

## Legal Regulation of Timesharing Contract and Other Contracts on Providing of Certain Services in Tourism Services in Slovak Republic

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### Abstract

*In relation with vacation we are able to meet the terms of timesharing or timeshare. To the definition there is necessary to state that their nature rests in time limitation (time) and sharing (share) of using a thing. The timesharing contract was introduced to Slovak legal order by amendment of Civil Code by the Act No. 150/2004 of the Coll. as a consumer contract on right to use of building or its part in certain time periods. Original legal regulation of timesharing was however later abolished by the Act No. 161/2011 of the Coll. on Protection of the Consumer in Case of Providing of Certain Tourism Services and on Change and Amendments of Other Acts. This paper provides look into evolution of legal regulation of timesharing in Slovakia and further analyses of valid legal regulation of timesharing contract and other contracts related thereto. The Author furthermore inform on using of the mentioned regulation in practice.*

### Key words

*timesharing, entrepreneur (provider), consumer, consumer contract on right to use building or its part in time periods, contract on using of accommodation facility in limited time periods, contract on providing of long-term recreation services, contract on participation on exchange system, contract for resale mediation*

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### Introduction

Timesharing in today's term emerged in 60's of the last century in France. Original idea of timesharing was based on principle of joint stock company in which the shareholder buys the stocks/shares. In legal area, such timesharing company provided points for which the shareholder could have spent the vacation in facility owned by the company instead of dividends. The value of the points was dependent on season and place of facility (Duláková et al., 2012, p. 666). The idea of timesharing was spreading mainly in Europe and the USA. In our parts of Europe we were able to meet the timesharing no sooner than 90's of the last century when it was generally common that the dealers invited married couples by phone to the meetings under the pretext win a trip, where the unsuspecting "winners" obtained advantageous offer to conclude the contract on the ground of which they were able to "buy" the apartment for example on Canary

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Islands. Contract on such "purchase" could be concluded only during that particular event and could not be cancelled. Many of addressed by this way did not have a clue that it was all about the sale of right to use the real estate in exactly specified time of the year in certain area valid for longer time, for example 20 years (Vozár, 1997, p. 24). Unfortunately, in relation to timesharing there occurred many unfair entrepreneurs in those times. There did not exist special legal regulation of such sales in Slovak legal order in 90's of the last century. Timesharing contract was introduced to our legal order together with the Act No. 150/2004 of the Coll. that amended the Civil Code in wording of previous amendments as a consumer contract on right to use the building or its part in specified time periods. By adoption the Act No. 150/2004 of the Coll. there was implemented into the Slovak legal order directive of European Parliament and the Council 94/47/ES dated 26th of October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis. The right to use the building or its part in one or more time periods in the year was to be concluded in form of consumer contract on right to use the building or its part in certain time periods that was regulated in provisions of §§ 55 to 60 of the Civil Code. These periods could not be however shorter than week (Vojčík, 2008, p. 17). The Directive from 1994 was replaced by the directive of the European Parliament and the Council on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts dated 14th of January 2009. This directive was implemented into Slovak legal order by adopting the Act No. 161/2011 of the Coll on Consumer Protection at Providing of Certain Tourism Services and on change and amendments of certain acts in wording of changes and amendments (thereinafter only as "Act on consumer protection in providing certain tourism services" or "Act. No. 161/2011 of the Coll."). This act came into force on 1st of July 2011 and simultaneously derogated the provisions of §§ 55 to 60 of the Civil Code.

## 1 Methodology

The main goal of this paper is to get closer to the evolution of legal regulation of the timesharing contract and to the analysis of valid legal regulation of the timesharing contract and other contracts related thereto. The authors set also the goal to discover how is the aforementioned legal regulation being used in practice. In order to achieve set goals of the paper there are being used various methods of scientific research at the process of drafting the paper. Firstly, the methods of analysis and synthesis. In order to separate the relevant information from non-relevant ones there served the method of abstraction. The conclusion was formulated through the methods of synthesis and induction. The information are sorted in the article in way to form one logical unit.

## **2 Results and Discussion**

### **2.1 Consumer protection at providing of certain services in tourism**

Act No. 161/2011 of the Coll. regulates rights of the consumer and duties of the seller related to timeshare using of accommodation facilities, providing long-term recreation services, its exchange and intermediation of its further selling, requirements of these consumer contracts and competence of the authorities of supervision at inspection of abiding the rules in this act.

Legal regulation is related exclusively to relations between consumer and entrepreneur, that is being named by the law as the seller. Under the term of consumer there is necessary to understand the consumer in meaning as specified in the Act on Consumer Protection No. 250/2007 of the Coll. in wording of changes and amendments. The same shall be applied in case of the seller.

For legal relations regulated by the Act No. 161/2011 of the Coll there shall be applied special legal acts, mainly Civil Code and Act on Consumer Protection.

Under contracts on providing certain services in tourism there shall be understood:

- Contract on timeshare using of the accommodation facility
- Contract on providing of long-term recreation services,
- Contract on participation on exchange system and
- Contract on reselling mediation.

#### **Providing the information before contract conclusion**

The seller is obliged in sufficient time before conclusion of the contract to provide the consumer clearly, certainly and free of charge with certain and correct information via form as specified in attachments No. 1 to 4 of the Act depending on type of the contract. This information must be in state language of the member state of European Union while the language per selection of the consumer may be the language of the state in which the consumer does have the permanent or temporal residence or which citizenship he bears. The information shall be provided in written form or on other permanent media that must easily accessible by the consumer. The filled form is inseparable part of concluded contract while the consumer confirms that he is familiar with the information form by special signature at relevant information form. The data filled in form before conclusion of the contract may be changed only exceptionally.

The act orders the seller to inform the consumer also in case of advertisement, presentation or other propagation event.

Before conclusion of the contract the seller is obliged to expressly instruct the consumer on right to withdraw from the contract, on period for withdrawal and on prohibition of provisional execution of rights of the seller.

### **Ad individual contracts on providing of certain services in tourism**

In contract on timesharing of accommodation facilities the seller obliges to provide the consumer with one or more accommodation facilities for using with possibility of night's lodging for time longer than one accommodation period and the consumer obliges to pay agreed sum. The contract is being concluded for period longer than one year. Act No. 161/2011 defines accommodation facility as a building, premises, or space, in which there is being provided temporal accommodation to the consumer for price and services related thereto. There is not important whether accommodation facility is real estate, crucial is the fact that it allows overnight sleeping (Lazar, 2014, p.209).

The contract on providing the long-term recreation services the seller obliges to provide the consumer with discounts or other advantages at accommodation independently or in connection travel services or other services, and the consumer obliges to pay the agreed price. Contract on providing the long-term recreation services is concluded for period longer than one year. The definition includes products like holiday clubs providing discounts. The ground is that the consumer obtains the right to get the discounts or other advantages at accommodation in combination with travel or other possibilities or without it. It relates to the contracts, where the right is obtained for price (Duláková at al, 2012, p. 742).

In case of contract on timesharing (so called timesharing contract) and in case of contract on providing long-term recreation services there is possible to notice common attributes – in both cases the contract must be concluded for period longer than one year and in both cases the subject matter relates to accommodation. The difference is in the fact that in case of timesharing the consumer obtains "right to use" one or more accommodation facilities, while in case of long-term holiday product the consumer gets "right for discount or other advantage" at accommodation.

With the contract on participation on exchange system the seller obliges to provide the consumer with possibility to participate on exchange system, and the consumer obliges to pay the agreed price. The contract is about inclusion of the consumer for the price into the exchange programme that allows the consumer the access to overnight accommodation or to other services for allowing other persons to have temporal access to advantages that results from the contract on timesharing or accommodation facility (Duláková at al., 2012, p. 743). The consumer may therefore use other holiday destinations.

With the contract on resale mediation the seller obliges to provide the consumer with the possibility to conclude the contract on timesharing of accommodation facility or the contract on providing the long-term recreation services and the consumer obliges to pay the agreed price, if the seller mediated the resale. The mentioned regulation there shall be covered the brokerage contracts concluded between consumer that have the interest to sell or buy time-bound using of the real estate and other property or long-term holiday product, and relevant seller that mediates the sale. The provision is not related to products when timesharing product is being sold by the consumer to other consumer nor to the situation when the entrepreneur buys from the consumer the subject matter of the contract reselling it to another consumer (Duláková at al., 2012, p. 744).

Any of these contracts must contain at minimum following data about the consumer and the seller:

Name, surname, date of birth, and the residence address of the consumer, Commercial name, registered seat, identification number, legal form, if the seller is the legal entity,

Commercial name, place of enterprising, identification number, if applicable, in case the seller if the natural person,

Date and place of conclusion of the contract.

The seller is obliged in time of concluding of the contract to provide the consumer with the original of the contract in written or on other permanent media that is easily accessible to the consumer in state language of the member state of European Union while in case of the consumer with permanent or temporal residence in other member state or with the citizenship of other member state this language can be the language of this member state according to preference of the consumer. If it is the case of the contract on timesharing of accommodation facilities, where the subject matter is the using of the only one real estate, the seller is obliged to provide the consumer with the official translation of the contract into state language or to one of official languages of the member state of European union, where the real estate is taking place, if the language is the official language of European Union.

The inseparable part of the contract is the form about the withdrawal from the contract. The seller is obliged to fill it in and to submit it to the consumer.

### **Withdrawal from the Contract**

The consumer is entitled to withdraw from the contract without reason in period of 14 days from the date of conclusion of the contract or contract on future contract, or from the date of its delivery or from the personal receiving of the contract by the consumer in case that the contract or the contract on future contract is submitted to the consumer later than the date of conclusion.

The Act allows prolongation of the period for withdrawal from the contract to the consumer in case:

1. If the seller fails to fulfil the obligation to attach the form about withdrawal from the contract, the period for withdrawal is prolonged to 1 year and 14 days,
2. If the seller fails to fulfil the obligation to provide the consumer with filled information form in sufficient advance, the period for withdrawal is prolonged to 3 months and 14 days.

The consumer may execute the right for withdrawal from the contract against seller in written form or in other form on durable media as well as by form for withdrawal from the contract in period for withdrawal while the period is procedural period i.e. it is sufficient to submit the delivery at the post on last day of the period.

By withdrawal from the contract there cease to exist any claims of the seller for compensation of costs related to fulfilment of the contract.

If the seller withdraws from the contract on timesharing of the accommodation facilities or from the contract on providing of long-term recreation services, there is also terminated from the beginning any other contract on the ground of which the consumer obtains the services related to subject matter of the contract on timesharing of accommodation facilities or on the ground of the contract on providing long-term recreation services that are being provided by the seller or by third party on the ground of the agreement with the seller. The same applies also to the contract on participation on exchange system that is bound to the contract on timesharing of accommodation facilities or to contract on long-term recreation services.

Before the period for withdrawal from the contract passed the seller or third party must not require the fulfilment on the ground of contract on timesharing of accommodation facilities, contract on providing the long-term recreation services or on the ground of contract on participation on exchange system that is mainly advance payment, payment agreed in the contract, providing the guarantee, blocking of financial resources on accounts in bank or branches of foreign bank, express acknowledgement of debt or any other counter value for seller or third person. On the ground of the contract on resale mediation there is not possible to require fulfilment from the consumer sooner than the mediation is provided or sooner than the contract is terminated on the ground of other reason.

### **Supervision over compliance with the law**

The supervision body according to Act No. 161/2011 of the Coll is Slovak Trade Inspection (Slovenská obchodná inšpekcia) that may fine the seller up to 30.000,- EUR in case of findings of breaches of duties set by the Act in case of breaching the same duty or in case that breach of the duty may endanger rights of two or more consumers.

### **Conclusions**

The legal regulation of timesharing contract was introduced to Slovak legal order in 2004 in relation to requirement for harmonization of the Slovak legal order with the legal order of European Union. Originally the regulation was contained in general part of Civil Code of § 55 to 60 where there was regulated consumer contract on right to use the building or its part in time periods. Before introducing the legal regulation, the Slovak consumer was protected in situations related to timesharing via various provisions that were contained in private law regulation as well as in public law, for example in Act on Consumer Protection, Civil Code, Commercial Code and in Act on Advertisement. Using of timesharing in practice proved that legal regulation contained in § 55 to 60 of the Civil Code, does not cover all situation, that occurred at the market, therefore there was necessary to adopt wider legal regulation. On 17th of May 2011 National Council of the Slovak Republic adopted the Act No. 161/2011 of the Coll, that derogated aforementioned legal regulation in Civil Code and instead of this regulation there are being regulated four contracts on providing of certain services in tourism: contract on timesharing of accommodation facility, contract on providing long-term recreation services, contract on participation on exchange system and contract on resale mediation. These contracts are focused on surrendering the accommodation facility for using, however they are

following also other goals Providing the long-term recreation (for example using of wellness or other advantage in case of accommodation), participation on exchange system (i.e. some kind of trading with participation in system where the advantage is gained for providing other advantage) and for resale mediation. The Act on Consumer Protection in Case of Providing Certain Services in Tourism introduced the obligation of seller to provide the consumer with information via filled information form in sufficient advance before contract conclusion. The Seller is also obliged to instruct consumer on right to withdraw from the contract, on period for withdrawal from the contract and on prohibition of provisional execution of rights of the seller. In contrast with previous legal regulation in Civil Code supervision in this area is entrusted by the law to Slovak Trade Inspection. Since timesharing is currently in Slovak Republic not very popular among consumers in practice we are able to encounter the timesharing contract as well as other contracts on providing the services in tourism relatively rarely.

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