L.N. 299 of 2004

MALTA TRAVEL AND TOURISM SERVICES ACT (CAP. 409)

Timeshare Promotion (Licensing of OPC Representatives) Regulations, 2004

IN exercise of the powers conferred by article 47of the Malta Travel and Tourism Services Act, the Minister for Tourism and Culture, acting on the recommendation of the Malta Tourism Authority, has made the following regulations:-

Citation.

1. The title of these regulations is the Timeshare Promotion (Licensing of OPC Representatives) Regulations, 2004.

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 immovable property on a timeshare basis or other equivalent arrangements.

Interpretation.

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

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

"the Authority" means the Malta Tourism Authority;

"identity document" means the identity document issued by the Authority in terms of regulation 5 hereof;

"OPC representative" means an individual who is employed or engaged to act as the representative of the vendor in the making of outside promotional contacts as part of a communications campaign to attract prospective buyers; for the purposes of this definition a "vendor" means the seller or any other person licensed under the Act to carry out tourism operations in the timeshare industry and includes any person acting as the marketer or promotional manager of such person;

"sale of a timeshare product" 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.

(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, 2000. L.N. 269 of 2000.

Licensing of OPC representatives.

4. (1) (a) No person shall act as a seller or carry out duties which are normally carried out by an OPC representative unless he is in possession of a valid licence issued by the Authority under these regulations.

(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 as to a particular timeshare resort.

(2) An application to be licensed to act as an OPC representative shall be accompanied by such information and documentation as may be required by the Authority, including:

(a) wherever available, the police conduct certificate, or an attestation by the employer as to the conduct of the prospective employee; and

(b) a certificate of competence drawn up by the prospective employer.

(3) Where an applicant requires a work permit issued by or under the provisions of the Immigration Act, no licence shall be issued until such work permit has been approved. Cap. 217.

(4) When a licence has been issued under these regulations, such licence shall be issued in relation to the employer or the person who has engaged the OPC representative and the licence so issued shall only be valid in relation to such employer or person.

(5) The Authority shall have the right to refuse to issue a licence or renew a licence where the documentation and testimonials listed in sub-regulation (2) hereof are not to its satisfaction, or where the applicant 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 one year from the date of issue. An application for its renewal must be lodged with the Authority 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.

(7) Applications for the renewal of a licence of an OPC representative shall be accompanied by an attestation in writing by the employer certifying the OPC representative.

(8) The Authority may subject any licence issued under these regulations to such conditions as it may deem appropriate including conditions relating to the proper attire which licensees may wear while carrying out functions subject to the licence.

Identity document.

5. (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 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.

Conduct of the OPC representative.

6. (1) No OPC representative may act in any manner or make any representation to a prospective buyer which:

(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.

7. Whosoever employs or otherwise engages the services of unlicensed OPC representatives shall be guilty of an offence. Employment, etc., of OPC representatives.

8. (1) Where the Authority is satisfied that an OPC representative has: Suspension or cancellation of licence.

(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 to the OPC representative.

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

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

9. (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 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. Representations by applicant.

(2) If the applicant or licensee is aggrieved by any decision of the Authority under sub-regulation (1) of this regulation, 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, 2002.

L.N. 125 of 2002.

Fines and penalties.

10. (1) Without prejudice to the provisions of regulation 9 of these regulations, any person who fails to comply with any of the provisions of these regulations, shall be guilty of an offence and, in the case of a first offence under these regulations, shall be liable to a fine *(multa)* of not less than twenty-five liri and not more than two hundred and fifty liri, and for a second and any subsequent offence, to a fine (*multa*) of not less than two hunded liri and not more than one thousand liri.

(2) The provisions of article 45 of the Act shall apply to offences committed against these regulations.

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