L.N. 151 of 2006

MALTA TRAVEL AND TOURISM SERVICES ACT (CAP. 409)

Timeshare Promotion (Licensing of OPC Representatives) (Amendment) Regulations, 2006

IN exercise of the powers conferred by article 47 of 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)(Amendment) Regulations, 2006 and they shall be read and construed as one with the Timeshare Promotion (Licensing of OPC Representatives) Regulations, 2004, hereinafter referred to as "the principal regulations".

L.N. 299 of 2004.

Amends regulation 1 of the principal regulations.

2. For the words "Timeshare Promotion (Licensing of OPC Representatives) Regulations, 2004" in regulation 1 of the principal regulations there shall be substituted the words "Timeshare and Timeshare-like Products Promotion (Licensing of OPC Representatives) Regulations, 2004".

Amends regulation 3 of the principal regulations.

3. Sub-regulation (1) of regulation 3 of the principal regulations shall be amended as follows:-

(a) immediately after the definition "the Authority", there shall be added the following new definition:-

" "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;";

(b) in the definition "OPC representative", for the words "in the timeshare industry" there shall be substituted the words "in the timeshare and timeshare-like products industry";

(c) immediately after the definition "identity document" there shall be added the following definition:

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

(d) immediately after the new definition "identity document" there shall be added the following new definition:

" "marketing company" means the operational resort or any of its representatives which actively market and promote the timeshare of the same resort through the off-premises system;";

(e) immediately after the definition "OPC representative" there shall be added the following definition:

" "operational resort" means a hotel which operates units on timeshare and is recognised as such by the Authority;";

(f) in the definition "sale of a timeshare product" for the words "sale of a timeshare product" there shall be substituted the words "sale of a timeshare and timeshare-like products";

(g) immediately after the definition "sale of timeshare product and time-share products" as amended, there shall be added the following new definition:-

" "timeshare-like products" means any agreement which includes elements of timeshare;".

Adds new regulation 5A to the principal regulations.

4. Immediately after regulation 5 of the principal regulations, there shall be added the following new regulation:-

"OPCs and Marketing Companies promoting timeshare.

5A. (1) (a) No person shall operate a marketing company for the promotion of timeshare and timeshare-like products unless he 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.

(b) All applications for the issue of licences to marketing companies to market and promote resorts for timeshare and timeshare-like purposes are to be made to the Authority.

(c) The Authority shall issue any such a licence if it is satisfied that the applicant has submitted the information and documentation as requested by the Authority.

(2) (a) The marketing company or its representatives shall not market and promote an operational resort for timeshare and timeshare-like purposes through the off-premises system unless the OPC carrying out such activities is licensed by the Authority.

(b) The marketing company or its representatives 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: provided that any marketing company or its representatives may apply for a maximum of eight OPC licences for every resort it promotes.

(c) The marketing company shall be held responsible by the Authority for its OPCs, whether these are engaged on a full-time or part-time basis, to conform fully with the provisions of these regulations 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 one thousand liri for every OPC it engages.

(3) (a) The Authority shall issue a temporary licence within three days of the application being received by the Authority for the licensing of an OPC representative, subject to the maximum licences established in terms of these regulations.

(b) The Authority shall not issue an OPC licence if it is not satisfied that the OPC:

(i) has successfully completed a training course at a training centre approved by the Authority and is sufficiently trained to carry out these activities in an efficient and proper manner;

(ii) is of a good moral character and has an acceptable educational background; and

(iii) has submitted a commitment to perform his duties in a proper manner, to abide by the provisions of these regulations, to adhere to the conditions of his licence and to accept the fines and penalties indicated in these regulations.

(4) Any OPC 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 and the marketing company in bold clear letters;

(b) if using a car, the OPC shall,

(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 in front of any commercial outlet and shall not carry out his activities from inside any commercial outlet unless so authorised by the owner 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.

(5) (a) A marketing company using the services of OPCs who are not licensed by the Authority shall become liable to pay a penalty of one thousand liri, and may also have the maximum number of its OPC 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 OPCs by two in terms of paragraph (a) hereof, 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 marketing company is utilizing its OPCs to market different resorts or products to the resort which was approved by the Authority and under which the OPC licences had been issued.

(d) The Authority shall impose fines for breaches of the regulations by OPCs as indicated hereunder:

(i) for not being dressed in accordance with the dress code approved by the Authority Lm100;

(ii) for not wearing an identity document or not wearing it prominently displayed .....Lm 200;

(iii) for being present in an area forming part of a larger number of OPCs present in that area not so authorised by the Authority .....Lm 100;

(iv) for carrying out OPC activities within a distance not authorised by the Authority .....Lm 200;

(v) for misrepresenting the operational resort or the product or for providing misleading information on the resort .....Lm 200;

(vi) for utilizing cars in a manner which breaches these regulations .....Lm 500;

(vii) for arguing, shouting or engaging in an argument whatsoever with other OPCs .....Lm 500;

(viii) for acting in an abusive manner with tourists or with officials of the Authority .....Lm 1000.

(6) 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; and

(e) not renew the licence of any OPC who has been found by the Authority to have carried out OPC activities while his licence was suspended by the Authority.

(7) (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 one thousand liri 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 article 14(8) of the Third Schedule of the Act, on payment of the fee set out in the Fees (Tourism) Regulations, 2002.". L.N. 125 of 2002.

Amends regulation 10 of the principal regulations.

5. In sub-regulation (1) of regulation 10 of the principal regulations, for the words "twenty-five liri", "two hundred and fifty liri" and "two hundred liri" there shall be substituted the words "two hundred liri", "five hundred liri" and "five hundred liri" respectively.

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