



REVISITING THE TIMESHARE DIRECTIVE – AND ENSURING YOU COMPLY

Specialist timeshare lawyer Alex Radford offers some key practical legal tips for timeshare developers who operate multiple resorts in different countries selling to a variety of nationalities.

The European Timeshare Directive 2008/122/EC, known as the Long-Term Holiday Product, Resale and Exchange Contracts Directive (the Directive), was approved by the European Member States in February 2009. The new Directive was designed to boost consumer confidence in the timeshare industry and to eliminate the operations of unscrupulous traders who had brought the businesses of legitimate traders into disrepute and caused havoc for consumers.

As a “maximum harmonization” Directive, member States were obliged to implement its provisions into national law accurately, as it was approved and in a format that did not exceed, or fall below its requirements. Member States had until 23rd February 2011 to transpose the Directive into national legislation.

A second timeshare Directive was well overdue given that unregulated new products such as long-term holiday products or discounted travel services had come into the market in recent years. In addition, the first directive 94/47/EC had been applied haphazardly across Member States, with Spain for example opting for a 10-day cooling-off period, the UK 14 days and Belgium 15 days.

In addition, some countries, such as the UK, prohibited the payment of deposits, while other, such as Spain, allowed payments to third parties. The second Directive changed all that with one stroke by introducing uniform standards to be applied across Member States.

The main highlights of the Directive are a standard 14-day cooling-off period and withdrawal form, the prohibition of the payment of deposits, criminal sanctions for breaches and importantly the introduction of the developer’s

obligation to provide the standard information to the consumer about the product being purchased. The Directive replaced the former regime in its entirety with new regulations.

Most developers have amended their project documents to comply with the new Directive, though some are still languishing behind and some are unaware of the extent of its reaches.

Here are some key practical points for developers who have various resorts operating in different countries to consider:

- It is important to draft your purchase contract and standard information form in a clear, comprehensible and accurate manner, covering all the requirements of the Directive. Carefully drafted contracts and documents add credibility and legitimacy to you and the product you are selling. There should be flexibility in the documents, allowing you to alter them as time passes and the product evolves.
- The standard information form sets out key information you should provide to the consumer covering all of the resorts within your offering, the management charge the consumer has to pay now, how it is calculated and will increase and details of all costs that you may potentially charge. If this is not reflected, it will be a breach of the contract to charge them. For instance, if you offer use of the spa for free now, will it still be free in the future?
- Once you have your flagship project documents in the language and country you operate in and they have been tried and tested, you will be ideally placed to implement them elsewhere. The Directive allows you to provide certified translations of your model project documents into the language of the country you are targeting. However, it would be unwise and naïve not to amend and modify your documents to the laws of the country you are targeting.

This may not seem necessary given that the Directive should be the same across Europe, but national contract law could apply to the contract, so it is important to seek local legal advice from specialist lawyers relating to your documents rather than relying on certified translations to conquer your new market.

Furthermore, if you are operating for example in Finland and the applicable law in your contracts is Finnish, consider how consumers in Germany or the UK will react to signing a contract with Finnish law and Finnish courts deciding any dispute. If you agree they would react adversely, then you will quite rightly apply the law and courts of the country you are targeting. How could you apply that law if you are not familiar with the laws of that country and without taking proper legal advice?

- A further result of the Directive is that if you target a particular country then you have to comply with the Directive as implemented by that country and although this should be the same across Europe, in some

cases it is different as a result of the hangover of the first Directive. Take Spain for example. Although club trustee systems are now recognised – a significant development for a country that does not recognise trusts – there are still resorts with fixed weeks fix units registered at the Land Registry that need to be accommodated within the new regime or the former escritura regime dissolved.

- Consumers now have a right to take action against you in the country where you are based as well as the country in which they are a resident, so it is important that you consider the potential implications and impact that the consumer's national law may have on your organisation.
- If you are inviting consumers to presentations about your product then the invites should clearly indicate the commercial purpose and nature of the event. Further key information in relation to the product should be made available to the consumer for the duration of the event.
- The definition of the products covered by the Directive, namely timeshare, resales long term holiday products or exchange contracts, are clearly defines and there is no distinction for fractionals, which are covered by the definition of timeshare. The sale of the fractionals must therefore comply with the Directive and, un like the other products, cannot be sold as an investment
- Finally, wherever you are operating and whoever you are selling to, it is important to ensure that your project documents are drafted to last the test of time

If you have any queries about the Timeshare and would like a conversation with one of our specialist lawyers, Alex Radford, please contact us by email at enquiries@mylawyerinspain.com or by telephone.