L.N. 157 of 2000

MALTA TRAVEL AND TOURISM SERVICES ACT (CAP. 409)

Package Travel, Package Holidays and Package Tours Regulations, 2000

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

Citation and commencement

1.1. The title of these regulations is the Package Travel, Package Holidays and Package Tours Regulations, 2000 and shall come into force on such day as the Minister may by notice in the Gazette prescribe, provided that different dates may be prescribed for different provisions of these regulations.

Interpretation.

2.1. In these regulations, unless the context otherwise requires –

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

"authorised officer" means any officer appointed and authorised in writing by the Authority to exercise for the purpose of these regulations, the functions conferred by these regulations;

"the Authority" means the Malta Tourism Authority;

"consumer" means the person who takes or agrees to take the package ("the principal contractor"), or any person on whose behalf the principal contractor agrees to purchase the package ("the other beneficiaries") or any person to whom the principal contractor or any of the other beneficiaries transfers the package ("the transferee");

"contract" means the agreement linking the consumer to the organiser and, or the retailer;

"Minister" means the Minister responsible for tourism;

"organiser" means the person who, other than occasionally, organises packages and sells or offers them for sale, whether directly or through a retailer;

"package" shall have the same meaning given to "travel package" under the Act, provided that the separate billing of various components of the same package shall not absolve the organiser or retailer from his obligations under these regulations;

"retailer" means the person who sells or offers for sale the package put together by the organiser.

Application of regulations.

3.1. These regulations shall apply only to packages sold or offered for sale in Malta.

Descriptive matter relating to packages must not be misleading.

4.1. No organiser or retailer shall supply to a consumer any descriptive matter concerning a package, the price of a package or any conditions applying to a contract, in respect of a package which contains any false or misleading information.

4.2. If an organiser or retailer is in breach of the provisions of paragraph 4.1, he shall be liable to compensate the consumer for any loss which the consumer suffers as a result.

Requirements as to brochures.

5.1. A brochure provided by the organiser or the retailer to a consumer shall state in a legible, comprehensible and accurate manner both the price and adequate information concerning:

5.1.1. the destination and the means, characteristics and categories of transport used;

5.1.2. the type of accommodation, its location, category or degree of comfort and its main features, its approval and tourist classification under the laws of the country where the accommodation is situated;

5.1.3. the meal plan;

5.1.4. the itinerary;

5.1.5. general information on passport and visa requirements and health formalities required for the journey and the stay;

5.1.6. either the monetary amount or the percentage of the price which is to be paid on account, and the time-table for payment of the balance;

5.1.7. whether a minimum number of persons is required for the package to take place and, if so, the deadline for informing the consumer in the event of cancellation;

5.1.8. any tax or compulsory charge;

5.1.9. in the case of packages offered by an organiser who has no place of business in Malta, a nominated agent with a permanent address of business within Malta who will accept service on behalf of and represent the organiser in any legal proceedings;

5.1.10. in the event of insolvency of the organiser and, or the retailer, the arrangements for security for the refund of money paid and, where applicable, for the repatriation of the consumer.

5.2. The provisions of paragraph 5.1 shall not apply:

5.2.1. when the brochure contains an express statement that changes may be made to the particulars contained in the brochure before the contract is concluded and the said changes are clearly communicated in writing to the consumer before the conclusion of the contract; or

5.2.2. when the consumer and the other party to the contract agree after the contract has been made, that the particulars or some of the particulars in the brochure, should not form part of the contract.

5.3. An organiser or a retailer who contravenes the provisions of paragraph 5.1 shall be guilty of an offence.

Information to be provided before the contract is concluded.

6.1. Before the contract is concluded, the organiser, whether directly or through a retailer, shall provide the consumer with the following information in writing or some other appropriate form:

6.1.1. general information about passport and visa requirements which apply to purchase of the package, including information about the length of time it is likely to take to obtain the appropriate passports and visas;

6.1.2. health formalities required by national administrations for the journey and the stay;

6.1.3. in the event of insolvency, the arrangements for security for the money paid over and, where applicable, for the repatriation of the consumer.

6.2. An organiser who contravenes the provisions of paragraph 6.1, shall be guilty of an offence unless the contravention is shown to be due to the failure of the retailer to pass on to the consumer the information supplied to the retailer by the organiser.

6.3. A retailer who fails to provide the consumer with the information required in paragraph 6.1 shall be guilty of offence.

Information to be provided in good time.

7.1. The organiser shall, in good time before the start of the journey, provide the consumer , whether directly or through the retailer, in writing or in another appropriate form, with the following:

7.1.1. where the package includes a transport component, the times and places of intermediate stops and transport connections as well as details of the place to be occupied by the traveler, including cabin or berth on ship, sleeper compartment on train;

7.1.2. the name, address, telephone number and e-mail address -

7.1.2.1. of the representative of the organiser in the locality where the consumer is to stay, or

7.1.2.2. if there is no such representative of an agency in that locality, the person on whose assistance a consumer in difficulty would be able to call,

or, if there is no such representative or agency, a telephone number or other information which will enable the consumer to contact the organiser or the retailer during the stay;

7.1.3. in the case of a journey or stay abroad by a child under the age of sixteen years on the day when the journey or stay is due to start, information enabling direct contact to be made with the child or the person responsible at the place where he is to stay; and

7.1.4 information on the optional conclusion of an insurance policy to cover the cost of cancellation by the consumer or the cost of assistance, including repatriation, in the event of accident or illness.

7.2. If the consumer is not provided with the information required under paragraph 7.1, the organiser shall be guilty of an offence unless the contravention is due to the failure of the retailer to pass on to the consumer the information supplied to the retailer by the organiser.

7.3. A retailer who fails to provide the consumer with the information required under paragraph 7.1 shall be guilty of an offence.

8.1. The organiser, whether dealing directly with the consumer or through a retailer, shall ensure that, depending on the nature of the package being purchased, the contract contains at least the following elements: Essential terms of contract.

8.1.1. the travel destination or destinations and, where periods of stay are involved, the relevant periods, with dates;

8.1.2. the means, characteristics and categories of transport to be used and the dates, times and points of departure and return. Where the package provides for a transit stop in another city other than the city of destination, this must mentioned in an accurate and clear manner;

8.1.3. where the package includes accommodation, its location, its tourist category or degree of comfort, its main features and its tourist classification under the laws of that country;

8.1.4. the meal plan;

8.1.5. whether a minimum number of persons is required for the package to take place and, if so, the latest time for informing the consumer in the event of cancellation;

8.1.6. the itinerary;

8.1.7. visits, excursions or other services which are included in the total price agreed for the package;

8.1.8. the name and address of the organiser, the retailer and where appropriate, the insurer;

8.1.9. the price of the package, if price revisions may be made in accordance with the terms which may be included in a contract, an indication of the possibility of such price revisions, and an indication of any dues, taxes or fees chargeable for certain services (such as landing, embarkation or disembarkation fees at airports or ports and tourist taxes) where such costs are not included in the package;

8.1.10. the payment schedule and method of payment;

8.1.11. special requirements which the consumer has communicated to the organiser or retailer when making the booking and which both have accepted;

8.1.12. the periods within which the consumer must make any complaint about the failure to perform or the inadequate performance of the contract.

8.2. Without prejudice to the liability of the organiser under paragraph 8.1, it shall be an express term in every contract that the consumer shall communicate at the earliest opportunity, in writing or any other appropriate form, to the supplier of the services concerned, and to the organiser or local representative, if there is one, any failure which the consumer perceives at the place where the services are supplied.

8.3. In cases of complaint the organiser or the local representative shall make prompt efforts to find appropriate solutions.

8.4 The words "any appropriate form" in paragraph 8.2 include oral communication, provided written details of the complaint are confirmed to the organiser or the local representative if the consumer fails to obtain a satisfactory response to the complaint.

Form of contract.

9.1. The organiser, whether dealing directly with the consumer or through a retailer, shall ensure that:

9.1.1. all the terms of the contract are set out in writing or in such other form as is comprehensible and accessible to the consumer and are communicated to him before the contract is concluded;

9.1.2. a written copy of these terms is supplied to the consumer.

9.2. Paragraph 9.1.1 shall not apply in the case of a proposal by a consumer made to the organiser or the retailer not more than fourteen days before the date of departure under the proposed contract.

9.3. An organiser, whether dealing directly with the consumer or through a retailer, who contravenes paragraph 9.1.2 shall be guilty of an offence unless the contravention is due to the failure of the retailer to provide the consumer with a written copy of the terms of the contract supplied to the retailer by the organiser.

9.4. A retailer who fails to provide the consumer with a written copy of the terms of a contract supplied to the retailer by the organiser shall be guilty of an offence.

10.1. In every contract there shall be an implied term that where the consumer is prevented from proceeding with the package, the consumer may transfer his booking to a person who satisfies all the conditions applicable to the package, provided that the consumer gives reasonable notice of his intent to transfer the booking before the specified departure date to the organiser or to the retailer acting on the instructions of the organiser. Transfer of bookings.

10.2. Where a transfer is made in accordance with the implied term set out in paragraph 10.1 the transferor and the transferee shall be jointly and severally liable to the organiser or the retailer acting on the instructions of the organiser for payment of the price of the package or, if the price has been paid, for payment of the balance, and for any additional costs arising from such transfer.

11.1. The prices laid down in the contract shall not be subject to revision unless the contract expressly provides for the possibility of upward or downward revisions and satisfies the following: Price revision.

11.1.1. that the contract states precisely how the revised price is to be calculated; and

11.1.2. that the contract provides that price revisions are to be made solely to allow for variations in -

11.2.2.1. transport costs, including the cost of fuel,

11.2.2.2. dues, taxes or fees chargeable for services such as landing taxes or embarkation or disembarkation fees at ports and airports, or

11.2.2.3. the exchange rates which apply to the particular package.

11.2. The price stated in the contract shall not be increased during the twenty days prior to the stipulated departure date.

12.1. In every contract there shall be implied terms to the effect that: Significant alterations to essential terms.

12.1.1. where the organiser is constrained before the departure to alter significantly an essential term of the contract, he will notify the consumer as quickly as possible in order to enable him to take the appropriate decisions and in particular to withdraw from the contract without penalty or to accept a provision in the contract specifying the alterations made and their impact on the price; and

12.1.2. the consumer will inform the organiser and the retailer of his decision as soon as possible.

Withdrawal by consumer pursuant to regulation 12.1. or cancellation by organiser.

13.1. The terms set out in paragraphs 13.2 and 13.3 are implied in every contract and apply where the consumer withdraws from the contract pursuant to the term implied by regulation 12.1.1 or where the organiser, for any reason other than the fault of the consumer, cancels the package before the agreed date of departure.

13.2. The consumer is entitled:

13.2.1. to take a substitute package of equivalent or superior quality if the other party to the contract is able to offer him such a substitute; or

13.2.2. to take a substitute package of lower quality if the organiser is able to offer such a replacement and to recover from the organiser the difference in price between that of the package purchased and the replacement package; or

13.2.3. to have repaid to him as soon as possible all the moneys paid under the contract.

13.3. The consumer is entitled, if appropriate, to be compensated by the organiser for non-performance of the contract by the party to the contract except where:

13.3.1. the package is cancelled because the number of persons who agree to take it is less than the minimum number required and the consumer is informed of the cancellation, in writing, within the period indicated stated in the description of the package; or

13.3.2. the package is cancelled by reason of unusual and unforeseeable circumstances beyond the control of the organiser , the retailer or other supplier of services, the consequences of which could not have been avoided even if all due care had been exercised.

13.4. Overbooking shall not be regarded as a circumstance falling under paragraph 13.3.2.

Remedies when a significant proportion of services not provided.

14.1. The terms set out in paragraphs 14.2 and 14.3 are implied in every contract and apply where, after departure, a significant proportion of the services contracted for is not provided or the organiser becomes aware that he will be unable to procure a significant proportion of the services to be provided.

14.2. The organiser shall make suitable alternative arrangements, at no extra cost to the consumer, for the continuation of the package and will, where appropriate, compensate the consumer for the difference between the services to be supplied under the contract and those supplied.

14.3. If impossible to make arrangements as described in paragraph 14.2 or these are not accepted by the consumer on reasonable grounds, the organiser shall, where appropriate, provide the consumer with equivalent transport back to the place of departure or to another return place to which the consumer has agreed and shall compensate the consumer for the proportion of services not supplied.

Extent and financial limits of liability.

15.1. The organiser and, or the retailer party to the contract, shall be liable to the consumer for the proper performance of the obligations under the contract, irrespective of whether such obligations are to be performed by the organiser, the retailer, or other suppliers of services. This shall not affect any right of action the organiser and, or the retailer may have against the retailer or those other suppliers of services.

15.2. The organiser and, or the retailer shall be liable to the consumer for any damage caused by the failure to perform the contract or the improper performance of the contract unless -

15.2.1. the failures which occur in the performance of the contract are attributable to the consumer; or

15.2.2. such failures are attributable to a third party unconnected with the provision of the services contracted for, and are unforeseeable or unavoidable; or

15.2.3. such failures are due to -

15.2.3.1. unusual and unforeseeable circumstances beyond the control of the organiser, the retailer or other supplier of services, the consequences of which could not have been avoided even if all due care had been exercised; or

15.2.3.2. an event which the organiser, the retailer or the supplier of services, even with all due care, could not foresee or forestall.

15.3. In the case of damage arising from the non-performance or improper performance of the services involved in the package, the contract may provide for compensation to be limited in accordance with the international conventions which govern such services.

15.4. In the case of damage other than personal injury resulting from the non-performance or improper performance of the services involved in the package, the contract may limit the amount of compensation to be paid to the consumer, provided that the limitation is not unreasonable.

15.5. Without prejudice to paragraphs 15.3 and 15.4 liability under paragraphs 15.1 and 15.2 cannot be excluded by any contractual term.

15.6. The contract shall clearly and explicitly require the consumer to communicate, at the earliest opportunity, in writing or other appropriate form, to the supplier of the services concerned and to the other party to the contract, any failure in the performance of a contract which he perceives at the place where the services are supplied.

15.7. The following terms are implied in every contract -

15.7.1. that in the circumstances described in paragraphs 15.2.3.1 and 15.2.3.2 the organiser or the retailer acting on the instructions of the organiser, will give prompt assistance to a consumer in difficulty;

15.7.2. if the consumer complains of a defect in the performance of the contract, the organiser or his local representative if there is one, will make prompt efforts to find appropriate solutions.

15.8. The provisions of section 31 of the Act shall also apply to any organiser and, or any retailer to whom these regulations may apply, even if such an operator and, or retailer does not operate a tourism operation which requires a licence under the Act.

Offences.

16.1. Any person who contravenes or fails to comply with these regulations, shall commit an offence and he shall be liable, on conviction, to a fine (*multa*) of not less than Lm 100 but not exceeding Lm 1,000, and to a fine (*multa*) of not less than Lm 25 and not exceeding Lm 50 for every day during which the offence continues.

16.2. If the Authority is satisfied that the organiser has repeatedly contravened or failed to comply with these regulations, the Authority may then suspend or decline to renew the licence of the organiser to operate as a travel agent under the Act for a period not exceeding one year.

16.3. Where an offence under these regulations has been committed by a body corporate and is proved to have been committed

with the consent or connivance of, or to have been facilitated by any neglect on the part of any director, manager, secretary or other similar officer of such body or of any person who was purporting to act in any such capacity, that person, as well as such body, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he were guilty of the first mentioned offence.

Enforcement.

17.1. An authorised officer may, if he has reasonable grounds for suspecting that an offence has been committed under these regulations, at all reasonable hours and on production, if required, of his credentials, exercise the following powers, namely:-

17.1.1. inspect any goods and enter any premises other than premises used only as a dwelling;

17.1.2. require any person engaged in the organisation or retailing of packages to produce any books or documents relating to the activity and take copies of, or of any entry, in any such book or document; or require such a person to produce in a visible and legible documentary form any information so relating which is contained in a computer, and take copies of it;

17.1.3. seize and detain any goods or documents which may be required as evidence in proceedings for an offence under these regulations. In doing so the officer shall inform the person from whom they are seized;

17.1.4. require any person engaged in the organisation or retailing of packages to give any other information which the officer may reasonably require in regard to such activity;

17.1.5. summon, at any reasonable time, any other person employed or engaged in the organisation or retailing of packages to give to the officer any information which the officer may reasonably require in regard to such activity and to produce to the officer any records which are in that person's control.

17.2. A person who obstructs or interferes with an authorised officer in the exercise of the officer's functions under these regulations or gives to an authorised officer information which is false or misleading shall be guilty of an offence.

17.3. A person who refuses to comply with any request of an authorised officer in the exercise of the officer's functions under these regulations shall be guilty of an offence.