shall not be used for marketing purposes.
- 4.7 Marketing by a Member or that Member's Representatives, whether or not including an offer of Incentives to consumers, must comply with at least the following requirements:
  - 4.7.1 if a sales presentation is to be made to proposing purchasers, this fact should be disclosed to the proposing purchasers at the point of contact together with important details regarding the sales presentation. Such details must include particulars as to the duration of the sales presentation and any tour, the location of the sales presentation and any tour and whether the proposing purchaser is able to leave the sales presentation or the Resort at any time;
  - 4.7.2 in the event that the proposing purchaser indicates an unwillingness to proceed with the sales presentation or the tour of the Resort, such unwilling proposing purchaser is to be afforded a reasonable opportunity to take no further part in the sales presentation or the tour of the Resort;
  - 4.7.3 proposing purchasers shall be advised that the Member is a Member of ATHOC and is bound by this Code of Practice, a copy of which the Member shall provide to the proposing purchaser if so requested.
- 4.8 All lead generation and promotional material for the marketing of Timeshares and all Promotional Claims must state that the Scheme in which Timeshares are being promoted is a timesharing scheme or where appropriate, is identified by some further or other words which indicate holiday ownership or a variation approved by the Board.
- 4.9 A Member or that Member's Representatives associated with the promotion, marketing and sale of Timeshares or a Scheme shall observe the following guidelines with respect to Off Premises Contact ("OPC"). Such a Member or such Member's Representatives shall:

- 4.9.1 have positive identification in badge form showing their name, their employer and/or the name of the Resort;
  - 4.9.2 be well mannered and courteous;
  - 4.9.3 be limited to a reasonable number per Resort in the area;
  - 4.9.4 not solicit in non-public areas uninvited, nor stop cars;
  - 4.9.5 not harass or follow consumers;
  - 4.9.6 obey local authority ordinances.
- 4.10 A Member or that Member's Representatives shall not make representations:
- 4.10.1 that there is a limited time for a consumer to accept the terms of an offer unless those representations is true in fact;
  - 4.10.2 to the effect that a reduced price will apply if they accept the terms of an offer on the day of that offer unless those representations are true in fact.

In each case, written particulars of the elements of the representations are to be provided by the Member or that Member's Representatives to the consumer to whom the representations are made and those details are to be retained by that Member.

- 4.11 A Member shall ensure that their advertising, promotion and Promotional Claims (including any statements made by that Member's Representatives) are not false, misleading or deceptive or likely to mislead or deceive.
- 4.12 No advertisement, promotion or Promotional Claim shall denigrate or unfairly attack any other Products or other sectors of the Industry.
- 4.13 A Member or that Member's Representatives shall not make representations regarding any credit facility (as the expression "credit facility" is defined in the Act) that are misleading or deceptive.

## **5.0 CLUB COMMITTEES**

- 5.1 A Regulated Member, Exempt Member and Operator Member (separately and collectively called a "Club Committee") must provide information, where required by a Regulatory Requirement, to a Scheme Member to facilitate Secondary Sales in the time period required by any Regulatory Requirement and for no fee, unless the Regulatory Requirements prescribe a fee. Otherwise, a Club Committee shall provide, within 14 days of a request by a Scheme Member, information reasonably required by a Scheme Member to facilitate Secondary Sales and the Club Committee may charge a Scheme Member a reasonable fee for the information.
- 5.2 A Club Committee shall ensure that Scheme Members are fully informed of the rules and regulations relating to the Scheme and modifications to those rules and regulations, as well as modifications to constituent Scheme documents.
- 5.3 A Club Committee shall treat Scheme Members of the same class equally and Scheme Members

of different classes fairly.

- 5.4 A Club Committee should allocate sufficient funds to maintain the quality and level of amenity of a Resort, unless the contrary is approved by a majority of Scheme Members. Resort budgets or Levies should include adequate provisions for refurbishment and capital replacement to maintain the standard of the Resort, and where there is a policy not to provide for refurbishment and capital replacement, this fact shall be disclosed by the Club Committee to Scheme Members by way of written notice in a newsletter or by such further or other means as the Club Committee may determine.
- 5.5 A Club Committee should make provision in the constituent documents of a Scheme for the recovery of unpaid moneys from non-financial Scheme Members and, where appropriate, for the resale of the Timeshare of a non-financial Scheme Member and the accounting to that Scheme Member for the proceeds of sale after deduction of the amount owing and any other deductions authorised under any of the constituent Scheme documents.
- 5.6 A Club Committee shall:
- 5.6.1 perform its role in accordance with Industry best practice and in the interests of Scheme Members;
  - 5.6.2 maintain record keeping and disclosure procedures in accordance with Industry best practice; and
  - 5.6.3 ensure that, with respect to the management and operation of the Scheme and the Scheme property, there is compliance with all relevant and applicable laws, rules and regulations including, but without limitation, rules, regulations and by-laws of any relevant and competent local authority.

## **6.0 RESIDENT MANAGERS & RESORT MANAGEMENT COMPANIES**

- 6.1 A Resident Manager and a Resort Management Company (separately and collectively called a "Resort Manager") shall conduct itself in a professional manner and at all times work in the best interests of the Scheme and the Scheme Members. Where a conflict between the interests of the Scheme or Scheme Members and the Resort Manager arises, the Resort Manager shall disclose the conflict to the Club Committee responsible for the Scheme and the Club Committee, having regard to the constituent documents of the Scheme and any binding agreement between the Club Committee and the Resort Manager, shall resolve the issue and if such constituent documents or such agreements are silent as to the issue, the Club Committee shall determine the issue having regard primarily to the interests of the Scheme or Scheme Members.
- 6.2 A Resort Manager shall:
- 6.2.1 perform its role in accordance with Industry best practice and in the interests of members; and
  - 6.2.2 maintain record keeping and disclosure procedures in accordance with Industry best practice.

## **7.0 EXCHANGES**

- 7.1 Exchange programmes in which other location usage rights or privileges are offered as a secondary benefit to consumers in the advertising, promotion, marketing or sale of a Timeshare or Exchange programmes which are presented to consumers or to any other person by an Exchange Organisation must be presented in a clear, accurate and balanced way, based upon adequate data and all material information provided.
- 7.2 A Member must not represent opportunities in respect of Exchanges which are greater than those capable of being delivered.
- 7.3 A Member making representations to consumers relating to an Exchange programme shall ensure that consumers are provided with information on the Exchange programme material to the purchase by consumers of a Timeshare or other entitlement to the Exchange programme. Such information shall be obtained by the Member from the Exchange Organisation and shall include at least the following and shall be presented in a clear, accurate and balanced way, based upon adequate data:
- 7.3.1 name and address of the Exchange Organisation;
  - 7.3.2 a statement as to whether the purchaser's contract with the Exchange Organisation is separate and distinct from the contract for purchase of the Timeshare;
  - 7.3.3 disclosure as to whether the purchaser's participation in the Exchange programme is dependent upon continued affiliation of the Resort with the Exchange Organisation;
  - 7.3.4 a statement as to whether the purchaser's participation in the Exchange programme is voluntary or mandatory;
  - 7.3.5 a description of the qualification procedure for Exchanges;
  - 7.3.6 a description of limitations, restrictions or priorities used in the operation of the Exchange programme including limitations based upon seasonality, unit size and occupancy level;
  - 7.3.7 whether Exchanges are arranged on a space-available basis and whether any guarantees of fulfilment of specific requests are made by the Exchange Organisation;
  - 7.3.8 the fees for participation by purchaser in the Exchange programme;
  - 7.3.9 whether and under what circumstances a purchaser may lose that purchaser's occupancy rights in the home Resort without receiving the Exchange or reasonable substitute accommodation from the Exchange Organisation;
  - 7.3.10 a clear, accurate and balanced description of other material terms and conditions of the purchaser's contractual relationship with the Exchange Organisation based upon accurate data and information.
- 7.4 An Exchange Organisation shall ensure at all times that it can meet its liability to supply the Exchange in accordance with its representations.

- 7.5 An Exchange Organisation shall ensure that its members or clients are fully informed on a timely basis of the rules and regulations relating to the Exchange programme and modifications to those rules and regulations and of any changes in membership or other fees and charges.
- 7.6 An Exchange Organisation shall provide to consumers separate written details of the relevant external disputes resolution scheme and be informed that consumers may complain to that external disputes resolution scheme if consumers have complaints about Exchanges. The Exchange Organisation or the Member (as the case requires) must retain a copy of the form of such disclosure.

## **8.0 CODE ADMINISTRATION COMMITTEE**

- 8.1 The CAC administers this Code of Practice and comprises three (3) members, two of whom are members of the Board appointed by the Board and the third of whom is the Chair and is also appointed by the Board and who shall be either a representative of a Regulatory Agency or any suitably qualified and experienced person who is not a Member or another member of the Board, if the Board, having made proper enquiries, reasonably believes that any other person who is qualified for appointment and who has been approached by the Board is unwilling or unable to accept such appointment.
- 8.2 CAC members hold office for a period of 2 years or such other period as the Board may determine and shall each be eligible for re-appointment.
- 8.3 Members of the CAC are eligible for appointment to the CRC.
- 8.4 The CAC shall meet at least twice in each year or so often as the occasion may require.
- 8.5 The CAC is responsible for at least the following:
- 8.5.1 to monitor the operation and effectiveness of the Code of Practice and to develop guidelines, policies and procedures for the promotion and application of this Code of Practice throughout the Industry and to establish and enhance recognition by consumers of this Code of Practice;
  - 8.5.2 to monitor the operation, administration and effectiveness of the complaints handling procedures and if appropriate, in consultation with Regulatory Agencies and Consumer Agencies;
  - 8.5.3 to prepare and publish an annual Compliance Report as to the operation of this Code of Practice with particular emphasis on the Industry's response to complaints and complaint handling;
  - 8.5.4 to the extent from time to time directed by the Board, to conduct a regular review of complaints and other issues raised within the Industry concerning advertising, marketing, promotion and selling practice and such further or other issues as may be raised from time to time by Members, consumers, Regulatory Agencies or Consumer Agencies;
  - 8.5.5 to collect and collate statistical and other data and information relating to complaints. With respect to complaints, the data kept and maintained by the CAC shall include at

least the following:

- 8.5.5.1 the number of complaints lodged directly with ATHOC or the CAC, by and against whom; and
  - 8.5.5.2 a summary of the complaints referred to in the Complaints Returns lodged by Members; and
  - 8.5.5.3 the subject matter, Member class, seriousness of complaint and current status of each complaint; and
  - 8.5.5.4 details of any action taken by ATHOC or by any other person; and
  - 8.5.5.5 the number and percentage of complaints found not to be in breach of this Code of Practice and the reason for this; and
  - 8.5.5.6 the time taken to deal with complaints against Members; and
  - 8.5.5.7 the number of items monitored under each category; and
  - 8.5.5.8 the number of breaches found through monitoring; and
  - 8.5.5.9 the number and type of sanctions imposed;
- 8.5.6 to prepare at least annually, for submission to and consideration by the Board, an operating budget for this Code of Practice to deal with at least the cost of operation and promotion of this Code of Practice.
- 8.6 The CAC shall report in writing to the Board at least annually on the nature, extent and effectiveness of its operation and activities by way of a Compliance Report. Such Compliance Report will include at least the following information:
- 8.6.1 particulars as to the administration, operation and effectiveness of this Code of Practice; and
  - 8.6.2 in broad terms, the number and general nature of all complaints received, whether the complaints were substantiated and the outcome of such complaints and particularly the following information:
    - 8.6.2.1 the number of complaints;
    - 8.6.2.2 the subject matter of the complaints;
    - 8.6.2.3 any themes coming out of the complaints for that year;
    - 8.6.2.4 how the complaints were resolved;
    - 8.6.2.5 case studies on a “standard” complaint;
    - 8.6.2.6 general observations about the statistics;

- 8.6.2.7 when and how the complaints were resolved;
  - 8.6.2.8 the number and type of alleged and actual breaches of the Regulatory Requirements or Code of Practice (by provision); and
  - 8.6.2.9 the number and level of sanctions that were imposed by ATHOC for breaches of Regulatory Requirements or the Code of Practice.
- 8.7 The Board will ensure that each Compliance Report is:
- 8.7.1 provided to ASIC either with the annual return of ATHOC or within a reasonable time after that is practicable;
  - 8.7.2 provided to each Member, whether by publication in a newsletter or by such other means and at such time as the Board determines, including electronic means;
  - 8.7.3 posted on the ATHOC website; and
  - 8.7.4 provided to such Regulatory Agencies, Consumer Agencies or other interested parties as the Board may determine and at such time as the Board may determine with the intent that the Compliance Report be distributed widely to interested parties.
- 8.8 A Member must ensure that in each PDS issued by that Member in relation to the Scheme of that Member there is included a clear statement to the effect that the Compliance Report is available, the type of information contained in the Compliance Report and gives the address at which the Compliance Report may be viewed or obtained; for example, the ATHOC website.
- 8.9 In complying with its obligations under this Code of Practice, the CAC may appoint such persons (whether or not Members), delegate such of its functions and responsibilities and obtain such advice and assistance as it, from time to time, deems reasonably necessary in all the circumstances.
- 8.10 If a member of the CAC retires or is removed from office or is prevented either temporarily or permanently, by reason of ill health, conflict of interests, or howsoever otherwise from acting or continuing to act as a member, a substitute member shall be appointed by the Board either from other Board members (if the office vacated was by a member of the Board) or from a Regulatory Agency or a Consumer Agency in any other case, either temporarily or permanently or otherwise as the Board may determine.
- 8.11 The Board, and to the extent required by the Board, the CAC must publicise the CRC and its functions adequately and appropriately.
- 8.12 To the extent required by the Board or the CAC, the CEO will assist with the functions of the CAC.

## **9.0 COMPLAINTS HANDLING BY MEMBERS**

### **Standards**

- 9.1 An Exempt Member, Operator Member and Regulated Member must establish and at all

times maintain a procedure to deal with complaints by Scheme Members in relation to the Scheme which complies with the Regulatory Requirements and the Australian Complaints Standard.

### **Internal Complaints Handling Procedures**

- 9.2 The Internal Complaints Handling Procedures in this Code of Practice apply to the extent not otherwise inconsistent with the Regulatory Requirements and the constituent documents of the Scheme.
- 9.3 A Member will appoint a responsible person within its organisation ("Compliance Officer") to:
- 9.3.1 ensure compliance with the Constitution and this Code of Practice; and
  - 9.3.2 bring to the attention of the Member any complaints received by that Member about the Product or the Industry.
- 9.4 A Member will keep and maintain a register of complaints received from any complainant as required by the Board ("Complaints Register").
- 9.5 A Member shall record, or shall cause the Compliance Officer to record, on the Complaints Register at least the following:
- 9.5.1 the date of receipt of a complaint;
  - 9.5.2 the name and address of the complainant;
  - 9.5.3 the date the written notice of receipt of complaint was sent to the complainant;
  - 9.5.4 the date that the complaint was considered and determined;
  - 9.5.5 the date that the complainant was notified of the outcome of the complaint; and
  - 9.5.6 such further or other matters as the Board requires.
- 9.6 If a complainant makes a complaint in relation to the Scheme, a Member must or must cause the Compliance Officer to:
- 9.6.1 within 7 days of receipt of the complaint, send the complainant written notice of such receipt and provide reasonable particulars of the complaints procedure including a time-frame for the complaint and otherwise communicate with the complainant in an appropriate manner;
  - 9.6.2 deal with the complaint or ensure that the Member deals with the complaint as soon as possible and in any event within 14 days after receipt of the complaint;
  - 9.6.3 consider or ensure that the Member properly considers the complaint and takes into account at least the following matters:
    - 9.6.3.1 whether the complaint has merit and warrants further investigation;

- 9.6.3.2 if further investigation is warranted, who will conduct the investigation;
- 9.6.3.3 any remedial action, timing of such action and the person or persons responsible for such action; and
- 9.6.3.4 the nature of the response to the complainant and the person who will prepare the response;
- 9.6.4 ensure that any further investigation undertaken is completed within 21 days after receipt of the complaint and that the results of the investigation are properly considered in the determination of the complaint;
- 9.6.5 deal with the complainant in good faith to seek to resolve the complaint and if the complaint is not resolved, to promptly notify the complainant of the complaints handling procedures available to the complainant under the Code of Practice.
- 9.7 The Compliance Officer or the Member must provide the complainant with all reasonable assistance and information which the complainant may require for the purpose of making or pursuing a complaint and understanding the complaint handling procedures adopted by the Member and available under this Code of Practice.
- 9.8 Any complainant must provide the Compliance Officer or the Member with all information which they may require in order to properly deal with and seek to resolve the complaint.
- 9.9 A Member shall complete and lodge annually with ATHOC a summary of complaints on such date or dates as may be determined by the Board from time to time on the form from time to time prescribed by the Board ("Complaints Return").
- 9.10 The Complaints Return must:
  - 9.10.1 contain a summary of all complaints received by that Member in the immediately preceding year and which are recorded in the Complaints Register;
  - 9.10.2 contain such further or other matters as the Board may determine; and
  - 9.10.3 be fully completed; and
  - 9.10.4 include a description of each complaint received by that Member and a statement as to whether or not each complaint has been resolved to the satisfaction of each complainant and if not, particulars as to the action taken or being taken to resolve the complaint or complaints.

#### **Other Procedures**

- 9.11 A Member shall report in writing to ATHOC:
  - 9.11.1 any conduct which that Member reasonably believes is prohibited by this Code of Practice within 14 days of becoming aware of such conduct; and
  - 9.11.2 any complaint made against that Member which alleges a breach of this Code of

Practice within fourteen (14) days of that Member becoming aware of that complaint.

9.12 A Member will co-operate with the Board, to the extent from time to time required by the Board, in the investigation of complaints relating to the Product, the Industry or another Member or any problems which may from time to time arise with respect to the provisions of this Code of Practice or any further or other investigations from time to time conducted by or on behalf of ATHOC.

## **10.0 COMPLAINTS BY MEMBERS AND OTHERS**

10.1 All complaints made or referred to ATHOC by a Member about another Member shall be in writing and referred to the Board for investigation and determination.

10.2 All complaints by a Complaining Member against a Subject Member must be recorded promptly and full details provided and recorded, in each case making use of the Guidelines for Complaints.

10.3 The Complaining Member and the Subject Member shall provide to each other and the Board within 14 days of request, full documents and information relevant to the complaint and such further or other documents and information as the Board may require to assist with the investigation and determination of the complaint.

10.4 If the Board, after making such further enquiry as it deems necessary or desirable, determines that a breach of this Code of Practice or the Constitution has occurred, the Board shall specify the provision of this Code of Practice or the Constitution found to be breached and shall provide reasons for its determination and shall also specify the form of sanction to be applied to the Subject Member.

10.5 With respect to determinations made by the Board:

10.5.1 the Board will make a determination on a timely basis;

10.5.2 each member of the Board has 1 vote and a determination is made by a simple majority;

10.5.3 determinations do not create binding precedents;

10.5.4 the Board must provide reasons for its determination in writing, unless it believes this to be inappropriate. In any reasons for the determination, the complaining Member and the Subject Member will not be identified by name. The Board shall also specify the form of sanction to be applied to the Subject Member.

10.6 The Secretary or the CEO or such other person as the Board determines shall notify the Complaining Member and the Subject Member of the determination of the Board within 14 days of the determination together with the reasons for the determination and particulars of the form of sanction (if any) applied to the Subject Member. The Board may provide to any other person with a direct interest in the outcome of the Member Complaint or Member Dispute such particulars as the Board may determine with respect to the Member Complaint or Member Dispute and its outcome.

10.7 The Board may take any action against a Member it believes necessary to enforce the

determination of the Board including, but not limited to:

- 10.7.1 terminating the membership of a Member, after discussions with ASIC;
- 10.7.2 commencing legal proceedings.
- 10.8 Each of the Complaining Member and the Subject Member are bound by the determination of the Board.
- 10.9 Neither the Complaining Member nor the Subject Member has any right of appeal against any determination made by the Board with respect to a complaint by a Member against another Member.
- 10.10 The Board may determine that either or both the Complaining Member and the Subject Member pay to ATHOC a bond in the amount determined by the Board in respect of the investigation and determination of a complaint and may determine that part or all of such bond is forfeited upon the determination of the complaint.
- 10.11 Complaints between Members must not be used as a competitive tool.
- 10.12 The Board must deal with Member Complaints, Member Disputes or any other complaints on their merits and do what, in its opinion is fair and reasonable in all the circumstances having regard to each of the following:
  - 10.12.1 procedures which accord with the principles of natural justice;
  - 10.12.2 to act in good faith and without bias;
  - 10.12.3 to deal with all matters as expeditiously as is possible in the circumstances;
  - 10.12.4 to treat all matters in confidence except as otherwise required under this Code of Practice;
  - 10.12.5 any applicable legal rule or judicial authority;
  - 10.12.6 general principles of good Industry practice;
  - 10.12.7 this Code of Practice;
  - 10.12.8 resolving complaints in an accessible, efficient and timely manner;
  - 10.12.9 keeping Complaining Members and Subject Members informed of progress;
  - 10.12.10 assisting Complaining Members and Subject Members to reach informed and voluntary decisions to resolve complaints;
  - 10.12.11 assisting Complaining Members (and to the extent determined, Subject Members) to prepare and present their complaints;
  - 10.12.12 discouraging frivolous or vexatious complaints.

- 10.12 In addition to dealing with complaints by a Member about another Member, the Board may deal with complaints made or referred to ATHOC by any consumer about a Member (to the extent that that complaint is not required to be dealt with by an external disputes resolution scheme approved by ASIC), complaints relevant to the Industry and any complaints made or referred by any Regulatory Agency or any Consumer Agency or any other person about or involving any Member or the Industry.
- 10.13 In complying with its obligations under this Code of Practice with respect to complaints, the Board may appoint such persons (whether or not Members), delegate such of its functions and responsibilities and obtain such advice and assistance as it, from time to time, deems reasonably necessary in all the circumstances.

## **11.0 SANCTIONS**

- 11.1 One or more of the following sanctions may be applied by the Board with respect to complaints by a Complaining Member against a Subject Member or if the Board otherwise determines that a Member is in breach of the Constitution or the Code of Practice:

- 11.1.1 censure of the Subject Member;
- 11.1.2 a requirement that the Subject Member give an undertaking in writing to discontinue or modify any conduct within such period as the Board determines;
- 11.1.3 the publication or issue of retraction statements or advertisements by the Subject Member. The format, size, wording, mode of publication and method of distribution of such a retraction statement or advertisement shall be subject to the approval of the Board prior to publication or issue and evidence of such publication or issue must be forthwith provided to the Board;
- 11.1.4 a requirement to remove or change any offending material;
- 11.1.5 a requirement to have future advertising, promotion or marketing material pre-vetted by the Board or its nominee at the cost in all respects of the Subject Member;
- 11.1.6 a requirement to lodge a bond in such amount and subject to such terms and conditions as are determined by the Board;
- 11.1.7 forfeiture of a lodged bond determined by the Board;
- 11.1.8 the imposition of a fine in an amount and payable at such time and on such terms and conditions as the Board determines to reflect the prejudice done by the breach or to negate the commercial advantage gained by the offending material or by the Subject Member;
- 11.1.9 suspension or exclusion or expulsion from membership of ATHOC as provided in the Constitution;
- 11.1.10 suspension or exclusion from any accreditation status;
- 11.1.11 a requirement, within any time limit prescribed by the Board for the Subject Member to

remedy the loss or damage suffered by the complainant as a result of the subject matter of the complaint. Such remedies may include, but are not limited to, payments, rebates, contract variation and compensation for the complainant;

11.1.12 an award of costs, expenses and/or interest on a claim in the amount determined by the Board;

11.1.13 such other sanction or sanctions as the Board) may determine.

11.2 If a Subject Member fails or refuses to comply with the sanction imposed by the Board or refuses to have a complaint heard by the Board then the Board may, without prejudice to any other provision of the Constitution or the Code of Practice:

11.2.1 refer the matter to an appropriate Regulatory Agency;

11.2.2 commence legal proceedings against the Subject Member on behalf of ATHOC;

11.2.3 suspend, exclude or expel the Subject Member in accordance with the Constitution; and

11.2.4 take such further or other action as may be available under the Constitution, Code of Practice or at law.

## **12.0 REVIEW AND MODIFICATION OF CODE OF PRACTICE**

12.1 Subject to any contrary determination by the Board, this Code of Practice will be reviewed and modified (if necessary) every 3 years or later if the Board so determines, but in any event, no later than every 5 years. Any modification will not apply to complaints already accepted by the Board unless expressly provided for in the modification.

12.2 In any such review and modification, comments will be sought from Members, other participants in the Industry, Regulatory Agencies, Consumer Agencies and other interested parties and will be taken into account together with some or all of the following:

12.2.1 the effectiveness of this Code of Practice;

12.2.2 necessary resources;

12.2.3 benefits;

12.2.4 visibility;

12.2.5 accessibility;

12.2.6 participant awareness;

12.2.7 complaints handling including, but without limitation:

12.2.7.1 appropriateness of the scope of complaints handling procedures;

12.2.7.2 progress in meeting relevant government and other relevant



- 14.1.1 the relevant Member must provide to the Board a written response together with such documents and information as the Board requests within such period as the Board determines as to the means by which the systemic problem has been addressed and remedied;
  - 14.1.2 the Board will provide information relating to systemic problems to ASIC as required in accordance with any Regulatory Guide or undertaking given to ASIC;
  - 14.1.3 if systemic problems are not addressed and resolved by Members to the Board's satisfaction, the Board will refer the matter to ASIC.
- 14.2 The Board will receive and deal with complaints relating to the operation of this Code of Practice in a timely manner and will establish procedures for the resolution of such complaints.
- 14.3 All members of the Board investigating or determining a complaint are not liable for any loss, damage or liability that arises from anything done or not done in the course of his or her duties as a member of the Board, except to the extent that such person acts in bad faith.

## **15.0 DEFINITIONS AND INTERPRETATIONS**

- 15.1 In this Code of Practice, unless the subject matter or context otherwise requires, the following expressions have the following meanings:
- 15.1.1 "**Act**" means the Corporations Act 2001;
  - 15.1.2 "**AFS Licence**" means an Australian financial services licence granted by ASIC under the Act;
  - 15.1.3 "**Annual Report**" means the annual report referred to in Clause 3.9;
  - 15.1.4 "**Annual Subscription**" means the annual subscription payable by a Member in accordance with the Constitution;
  - 15.1.5 "**ASIC**" means the Australian Securities & Investments Commission or any successor organisation;
  - 15.1.6 "**Associate**" has the same meaning as in the Act;
  - 15.1.7 "**ATHOC**" or "**Company**" means Australian Timeshare & Holiday Ownership Council Limited A.C.N. 065 260 095;
  - 15.1.8 "**ATHOC Agreement**" means the Agreement entered into between ATHOC and a Member;
  - 15.1.9 "**Auditor**" means the Registered Company Auditor appointed in accordance with the provisions of the Constitution or in accordance with the Act as the Auditor for the time being of ATHOC and where more than one Auditor is appointed includes each of them;
  - 15.1.10 "**Australian Complaints Standard**" means Australian Complaints Standard which is

entitled "Customer Satisfaction – Guidelines for complaints handling in organisations AS ISO 10002-2006" (as amended or replaced);

- 15.1.11 "**Board**" means the Board of Directors of ATHOC from time to time or any committee thereof;
- 15.1.12 "**Business Day**" means any day on which normal and usual business is performed and which is not a Saturday, Sunday or public holiday;
- 15.1.13 "**CEO**" means the Chief Executive Officer of ATHOC from time to time and includes any manager or other person from time to time performing the function of Chief Executive Officer;
- 15.1.14 "**Code Administration Committee**" or "**CAC**" means the Code Administration Committee as constituted under the Code of Practice;
- 15.1.15 "**Code of Ethics**" means the Code of Ethics (as amended) of ATHOC;
- 15.1.16 "**Code of Practice**" means this Code of Practice as made, modified or revoked from time to time by the Board and adopted by the Board in accordance with the Constitution and includes the Code of Ethics;
- 15.1.17 "**Complaining Member**" means a Member who has a Member Dispute against a Subject Member;
- 15.1.18 "**complaint**" means any expression of dissatisfaction with a Product offered or provided and includes a dispute;
- 15.1.19 "**Compliance Plan**" means the compliance plan of:
- 15.1.19.1 a Regulated Member as required by the Act; or
  - 15.1.19.2 an Exempt Member or an Operator Member as required by the Board and which sets out adequate measures that the Exempt Member or the Operator Member is to apply with respect to the Scheme to ensure compliance with the Act, any relief granted by ASIC, any relevant Regulatory Guides, the Constitution, Code of Practice and the constituent documents of the Scheme and any further or other matter reasonably determined by the Board;
- 15.1.20 "**Constitution**" means the constitution from time to time of ATHOC;
- 15.1.21 "**consumer**" means a person to whom a Product is offered or provided;
- 15.1.22 "**Consumer Agency**" means the Australian Consumers Association, the Consumer's Federation of Australia, the Public Interests Advocacy Centre and bodies or agencies representing consumers and which are relevant to the Industry;
- 15.1.23 "**Contract**" means a contract for the purchase of a Timeshare;
- 15.1.24 "**Corporations Regulations**" mean the regulations made under the Act and for the time

being in force;

- 15.1.25 "**Developer**" means any person or incorporated entity engaged in the development or promotion of a Resort or scheme;
- 15.1.26 "**Director**" means any director of ATHOC for the time being and includes a person duly appointed and for the time being acting as an attorney for a Director or as an Alternate Director;
- 15.1.27 "**Disclosure**" or "**disclosure**" means unless otherwise stated, disclosure to the Public;
- 15.1.28 "**dispute**" means a pursued unsatisfied complaint;
- 15.1.29 "**Exchange**" means the exchange of one Owner's holiday entitlements with another Owner's holiday entitlements, or the provision of alternative holiday accommodation, directly or indirectly through an Exchange Organisation;
- 15.1.30 "**Exchange Organisation**" means a person which provides Exchanges;
- 15.1.31 "**Exempt Member**" means a Member who has applied to ASIC for the Scheme to comply with the requirements of one of the exemptions from Section 601ED of the Act contemplated by RG 160 and whose application is granted by ASIC and does not include an Operator Member;
- 15.1.32 "**Financial Statements**" means the financial statements referred to in Clause 3.8;
- 15.1.33 "**Financial Year**" means each consecutive period of twelve (12) months from the 1st January (or such other day as the Board determines) in each year until the 31<sup>st</sup> December (or such other day as the Board determines) in the following year;
- 15.1.34 "**GST**" means any tax imposed on any supply under the Constitution (without regard to any input tax credit) by or through the *A New Tax System (Goods and Services Tax) Act 1999* and any related *Tax Imposition Act* (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate, recapture or recoup the tax imposed by any of the foregoing Acts;
- 15.1.35 "**Guidelines for Complaints**" means the Guidelines for Complaints being Annexure 1 to this Code of Practice as that annexure may from time to time be modified;
- 15.1.36 "**Incentive**" means any oral or written statement or representation which may induce a member of the public to acquire a Timeshare;
- 15.1.37 "**Industry**" means the timesharing and holiday ownership industry in Australia made up of persons engaged or interested in such industry;
- 15.1.38 "**Levies**" means the annual maintenance fee payable by an Owner in accordance with a Scheme and includes and special levies also payable in accordance with a Scheme;
- 15.1.39 "**Logo**" means the Logo of ATHOC;
- 15.1.40 "**Marketer**" means any person engaged in marketing a Scheme or a Product;

- 15.1.41 "**Member**" means the person for the time being registered under the provisions of the Constitution as a member of ATHOC;
- 15.1.42 "**Member Complaint**" means any expression of dissatisfaction by a Member against another Member;
- 15.1.43 "**Member Dispute**" means a pursued unsatisfied complaint by a Member against another Member and includes, without limitation any unresolved Member Complaint;
- 15.1.44 "**Member Duties**" means all the duties and obligations of a Member under the Constitution and the Code of Practice;
- 15.1.45 "**Member Records**" means the financial, administrative and other records and systems referred to in Clauses 3.7 to 3.13 (both inclusive) and includes all books and records of any associate of the Member (within the meaning of the Act) and any partner of the Member;
- 15.1.46 "**Member Surveillance**" means the inspection, surveillance and compliance and other audits of the Member, the Member Records and property of the Scheme by ATHOC or its nominated representatives;
- 15.1.47 "**MIA**" means the Managed Investments Act 1998;
- 15.1.48 "**month**" means calendar month;
- 15.1.49 "**old Law**" means the Act as in force immediately before the commencement of the MIA;
- 15.1.50 "**OPC**" means Off-Premises Contact and whether or not applied in relation to a condition under an AFS Licence;
- 15.1.51 "**operation**" in relation to a Scheme includes the marketing and sale of interests in the Scheme and the on-going management of the Scheme or a rental pool associated with the Scheme;
- 15.1.52 "**Operator Member**" means a Member who has applied to ASIC under RG 160 to extend the transitional provisions for the Scheme (which has a fixed termination date) and whose application is granted by ASIC;
- 15.1.53 "**PDS**" or "**Product Disclosure Statement**" has the same meaning as a product disclosure statement in Chapter 7 of the Act and, if the context requires, includes any other disclosure document for the sale or issue of interests in a Scheme in accordance with the Act;
- 15.1.54 "**person**" includes a natural person, company, body corporate, association, firm, business, partnership, body of persons, government or semi-government authority or local or municipal authority;
- 15.1.55 "**Prescribed Interest Rate**" means the maximum rate of interest (as published in major Australian daily newspapers) charged in Australia by the Commonwealth Bank of

Australia (or its successor) on overdraft accounts as at any day on which interest accrues or such other rate of interest as may be prescribed by the Board from time to time and for the purpose or purposes prescribed by the Board;

- 15.1.56 "**Primary Sale**" means any sale or transfer of a Timeshare made under the original offer by a Responsible Entity, any other Regulated Member or an Exempt Member or an Operator Member;
- 15.1.57 "**Product**" means a Timeshare and any and all goods and services offered or available in connection thereto or in association therewith;
- 15.1.58 "**Product Information**" means a document containing information about a Timeshare or a Scheme circulated or made available in the context of the advertising, promotion, marketing or sale of Timeshares;
- 15.1.59 "**Promotional Claim**" means any statement made by a Member or a Representative, whether verbal or in writing, which conveys the positive attributes of a Product which extends beyond a simple qualitative or quantitative description of the Product for the purpose of advertising, marketing, sale or promotion of a Timeshare;
- 15.1.60 "**Provider**" means a Member providing a Product to a consumer;
- 15.1.61 "**Purchaser**" means a person who has applied to become and who has become an Owner;
- 15.1.62 "**quality**" means the totality of features and characteristics of a Product that bears on its ability to satisfy stated or implied needs;
- 15.1.63 "**Regional Committee**" means a Regional Committee established under the Constitution and includes the Northern Committee, Southern Committee and the Western Committee;
- 15.1.64 "**Register**" means the Register of Members required to be maintained by the Constitution and the Act;
- 15.1.65 "**Registered Company Auditor**" means a person registered as an auditor, or deemed to be registered as an auditor, under the Act;
- 15.1.66 "**Regulated Member**" means a Member whose Scheme is registered by ASIC under the Act;
- 15.1.67 "**Regulatory Agency**" means ASIC, the Australian Competition & Consumer Commission, State consumer affairs agencies or bodies and other regulatory agencies or bodies relevant to the Industry or consumers;
- 15.1.68 "**Regulatory Guide** " or "**RG**" means a regulatory guide issued by ASIC, as that regulatory guide may be modified from time to time and includes any replacement regulatory guide;
- 15.1.69 "**Regulatory Requirement**" means, insofar as they apply to a Member or Scheme:

- 15.1.69.1 the Act;
- 15.1.69.2 any exemption, modification, declaration or relief of or by ASIC regarding the Act;
- 15.1.69.3 the AFS Licence; and
- 15.1.69.4 any other relevant law;
- 15.1.70 "**Rental**" means money received by an Owner for the rental of that Owner's Timeshare either by private rental or by the use of a rental pool conducted under the Scheme;
- 15.1.71 "**Representative**" means any employee, contractor, agent or servant of a Member;
- 15.1.72 "**Resident Manager**" means any person or incorporated entity which carries out the day to day management of a Resort;
- 15.1.73 "**Resort**" means the property or properties of a Scheme;
- 15.1.74 "**Resort Management Company**" means any person which provides professional management services in relation to a Scheme;
- 15.1.75 "**Responsible Entity**" means the responsible entity of a registered Scheme named in ASIC's record of the Scheme's registration as the responsible entity or temporary responsible entity of the registered Scheme;
- 15.1.76 "**RG 160**" means Regulatory Guide 160 entitled "Timesharing schemes" issued by ASIC on the 20<sup>th</sup> April, 2000 and re-issued on 7 February 2007 and 14 February 2008, as amended;
- 15.1.77 "**Scheme**" or "**Club**" means:
- 15.1.77.1 in respect of an Exempt Member or an Operator Member, the timesharing scheme which is not a registered scheme but which complies with the requirements of one of the exemptions from Section 601ED of the Act contemplated by RG 160; or
- 15.1.77.2 in respect of a Registered Member, the timesharing scheme which is registered under Section 601EB of the Act;
- 15.1.78 "**Scheme Committee**" or "**Club Committee**" means the board of directors of a Responsible Entity or a Club and includes a Trustee;
- 15.1.79 "**Scheme Member**" means a member of a Scheme;
- 15.1.80 "**Secretary**" means any person appointed to perform the duties of a Secretary of ATHOC and includes any person appointed to perform such duties temporarily;
- 15.1.81 "**Secondary Sale**" means any sale of a Timeshare other than a Primary Sale;
- 15.1.82 "**Special Levy**" means the special levy payable by some or all Members in accordance

with the Constitution;

- 15.1.83 "**Subject Member**" means a Member against whom a complaint has been made;
- 15.1.84 "**systemic problem**" means a problem which is caused by failures in the Product design, delivery systems or organisational policies or procedures;
- 15.1.85 "**Systems**" means the systems referred to in Clause 3.12;
- 15.1.86 "**Termination Date**" means the date of termination of the ATHOC Agreement;
- 15.1.87 "**Timeshare**" means an interest in a timesharing scheme;
- 15.1.88 "**Timeshare Owner**" means a person who has purchased a Timeshare;
- 15.1.89 "**timesharing scheme**" has the meaning given by the Act;
- 15.1.90 "**Trust Account**" or "**Levies Account**" means the bank or other accounts opened, maintained and operated by the Member for the deposit, holding and disbursement of moneys derived from the operation of:
- 15.1.90.1 the Scheme; and
- 15.1.90.2 any rental pool
- and which account or accounts must be styled as a trust account and must be audited twice annually by a Registered Company Auditor who must provide a report to ATHOC;
- 15.1.91 "**Trustee**" means the trustee of a non-registered Scheme under the old Law;
- 15.1.92 "**writing**" includes printing, typing, lithography and other modes of representing or reproducing words in a visible form and "written" has a corresponding meaning;
- 15.1.93 "**year**" means calendar year.

15.2 In the Code of Practice, the Recitals, Schedules and any Annexures hereto and in the Certificates (if any) and other instruments, agreements or documents executed or issued hereunder, unless the context otherwise requires:-

- 15.2.1 a reference to the singular includes the plural and vice versa;
- 15.2.2 a reference to a gender includes all genders;
- 15.2.3 a reference to any person or party includes a reference to any individual, company, body corporate, association, partnership, firm, joint venture, trust and governmental agency as the case requires and to that person's successors, permitted assigns, substitutes, executors and administrators;
- 15.2.4 a reference to any document (including this Code of Practice) includes references to that document as amended, consolidated, supplemented, novated or replaced;

- 15.2.5 a reference to an agreement includes any deed, agreement or legally enforceable arrangement or understanding whether written or not;
- 15.2.6 all references to Clauses, sub-clauses, Paragraphs, sub-paragraphs, Recitals, Schedules and any Annexures are references to in Clauses, sub-clauses, Paragraphs, sub-paragraphs, Recitals, Schedules and any Annexures in the Code of Practice as amended from time to time. A reference in the Code of Practice to a Clause shall apply to whole numbers without decimal indication and to numbers including a decimal number, but any reference to a Clause without such decimal indication shall include all Clauses commencing with that whole number (including those that have a decimal indication) and a reference to a Clause including a decimal in such reference shall refer only to the Clause bearing that decimal number;
- 15.2.7 a reference to a law includes reference to any constitutional provision, treaty, decree, convention, statute, act, regulation, rule, ordinance, proclamation, subordinate legislation, by-law, judgment, rule of common law or equity, rule of any applicable stock exchange and is a reference to that law as amended, consolidated, supplemented or replaced;
- 15.2.8 without prejudice to Clause 17.2.7, any reference to the Act includes a reference to the Corporations Regulations (including any amendment, consolidation, modification, supplement or replacement) and also includes a reference to all relief granted by ASIC with respect to a particular provision or provisions of the Act (including amendment, consolidation, modification, supplement or replacement of such relief);
- 15.2.9 a reference to any judgment includes references to any order, injunction, decree, determination or award of any court or tribunal;
- 15.2.10 a reference to any proceeding includes litigation, arbitration and investigation;
- 15.2.11 a reference to "deliver" includes cause to be delivered and references to "sell" include procure the sale of;
- 15.2.12 all references to any period of time prescribed or allowed under any provision of the Code of Practice for the giving of any notice, for the doing of any act or the occurrence of any event shall be deemed not to include the day of the act or the event, or of giving any such notice, from or after which such period of time is to be calculated, but to include the last day of which such notice is to be given or such act is to be done or event occurs, as the case may be;
- 15.2.13 unless otherwise expressly defined in the Code of Practice, words and expressions defined in the Act have the same meanings as are given by the Act;
- 15.2.14 an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- 15.2.15 an agreement, representation or warranty on the part of two or more persons, unless expressly stated to the contrary, binds then jointly and severally;

- 15.2.16 a reference to time is a reference to Australian Eastern Standard time;
- 15.2.17 in the absence of anything to the contrary in the Code of Practice expressed or implied, a reference to a day is to be construed as the period of time commencing at midnight and ending 24 hours later;
- 15.2.18 a reference to dollars or "\$" is a reference to the lawful currency for the time being of Australia.
- 15.3 The headings appearing in the Code of Practice are for convenience and shall in no way affect the construction of its provisions.
- 15.4 If a payment or other act must (but for this Clause 174) be made or done on a day which is not a Business Day, then it must be made or done on the next following Business Day.
- 15.5 The words "including" or "includes" mean including but not limited to or including without limitation.
- 15.6 Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- 15.7 Where any party is required to provide, or may provide, a notice or application in writing to the other party, then the Board may permit that notice or application to be given in electronic form and on such other terms and conditions as the Board may determine.

## ANNEXURE 1

### AUSTRALIAN TIMESHARE & HOLIDAY OWNERSHIP COUNCIL LIMITED A.B.N. 58 065 260 095 ("ATHOC")

#### GUIDELINES FOR COMPLAINTS

- 1.1 These Guidelines are intended to assist both complainants and Subject Members (namely Members against whom a complaint has been made) to ensure that a fair and full review is conducted of all complaints in accordance with the Code of Practice of ATHOC. If these general criteria are not met, the complaint may be returned for more information or the complaint may be heard or the appeal conducted in the absence of complete information and documents.
- 1.2 Complainants are required to contact the Subject Member prior to lodging a complaint with ATHOC for investigation and determination by the Board as a satisfactory explanation or resolution may be immediately available. Dialogue or contact with the Subject Member is essential, unless an adequate reason for not undertaking such dialogue or making such contact is given by the complainant to the Board. The complaint will not be accepted for investigation and determination until reasonable attempts at dialogue or contact with the Subject Member are made in accordance with the Code of Practice.
- 1.3 Complaints made to the Board by any Member complaining against another Member should include the following information and documents to ensure that the complaint handling procedures in the Code of Practice commence:
  - 1.3.1 a typed or neatly written summary page containing at least the following:
    - 1.3.1.1 full particulars of the Subject Member;
    - 1.3.1.2 a description of the nature of the complaint specifying the issue or issues and the person or persons alleged to have made any representations or misrepresentations together with particulars of the alleged representation or misrepresentation;
    - 1.3.1.3 copies of all documents and materials relied upon;
    - 1.3.1.4 the provision of the Code of Practice or the Constitution of ATHOC alleged to have been breached;
    - 1.3.1.5 details of all attempts made to resolve the matter with the Subject Member;
    - 1.3.1.6 full particulars of the complainant including the complainant's address and telephone number and facsimile number and e-mail address;
  - 1.3.2 for all complaints relating to advertising, marketing or promotional practices, particulars of the alleged consequences (including loss and damage allegedly suffered

- by the complainant) together with supporting data and material;
- 1.3.3 a detailed written and signed statement relating to the complaint and the issues raised;
  - 1.3.4 if legal, accounting, financial or other advice has been obtained, a copy of such advice or full particulars of the advice provided together with full particulars of the advisor including the advisor's full name, address, telephone number, facsimile number and e-mail address.
- 1.4 A Complaints Officer of ATHOC will assist the complainant in making the complaint.
- 1.5 If the Board accepts a complaint for investigation and determination:
- 1.5.1 after or during the provision of all relevant information and documents, the Complaints Officer of ATHOC will conduct preliminary investigations with a view to conciliating the complaint. If necessary, a conciliation conference will be held;
  - 1.5.2 if the complaint is not resolved by conciliation, the complaint will be referred to the Board for investigation and determination in the case of consumer complaints and to the Board for investigation and determination in the case of a complaint made by a Member against another Member;
  - 1.5.3 the complaint may be determined on the basis of information or documents then available or further information and documents may be requested. The complainant and the Subject Member may also be interviewed and may be given an opportunity to make oral and written submissions;
  - 1.5.4 Members are bound by the determination and complainants are expected to be bound by the determination;
  - 1.5.5 written reasons for the determination may be given together with particulars of any sanctions imposed;
  - 1.5.6 in all dealings with complaints, due regard will be given to principles of natural justice, making decisions by reference to what is fair and reasonable in all the circumstances, acting in good faith and without bias, treating all matters as expeditiously as possible and treating all matters in confidence.