SUBSIDIARY LEGISLATION 409.16

TIMESHARE AND TIMESHARE-LIKE PRODUCTS PROMOTION (LICENSING OF OPC REPRESENTATIVES) REGULATIONS

14th May, 2010

LEGAL NOTICE 287 of 2010.

Citation.

1. The title of these regulations is the Timeshare and Timeshare-like Products Promotion (Licensing of OPC Representatives) Regulations.

Scope.

2. The object of these regulations is to provide for the licensing of OPC representatives and to regulate the conduct of such persons when these are making outside promotional contacts with prospective buyers as part of a marketing campaign for the offer of property on a timeshare basis or other equivalent arrangements.

Interpretation.

3. (1) In these regulations, unless the context otherwise requires -

Cap. 409.

"the Act" means the Malta Travel and Tourism Services Act;

"the Authority" means the Malta Tourism Authority;

"bond" means the amount deposited by a marketing company to cover fines imposed by the Authority for breaches of the regulations by the marketing company depositing the bond and by the OPCs of the same company;

"identity document" means the identity document issued by the Authority in terms of regulation 6;

"marketing company" means the physical or legal person being the operational resort or club itself or any of its marketing agents or representatives which actively market, promote the timeshare and timeshare like products of the same resort or club through an off-premises system;

"off-premises system" means the marketing and promotion of timeshare and timeshare-like products in public areas;

"OPC representative" means an individual who is employed or otherwise engaged by the marketing company to act as its representative in the making of outside promotional contacts as part of a communications campaign to attract prospective buyers;

"operational resort" means a hotel licensed under the Act which operates units on timeshare or operates other timeshare like products and is recognised as such by the Authority;

"sale of a timeshare and timeshare-like products" includes both the marketing and sales aspects of a contract concerning intermittent rights of occupancy for holiday accommodation, and shall include, but shall not be limited to, approaching prospective buyers for such purpose;

"timeshare-like products" means any agreement of any duration which includes elements of timeshare and shall include, but shall not be limited to, a contract of a duration of more than one year under which a consumer, for consideration, acquires primarily the right to obtain discounts or other benefits in respect of accommodation, in isolation or together with travel or other services.

(2) All other words and expressions shall have the same meaning as is assigned to them by the Act and by the Protection of Buyers in Contracts for Time Sharing of Immovable Property Regulations.

S.L. 409.02

Licensing of OPC representatives.

4.(1) (*a*) No marketing company shall employ or otherwise engage a person who shall offer or promote timeshare or timeshare like products or act as a seller or carry out duties which are normally carried out by an OPC representative unless that person is in possession of a valid licence issued by the Authority under these regulations:

Provided that such a licence is not required where the person offering or promoting timeshare or timeshare like products or acting as a seller or carrying out duties which are normally carried out by an OPC representative, carries out his duties from a premises licensed to be used for commercial purposes with the consent of the licensee of the same premises.

(*b*) The Authority may issue such number of licences which shall not exceed such number of licences as may, from time to time, be determined by it as may be appropriate and proportionate to the inventory of timeshare and timeshare products being marketed by the marketing company and having regard to the tourism policy current at the time.

(2) An application for a person to be licensed to act as an OPC representative shall be submitted by the marketing company that shall be employing or otherwise engaging the OPC representative, in the form established by the Authority for the purpose and it shall be accompanied by such information and documentation as required by the Authority, including:

(*a*) a recent police conduct certificate showing that the person is of good conduct, or any other proof or attestation of good character standing and good conduct of the applicant OPC representative which may be in the form of an attestation drawn up by the marketing company that shall be employing or otherwise engaging the applicant OPC representative;

(*b*) a certificate or attestation drawn up by the marketing company that shall be employing or otherwise engaging the OPC representative, certifying that the person is competent to act as an OPC representative and that the said person has an acceptable educational

background;

(*c*) a certificate or attestation of acquired knowledge following appropriate training of not less than ten hours in the carrying out of duties which are normally carried out by an OPC representative in an ethical and respectful manner towards potential consumers of time share and timeshare-like products; and in the regulatory framework governing this activity, including these regulations and any other law, particularly those concerning consumer rights in general and as may be specific to the promotion and selling of timeshare and timeshare-like products; and

(*d*) a written declaration signed by the applicant OPC representative committing to perform his duties in a proper and ethical manner; to abide by the provisions of these regulations and any other law, particularly those concerning consumer rights in general and as may be specific to the promotion and selling of timeshare and timeshare-like products; to adhere to the conditions of his licence and to accept the fines and penalties indicated in these regulations:

Provided that where the Authority is not satisfied with the information or documentation submitted by the applicant it shall reserve the right to request additional information or documentation and to take recourse to other sources of information or audit to verify the information or documentation submitted by the applicant.

(3) Where an applicant OPC representative requires a work permit or any other permit issued by or under the provisions of the Immigration Act or any other law, no licence shall be issued until such permit or permits have been issued or approved. Cap. 217.

(4) When a licence has been issued to an OPC representative under these regulations, such licence shall be issued in relation to the marketing company that shall be employing or otherwise engaging the OPC representative and the licence so issued shall only be valid in relation to such marketing company.

(5) The Authority shall have the right to refuse to issue a licence or renew a licence where the documentation and attestations listed in sub-regulation (2) are not to its satisfaction, or where the applicant OPC representative or the marketing company has been found guilty of a breach of any of the regulations issued under the Act or of the conditions of a licence issued by the Authority.

(6) A licence issued under this regulation shall be valid for a period of one year from the date of issue. An application for its renewal must be lodged with the Authority by the marketing company not later than one month prior to its expiry. Any person who fails to renew a licence as aforesaid shall be deemed to be acting without a valid licence:

Provided that the renewal of such licence shall only be subject to the continued fulfilment of the relevant applicable

requirements current at the time.

(7) Applications for the renewal of a licence of an OPC representative shall be accompanied by a signed attestation in writing by the marketing company certifying the OPC representative's conduct and compliance with all applicable rules and regulations.

(8) The Authority may subject any licence issued under these regulations to such conditions as it may deem appropriate, necessary and proportionate including conditions relating to the proper attire which licensed OPC representatives may wear while carrying out functions and activities subject to the licence.

Review clause.

5. Notwithstanding the provisions of these regulations, the Authority may, in consultation with the Minister, after giving due advance and reasoned notice to licensees, review and amend its policy in relation to the allowable methods and channels of promotion of timeshare and timeshare-like products; in particular, the promotion, offering and selling activities normally carried out by an OPC representative and revoke such OPC representative licences or withhold their renewal.

Identity document.

6. (1) The Authority shall issue an identity document to any OPC representative licensed under these regulations. The identity document shall contain a photograph of the OPC representative and such other information as the Authority may deem appropriate.

(2) The identity document shall remain the property of the Authority and shall be returned to the Authority on reasonable demand, or on the suspension or revocation of the licence issued under these regulations.

(3) An OPC representative shall wear the identity document in a clearly visible manner while carrying out any of the duties or functions which are subject to these regulations. The failure to wear the identity document in accordance with the provisions of these regulations shall constitute an offence.

(4) Any person making use of any identity document issued to another person or of a false identity document, or of an identity document which has, in any manner, been tampered with, or who fails to return the identity document when so requested by the Authority, shall be guilty of an offence against these regulations.

OPCs and marketing companies promoting timeshare.

7.(1) (*a*) No person shall operate and provide services of a marketing company for the promotion of timeshare and timeshare-like products unless such person has previously applied for and obtained a licence for that purpose issued by the Authority. Any such licence shall remain valid until the thirty-first day of December next following the date of issue and may be renewed from year to year or for such further periods as may be specified by the Authority:

Provided that the renewal of such licence shall only be subject to the continued fulfilment of the relevant applicable requirements and tourism policy current at

the time.

(*b*) All applications for the issue of licences to marketing companies to market and promote timeshare and timeshare-like products are to be made to the Authority in the form established for the purpose.

(*c*) The Authority shall issue any such licence if it is satisfied that the person applying to operate and provide services of a marketing company for the promotion of timeshare and timeshare-like products has submitted the information and documentation as requested by the Authority. Such information and documentation includes:

(i) proof of the identity, place of residence, contact details and legal status of the applicant;

(ii) the registration number and the articles of association when the applicant is a body corporate;

(iii) good character reference or certificate of good conduct of the applicant; when the applicant is a body corporate, the character reference or certificate of good conduct shall be of the person or persons who hold the legal representation of the company;

(iv) total itemised inventory of the timeshare units or timeshare-like products to be marketed by the applicant in Malta; including the main features of the immovable property or ancillary services;

(v) declaration by a trustee confirming the itemised inventory referred to in sub-paragraph (iv);

(vi) proof of the identity, contact details, legal status, place of residence or place of incorporation as applicable, and registration number of the trustee making the declaration referred to in sub-paragraph (v).

(2) (*a*) The marketing company shall not market and promote an operational resort for timeshare and timeshare-like purposes through the off-premises system unless any OPC representative carrying out such activities is licensed by the Authority in accordance with these regulations.

(*b*) The marketing company which is marketing and promoting an operational resort for timeshare and timeshare-like purposes through the off-premises system shall apply to the Authority for every resort it promotes.

(*c*) The marketing company shall be held responsible by the Authority for its OPC representatives, whether these are engaged on a full-time or part-time basis or any other contractual basis or terms of engagement, to conform fully with the provisions of these regulations, with any other applicable law and with the conditions

of their licence.

(*d*) The marketing company shall deposit a bond in favour of the Authority, at a bank and an account indicated by the Authority, for the amount of two thousand and five hundred euro (€2500) for every OPC representative it employs or otherwise engages.

(3) Any OPC representative licensed by the Authority shall:

(*a*) display prominently the identity document issued to him by the Authority, which identity document shall be of a colour different from those of other marketing companies and shall show the name of the OPC representative and the marketing company in bold clear letters;

(*b*) if using a car -

(i) for the last twenty-five metres, approach the tourist and public on foot;

(ii) strictly adhere to the driving code of conduct;

(iii) not approach and contact a tourist while the OPC is in the car;

(iv) not utilize another OPC as a driver but shall ensure that such a driver, if utilized, waits for him in the car;

(*c*) not conduct his activities in the company of more than one other OPC in the same area;

(*d*) not conduct his activities within fifty metres of another OPC marketing the same resort;

(*e*) show respect towards other OPCs, whether these are engaged by the marketing company he represents or are engaged by another marketing company; he shall furthermore not at any time argue, shout or engage in an argument whatsoever with any other OPC;

(*f*) respect the privacy of tourists and the responsibility of the Authority's officials in carrying out their duties and shall not, in any way, cause emotional distress to any person by verbal or physical harassment or coercion;

(*g*) not loiter within a distance of twenty metres of any commercial outlet and shall not carry out his activities from inside any commercial outlet unless so authorised by the licensee of the same outlet;

(*h*) not misinterpret, in any way, the operational resort and the product he is marketing and shall provide true and genuine information of such resort and product to the tourist he is contacting; and

(*i*) be properly dressed at all times.

(4) (*a*) A marketing company using the services of OPC representatives who are not licensed by the Authority shall become liable to pay a penalty of two thousand

and three hundred euro (€2,300), and may also have the maximum number of its OPC representative permits reduced by two for a period of twelve months from the day the fine has been imposed by the Authority.

(*b*) The licence of a marketing company to market and promote an operational resort shall be suspended by the Authority if, within seven days of the order by the Authority to reduce its OPC representatives by two in terms of paragraph (*a*), has failed to comply with such an order.

(*c*) The licence of a marketing company to market and promote an operational resort shall be suspended by the Authority for one year, and the OPCs' licences engaged by the same marketing company shall be immediately withdrawn, if it is found by the Authority that the licensee of the marketing company is permitting any person to carry out OPC activities while the licence of the same OPC was suspended by the Authority.

(*d*) The Authority shall impose fines for breaches of the regulations by OPCs as indicated in the Schedule.

(5) The Authority shall:

(*a*) immediately suspend the licence of any OPC, and such OPC shall not be issued with a subsequent licence for a period of twenty-four months following such suspension if the OPC is found to have tampered with the identity document issued by the Authority in his name;

(*b*) immediately withdraw the licence of any OPC found by the Authority to have acted in an abusive and incorrect manner with tourists or with the officials of the Authority or to have acted in liaison with any unlicensed OPC;

(*c*) not issue a licence to a person to act as an OPC, if that person was previously found by the Authority to have acted as an OPC without a licence for that purpose issued by the Authority;

(*d*) suspend the licence of an OPC for a period of twelve months, if such OPC has been found by the Authority to have breached these regulations or the conditions of his licence for three consecutive times within the preceding twenty four months.

(6) (*a*) Any amounts withdrawn by the Authority from the bond deposited with it by the marketing company to cover fines imposed as per these regulations shall, within seven days of the imposition of the fine, be replaced by the marketing company with the same amount withdrawn by the Authority in order that the bond deposited shall at all times remain equivalent to the amount of two thousand five hundred euro (€2,500)

for every OPC engaged by the marketing company.

(*b*) The fines imposed by the Authority in terms of these regulations shall, following notice in writing to the marketing company, be withdrawn from the bond deposited by the marketing company with the Authority unless the marketing company or its representative shall supply proof to the satisfaction of the Authority that the breach has not been effected.

(*c*) Before withdrawing amounts from the bond deposited with the Authority by the marketing companies to cover fines, and before imposing fines on OPCs and marketing companies for breaches of these regulations, the Authority shall inform the marketing company or the OPC, as the case may be, of its intention and shall give the marketing company or the OPC an opportunity to make representations.

(*d*) If the marketing company or OPC is aggrieved by any decision of the Authority, the marketing company or OPC may lodge an appeal from such a decision in accordance with the provisions of the Third Schedule to the Act on the payment of the fee set out in the Fees (Tourism) Regulations.

S.L. 409.05

Conduct of the OPC representative.

8. (1) Without prejudice to any other applicable law in force at the time, no OPC representative may act in any manner or make any representation to a prospective buyer who:

(*a*) is misleading or deceptive, including the use of misleading or deceptive prize draws, award schemes or free gifts;

(*b*) involves a failure to disclose information which is reasonably due in the circumstances or which should be given due to a legal obligation; or involves force, harassment, coercion or undue influence or pressure on the prospective buyer.

(2) Any person who contravenes these regulations shall be guilty of an offence.

Employment, etc., of OPC representatives.

9. Whosoever employs or otherwise engages the services of unlicensed OPC representatives shall be guilty of an offence.

Suspension or cancellation of licence.

10. (1) Where the Authority is satisfied that an OPC representative has -

(*a*) behaved in an improper manner not befitting his duties and responsibilities;

(*b*) acted in contravention of any of the provisions of the Act or of these regulations or of any other regulations made under the Act, or has failed to do something which he is required to do by the Act or by these regulations, or acted in breach of any conditions attached to his licence; or

(*c*) has been convicted of an offence under the Act or under these regulations, or of any other offence which, in the opinion of the Authority, renders him unfit to continue to act as an OPC representative,

the Authority may, having regard to the circumstances of the case, suspend or revoke the licence issued in favour of that OPC representative.

(2) In the case of any suspension, as is referred to in sub-regulation (1), such suspension shall not exceed a period of five years.

(3) Where the licence of an OPC representative has been suspended or revoked in terms of sub-regulation (1), the OPC representative shall not be eligible for a licence before the lapse of the period of such cancellation or revocation.

Representations by applicant.

11. (1) Before refusing to grant or renew a licence or before suspending or cancelling any such licence in accordance with the provisions of the Act or of these regulations, the Authority shall notify the applicant or the licensee, as the case may be, of its intention and reasons, and shall give him an opportunity to make representations. Such representations shall be received by the Authority not later than seven days from the date of the notification of the refusal to grant or renew the licence or the cancellation of such licence.

(2) If the applicant or licensee is aggrieved by any decision of the Authority under sub-regulation (1), he may lodge an appeal from such a decision in accordance with the provisions of article 14(8) of the Act, on payment of the fee set out in the Fees (Tourism) Regulations. S.L. 409.05

Provision of services by marketing companies and OPC representatives established in other Member States on a temporary and occasional basis. Cap. 500.

12. (1) The Authority shall respect the right of a marketing company and of OPC representatives employed or otherwise engaged by the company who are lawfully established and providing services in another Member State to provide services in Malta on a temporary and occasional basis in accordance with the Services (Internal Market) Act:

Provided that, due to the complexity and inherent economic risks associated with these activities that may be detrimental to consumers of timeshare and timeshare-like products, and in order to effectively implement Community and national law in this area, such marketing company, before commencing to provide such temporary and occasional services in Malta, shall submit to the Authority, in a form established for the purpose, the following documents and information:

(*a*) the name, place of residence, contact details, legal status and Member State of establishment of the marketing company;

(*b*) the itemised inventory of the timeshare units or timeshare-like products to be marketed by the applicant in Malta; including the main features of the immovable property or ancillary services;

(*c*) declaration by a trustee confirming the itemised inventory referred to in paragraph (*b*);

(*d*) identity, contact details, legal status, place of residence or place of incorporation as applicable, and registration number of the trustee making the declaration referred to in paragraph (*c*);

(*e*) without prejudice to the provisions of any other laws and regulations concerning employment, the identity of the OPC representatives employed or otherwise engaged by the marketing company to promote and market the inventory of timeshare and timeshare-like products in Malta mentioned under paragraph (*b*) and reference or proof of their lawful establishment in another Member State.

(2) Where the information requirements mentioned in sub-regulation (1) have already been fulfilled in the Member State of establishment, the marketing company or any OPC representative shall indicate this in the form also mentioned in sub-regulation (1) and the Authority shall reserve the right to verify such information in accordance with the Services (Internal Market) Act.

Cap. 500.

(3) Without prejudice to any other applicable law in force at the time, when providing services in Malta, the marketing company and the OPC representatives it employs or otherwise engages shall respect the requirements of regulation 7(4), (5) and (6):

Provided that such OPC representatives shall, in complying with regulation 7(4), wear a valid identity document issued to them by the relevant competent authority in the Member State of their establishment.

Fines and penalties.

13. Without prejudice to the provisions of regulation 11, any person who fails to comply with any of the provisions of these regulations, shall be guilty of an offence and, in that case, the proceedings and penalties stipulated in articles 43 and 45 of the Act shall apply.

Saving.

14. Any licence issued under the Timeshare and Timeshare-like Products Promotion (Licensing of OPC Representatives) Regulations, 2004, revoked by these regulations, and which is in force immediately before such revocation shall, subject to compliance with the provisions of the Act and regulations made thereunder, continue to be in force thereafter until such time as their next renewal falls due.

SCHEDULE

Regulation 7(5)(*d*)

Fines for Breaches of the Regulations by OPCs

1.	For not being dressed in accordance with the dress code approved by the Authority	€250
2.	For not wearing an identity document or not wearing it prominently displayed	€450
3.	For being present in an area forming part of a larger number of OPCs present in that area not so authorised by the Authority	€250
4.	For carrying out OPC activities within a distance not authorised by the Authority	€450
5.	For misrepresenting the operational resort or the product or for providing misleading information on the resort	€450
6.	For utilizing cars in a manner which breaches these regulations	€1,200
7.	For arguing, shouting or engaging in an argument whatsoever with other OPCs	€1,200
8.	For acting in an abusive manner with tourists or with officials of the Authority	€2,300