

SOME QUESTIONS ABOUT THE REGULATION OF THE “TIMESHARING”: UNDER THE LAW 4/2012, 6TH JULY

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The approval of Law 4/2012 of 6th July on contracts of rotational use of tourist assets, purchase of long term holiday products, resale and exchange contracts and taxation rules, officially transposed Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on consumer protection in respect to certain aspects of such contracts, repealing Directive 1994/47/EC and incorporating Law 42/1998/EC on titles I and II with their adaptations thereto.

The abovementioned text explains how economic and legal relationships arising from the development of tourism have led to a universal phenomenon in this sector whereby individuals and traders around the world are now recipients and providers of tourist services, creating a dynamic situation which is constantly evolving and adapting to market conditions.

Particularly interesting is a comparison of structural diversity, which includes not only individual rights under time-share agreements, have caused to disputes involving case law and jurisprudential problems and concepts such as joint ownership, as are the terminological difficulties arising and approach to illegality subject to forfeiture and unlimited real rights over holiday accommodation and their treatment in the 2009 Directive (article 3.4). This is an unresolved matter and will doubtless be the cause of numerous practical problems regarding the new regulation in question.

Firstly it deals with contracts for rotational use of tourist assets, whereby the consumer acquires, in exchange for consideration, the right to use one or more overnight accommodations for more than one period of occupation lasting more than one year, thus regulating not only timeshare ownership but also all kinds of tourism assets such as boats and caravans for more than one year rather than the three-year term foreseen in the previous rules. Article 23 of these states that these arrangements are subject to the provisions of Title II, which is mandatory, notwithstanding the provisions of the LAU and general consumer protection law (Article 23.6). It also provides for registration of acquisitions and transmissions of timeshare rights at the Land Registry if “the contract has been concluded or executed by public deed and the registrar assigns a folio number to the right to

use transferred, subject to the provisions of the Mortgage Law (article 31.1) in relation to article 33 of this law governing the legality of such a transaction.

In addition the contract of long-term holiday product governed by article 3 of the draft bill provides for a type of contract in this category which is already available on today's market today and is known as a "vacation club" "vacation club exchange" or "travel club".

To join this type of club the purchaser usually makes a down payment which gives access to certain discounts and offers for accommodation alone or for other services (flights, rental cars). Article 10 of the AP 10 requires the price of these contracts to be paid according to a phased plan, including annual membership). Again, these should be one-year contracts.

In the same lines, resale contracts as foreseen in Section 5 of the draft bill address contracts in which the entrepreneur, in exchange for consideration, assigns right, to the consumer to purchase a timeshare or a long-term holiday product.

Given that many consumers felt cheated by agents who, after collecting commission on the resale of the timeshare from the consumer, did not do their work. These products required regulation. It was very often the seller who offered the purchaser the right in order to recoup his investment when this did not meet his expectations. In practice this perpetrated the illegal the purchase contract offered for resale. Fourthly, the equity swap involving the timeshare rights over property for tourist use in Article 6, whereby the consumer paid to join an exchange system that allowed him to enjoy accommodation or services in exchange for granting temporary benefits to other persons comprising rights stemming from a legal contractual relationship.

On the other hand, the right to withdraw, which included two circumstances under which a consumer may exercise his right to withdraw from the agreement in the 2012 regulation and its calculation are also analysed:

- 1) When the seller fails to complete and provide the consumer with the standard withdrawal form in a separate document as required.
- 2) When the seller does not provide the consumer with pre-contractual information before the contract is signed, including standard reporting forms in the Annexes to the standard as it was also required.

Having considered the above aspects, we will examine the main developments to Law 4/2012 in comparison to previous regulations and contracts as described above. Title I consists of 22 articles divided into seven chapters, containing the effective transposition of Directive 2008/122, and includes practically all the observations that the Fiscal Council and the General Council of the Judiciary Branch (GCJB) made of the draft bill, highlighting its noteworthy subjective (characterised by the presence of an entrepreneur and a consumer) and imperative (Article 16 Law 4/2012, of 7th July) nature.

In relation to the above, the work also looks at the purchaser protection technique, both with regard to advertising ((Article 7 of the Law 4/2012) which is an almost literal transcription of article 3 of the Directive, on information to be provided to the consumer, which may be either pre-contractual or contractual in nature, as well as information to be provided during the term of the agreement (Articles 8 and 9 of the Act), consequences of breach of the obligation to provide information specified in Article 8.1, the minimum content of the contract as developed in the annexes to Law 4/2012 which are an inherent part

of the binding contract (Article 1.2 regulatory body, grounds for termination of contract, the right to withdrawal (Article 12 of the Act) to which Chapter II of Title I TRLCU also applies, which specifies a longer withdrawal period of 14 days having transposed the 2009 Directive, as opposed to the 10-day withdrawal deadline specified in Law 42/1998, which form part of any contract, since Article 11.4 requires individual signature of a separate withdrawal form (Article 12.2 b) which must also contain, the information for consumers in the binding promotional brochure, of which the consumer must be notified in advance.

In the light of the above, an analysis of the prohibition on advance payments, which is intended to facilitate the consequences of exercise of the right of withdrawal-before-shown, seems appropriate in this study. This provides that the purchaser of any regulated by Law 4/2012 has a right of withdrawal term (without giving any reason) under the terms and conditions of Article 12, the regime that is applicable on a supplementary basis, and Chapter II of Title 1 of TRLGCU. It also discusses the extension of the withdrawal deadline to 14 days as the result of the transposition of Directive 2009. This operation must appear in the content of the contract and in the promotional brochure given to the consumer.

To sum up we will discuss the changes introduced by Tax Law 4/2012 (Articles 36 and 37), defining changes in both property tax which, in the same way as in the previous law, unifies Articles 10.3 b) of Law 19/1991 on capital transfers and documented legal acts applicable to property transfers between individuals not subject to VAT or personal income tax, Article 71.3 of which establishes a special scheme for timeshare properties, drawing attention to some significant shortcomings in the Act, which could have regulated associated schemes in a more comprehensive manner (for example, Article 23. 8 Law 4/2012).

