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DECREE LAW No 427 OF 9 NOVEMBER 1998

Implementation of Directive 94/47/EC 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 PRESIDENT OF THE REPUBLIC

Having regard to Articles 76 and 87 of the Constitution,

Having regard to Law No 128 of 24 April 1998 and in particular Article 41 thereof,

Having regard to Directive 94/47/EC of the European Parliament and the Council of 26 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,

Having regard to Article 14 of Law No 400 of 23 August 1988,

Having regard to the preliminary deliberations of the Council of Ministers adopted at the meeting of 22 May 1998,

Having obtained the opinions of the relevant committees of the Chamber of Deputies and Senate of the Republic,

Having regard to the decision of the Council of Ministers adopted at the meeting of 5 November 1998,

On a proposal from the Ministers for Community Policies, Justice, Industry and Trade and Craft Trades in agreement with the Ministers for Foreign Affairs, the Treasury and Budget and Economic Planning,

HEREBY ISSUES

the following Decree:

Article 1

Definitions

1. For the purposes of this Decree:

- a) "contract" shall mean one or more contracts concluded for at least three years under which, directly or indirectly, on payment of a global price, a real property right or any other right relating to the use of one or more immovable properties for a specified or specifiable period of the year, which may not be less than one week, is established or transferred, or is the subject of an undertaking to establish or to transfer;
- b) "vendor" shall mean any natural or legal person who, in his professional capacity, establishes, transfers or undertakes to establish or transfer the right which is the subject of the contract; any person who, for any reason, promotes the establishment, transfer, or undertaking to transfer the right which is the subject of the contract, shall be treated as the vendor for the purposes of application of this Decree;

c) "purchaser" shall mean any natural person who, not acting in his professional capacity, has the right which is the subject of the contract established for him or transferred to him or receives an undertaking in respect of such establishment or transfer;

d) "immovable property" shall mean any building or part of a building for use as accommodation, including tourist accommodation, to which the right which is the subject of the contract relates.

Article 2

Information document

1. The vendor is required to provide to any person requesting information on the immovable property a document setting out accurate information on the following:

a) the right which is the subject of the contract, with details of its nature and the conditions governing the exercise of that right in the Member State in which the property is situated; if those conditions have been fulfilled or, if they have not, what conditions are to be fulfilled;

b) the identity and domicile of the vendor, including details on his legal status, and the identity and domicile of the owner;

c) where the immovable property has been determined:

1) a description of the immovable property and its location;

2) the terms of the building permit and the regional laws governing use of immovable property for tourism purposes and, in the case of property located abroad, the terms of the documents attesting to their compliance with the relevant regulations;

d) where the immovable property is under construction:

1) the terms of the building permit and the regional laws governing use of immovable property for tourism purposes and, in the case of property located abroad, the terms of the documents attesting to their compliance with the relevant regulations and also the stage reached in the construction works and the estimated date of completion thereof;

2) the state of completion of services, such as gas, electricity, water and telephone connections;

3) in the event of failure to complete the immovable property, guarantees relating to reimbursement of payments already made and the conditions governing the operation of those guarantees;

e) the common services to which the purchaser has or will have access such as lighting, water, maintenance, refuse collection and on what conditions concerning use;

f) the common facilities, such as swimming pools, sauna, and so on, to which the purchaser has or will have access and on what conditions concerning use;

g) the rules applicable in respect of maintenance of and repairs to the immovable property and its administration and management;

h) the price to be paid by the purchaser to exercise the contractual right; an estimate of the amount to be paid by the purchaser for the use of the common services and facilities and the basis for calculation of the amount of charges relating to occupation of the property, the taxes and fees, the administrative overheads for management, maintenance and repairs and any fees for registration of the contract;

i) information on the right to withdraw from the contract, including indication of the particulars of the person to whom any letter of withdrawal should be sent, specifying the arrangements under which such letters may be sent and the amount of the costs which the purchaser will be required to defray in the event of withdrawal; information on the arrangements for cancellation of the credit agreement linked to the contract in the event of withdrawal;

l) how to obtain further information.

2. The provisions of paragraph 1 shall also apply where the vendor offers to the public the right to use one or more immovable properties by means of lists, directories, catalogues or other media. In that case an information document shall be provided in respect of each of the immovable properties on offer.

3. The vendor may not amend the components of the document referred to in paragraph 1 unless such amendments are due to circumstances beyond his control; in that case the amendments shall be notified to the interested party prior to conclusion of the contract and included therein. However, once the information document has been handed over, the parties may agree to amend it.

4. The document referred to in paragraph 1 shall be drawn up in the language or one of the languages of the Member State in which the person concerned is resident or, at his option, in the language or one of the languages of the Member State of which he is a national, provided that it is an official language of the European Union.

Article 3

Conditions relating to the contract

1. The contract shall be drawn up in writing under pain of nullity; it shall be drawn up in Italian and translated into the language or one of the languages of the Member State in which the purchaser is resident or, at the option of the latter, into the language or one of the languages of the Member State of which he is a national, provided that this is an official language of the European Union.

2. The contract shall include, in addition to all the information referred to in Article 2 (1) a) to i), the following additional information:

a) the identity and domicile of the purchaser;

b) the period of time within which the right which is the subject of the contract may be exercised and the date on which the purchaser may start to exercise this right;

- c) provision for a clause affirming that the purchase does not entail for the purchaser any other charges, obligations or costs other than those specified in the contract;
- d) whether or not it is possible to join a scheme for the exchange or resale of the contractual rights, and any costs involved should an exchange or resale scheme be organised by the vendor or by a third party designated by him in the contract;
- e) the date and place of each party's signing of the contract.

3. The vendor shall provide the purchaser with a translation of the contract in the language of the Member State in which the immovable property is situated provided that this is one of the official languages of the European Union.

Article 4

Specific obligations on the vendor

1. The vendor shall use the term "timeshare" in the information document, in the contracts and in the advertising relating to the immovable property only where the right which is the subject of the contract is a real right.
2. The advertising relating to the immovable property shall refer to the possibility of obtaining the information document, giving details of the place where it is provided.

Article 5

Right of withdrawal

1. Within ten days of conclusion of the contract, the purchaser may withdraw therefrom without giving any reason. In that case the purchaser shall not be required to pay any penalty and shall reimburse to the vendor only the expenses incurred and documented as a result of conclusion of the contract and mentioned therein, provided that this expenditure relates to legal formalities which must be completed before the end of the period of withdrawal.
2. If the contract does not include all the information referred to in Article 2 (1) (a), (b), (c), (d)(1), (h) and (i) and in Article 3 (2) (b) and (d) and does not include the date referred to in Article 3 (2) (e), the purchaser may withdraw therefrom within three months of its conclusion. In that case the purchaser shall not be required to pay any penalty or make any reimbursement.
3. If, within three months of conclusion of the contract, the information referred to in paragraph 2 is notified, the purchaser may exercise the right of withdrawal under the conditions referred to in paragraph 1; the ten-day term runs from the date of reception of the notification of this information.
4. If the purchaser does not exercise the right of withdrawal referred to in paragraph 2 and the vendor does not proceed with the notification referred to in paragraph 3, the purchaser may exercise the right of withdrawal under the conditions referred to in paragraph 1, and the ten-day term shall run from the day after the end of the three-month period subsequent to conclusion of the contract.

5. The right of withdrawal shall be exercised by notifying the person specified in the contract or, failing that, the vendor. The notification shall be signed by the purchaser and shall be sent by registered letter with a form for acknowledgement of receipt within the period provided for. The notification may also be sent, within the same period, by telegram, telex or fax, provided that confirmation is sent by means of registered letter with a form for acknowledgement of receipt within the following 48 hours.

Article 6

Prohibition of advance payments

1. The vendor shall be prohibited from requiring or receiving from the purchaser payment of sums of money as advances, downpayments or premiums until expiry of the deadline for exercise of the right of withdrawal referred to in Article 5.

Article 7

Obligation to provide surety

1. The vendor shall be required to provide bank or insurance surety to guarantee completion of the work on building the immovable property. The surety shall be referred to in the contract under pain of nullity.

2. The guarantee referred to in paragraph 1 may not impose on the purchaser prior right of execution for the vendor.

Article 8

Cancellation of credit agreement

1. An agreement for credit granted by the vendor or by a third party on the basis of an agreement between the latter and the vendor, entered into by the purchaser for payment of the price or part of it, shall be cancelled without payment of any penalty if the purchaser exercises his right to withdraw within the meaning of Article 5.

Article 9

Nullity of clauses in contracts or additional agreements

1. Clauses in contracts or additional agreements whereby the purchaser renounces the rights under this Decree or the vendor's responsibilities are limited shall be null and void.

Article 10

Irrevocable territorial jurisdiction

1. In the event of any disputes arising from application of this Decree, irrevocable territorial jurisdiction shall fall to the courts of the purchaser's place of residence or domicile if located in the territory of a Member State.

Article 11

Rights of the purchaser in the event of application of foreign law

1. Where the parties have decided to apply to the contract law other than Italian law, the terms of the protection provided under this Decree shall still be afforded to the purchaser provided that the property which is the subject of the contract is located in the territory of a Member State.

Article 12

Penalties

1. Unless the act is unlawful, a purchaser who infringes the rules set out in Articles 2 (1) (d)(2) and (3), (e), (f), (g) and 3 (3), (4) and (6) shall be required to pay a pecuniary administrative penalty of between LIT 1 million and LIT 6 million.

2. An additional administrative penalty, suspension of pursuit of business of between 15 days and 3 months, shall be imposed on a vendor repeatedly infringing the provisions referred to in paragraph 1.

3. Article 11 (3) of Decree No 50 of 15 January 1992 shall be applied for the purposes of establishment of infringement and imposition of penalties.

Article 13

Entry into force

1. This Decree shall enter into force 60 days after its publication in the Official Journal of the Italian Republic.