



REPUBLIC OF SAN MARINO

DELEGATED DECREE no. 135 of 24 October 2013

(ratifying Delegated Decree no. 104 of 31 July 2013)

We the Captains Regent of the Most Serene Republic of San Marino

Having regard to Delegated Decree no. 104 of 31 July 2013 - "Implementing Regulation on tourist companies referred to in Title IV of Law no. 22 of 27 January 2006 (Framework Law on Tourism of the Republic of San Marino)" - which has been promulgated:

Having regard to Article 2 of Law no. 22 of 27 January 2006;

Having regard to Article 1 of Law no. 70 of 26 June 2013;

Having regard to Congress of State Decision no. 2 adopted in its sitting of 30 July 2013;

Having regard to the amendments made to the above-mentioned Delegated Decree when ratified by the Great and General Council in its sitting of 23 October 2013;

Having regard to Decision no. 27 of the Great and General Council adopted on 23 October 2013;

Having regard to Article 5, paragraph 3 of Constitutional Law no. 185/2005 and to Articles 8 and 10, paragraph 2 of Qualified Law no. 186/2005;

Hereby promulgate and order the publication of the final text of Delegated Decree no. 104 of 31 July 2013, as amended following the approval of the Great and General Council when ratifying it.

"IMPLEMENTING REGULATION ON TOURIST COMPANIES REFERRED TO IN TITLE IV OF LAW NO. 22 OF 27 JANUARY 2006 "FRAMEWORK LAW ON TOURISM OF THE REPUBLIC OF SAN MARINO"

CHAPTER I General Provisions

Art. 1

(Preamble)

1. This Delegated Decree shall regulate the tourist companies defined by Article 28 of Law no. 22 of 27 January 2006 ("Framework Law on Tourism of the Republic of San Marino") as travel and tourism agencies and tour operators.

Art. 2

(Insurance policy and security deposit)

1. Travel agencies and tour operators shall take out a third-party liability insurance policy for compensation (principal, interest and expenses) of injury to persons and damage to property involuntarily caused to third parties as a result of an accident occurring in connection with their activity. Such insurance shall cover the risks to persons arising from their participation in the travel and accommodation programmes, and shall guarantee that the obligations undertaken towards the users of the tourist services are met.

2. The minimum insurance coverage per claim shall amount to €1,000,000.00, with the following limits:
 - a) €1,000,000.00 for injury to persons and limited to each traveller;
 - b) €260,000.00 for damage to property or animals;
 - c) €50,000.00 for any other damage, including pecuniary losses resulting from accidents occurring in connection with the performance of the activity.
3. The security deposit referred to in Article 28, paragraph 7 of Law no. 22 of 27 January 2006 shall consist of a specific compulsory insurance clause covering any damage caused as a result of the business activity.
4. An action for damage compensation shall be time-barred after one year from the user's return to the place of departure. This period shall start to run on the date provided in the contract for the time-limit of the service giving rise to the dispute.
If the action for damage compensation relates to injury to persons, the limitation period shall be two years from the user's return to the place of departure.
Users' complaints against the tour operator or travel agency shall in any case be made by registered letter with acknowledgement of receipt within and no later than ten days from the date of return to the place of departure.
5. The tour operator and travel agency shall be exempt from the liability referred to in the preceding paragraphs where the non-performance or defective performance of the travel contract is attributable to the user or was due to an unforeseeable or unavoidable act of a third party or to fortuitous or force majeure circumstances.
6. Tour operators and travel agencies shall promptly provide all useful remedies to help the users, in order to enable them to continue their trip, without prejudice, however, to the right to damage compensation if the defective performance of the contract is not attributable to the users.
7. Tour operators and travel agencies that have compensated the users shall be subrogated to the latter in all their rights and actions against liable third parties. The users shall provide the organiser or seller with all documents, information and elements they have and that are useful for exercising the right of subrogation.
8. Travel programmes, however presented, shall contain the details of the insurance policy.
9. Holders of operating licences shall send annually to the Office for Industry, Handicraft and Trade the documents proving that the authorised activity is covered by insurance. The granting of new operating licences shall be subject to the submission of the insurance policy concluded to the Office for Industry, Handicraft and Trade.
10. The right to take out additional tourist assistance and health insurance policies shall remain unaffected.

Art. 3

(Technical Director)

1. The activities of travel agencies and tour operators shall be the responsibility of the Technical Director. Licence holders shall be responsible for the technical management of tourist intermediation companies in case of sole proprietorships, provided that they hold the position of Technical Director. If the tourist intermediation activity is carried out through a company, the company owning the travel agency or tour operator shall appoint a natural person as Technical Director.
2. The position of Technical Director shall be held on an exclusive and continuous basis.
3. The Technical Director shall be jointly and severally liable with the owner of the agency or tour operator.
4. The name of the Technical Director shall be indicated in the operating licence and on travel proposals.

5. In the event of termination or suspension of the Technical Director's office, the owner of the agency, if other than the Technical Director, shall immediately inform the Office for Industry, Handicraft and Trade and, at the same time, appoint another person from the List referred to in Article 4. If at the time of the replacement there is no qualified Technical Director registered in the List, a Technical Director who meets the requirements set out in Article 29, paragraph 2 of Law no. 22 of 27 January 2006 may be appointed on a temporary basis, and in any case until the outcome of the first session of the qualification exam referred to in Article 5, paragraph 1.

Art. 4

(Professional qualification of the Technical Director - List of Technical Directors of tourist intermediation companies)

1. In order to be qualified as and carry out the functions of Technical Director, it shall be necessary to have obtained a professional qualification and to be registered in the specific List of Technical Directors of tourist intermediation companies. The List shall be established at the Office for Industry, Handicraft and Trade and shall indicate, in addition to the personal details of qualified persons, the date on which they obtained their qualification and the name of the tourist intermediation company where they hold the office of Technical Director. The Office for Industry, Handicraft and Trade shall be responsible for keeping and updating the List of Technical Directors.
2. In order to qualify as a Technical Director, it shall be necessary to pass the specific qualification exam.

Art. 5

(Professional qualification exam - requirements - exam subjects)

1. The exam to qualify as Technical Director shall follow a public competition announcement issued by the Office for Tourism and shall be held at least every three years.
2. On the date of submission of the application, the applicants shall meet the admission requirements set out in Article 29, paragraph 2 of Law no. 22 of 27 January 2006. The requirement referred to in Article 29, paragraph 2, letter d) of the aforementioned Law shall be specified as follows:

- Work experience shall be documented by at least one pay slip for each year of work and a statement by the owner of the travel agency or tour operator. The years of work required in order to document the specific work experience in the field concerned shall be consecutive or with breaks not exceeding 30 days, and shall relate to a period of maximum two years before.

3. The qualification exam shall consist of a written test on the following subjects:
 - a) Tourism techniques, tourism geography, tourism legislation, management and organisation of travel agencies, currency and customs regulations, corporate accounting and budget management;
 - b) English;

And an oral test on the same subjects as the written test, as well as on the following additional subjects:

- c) Promotion and marketing techniques;
- d) A foreign language other than that of the written test.

Art. 6

(Selection Board)

1. The Selection Board responsible for awarding the qualification as Technical Director shall be appointed by the Congress of State upon proposal of the Minister of Tourism, shall not receive any remuneration and shall be composed of:

- a) The Director of the Office for Tourism, who shall chair it, and the Director of the Office for Industry, Handicraft and Trade;
 - b) Two teachers or experts in the subjects specified in the competition announcement;
 - c) A Technical Director or a representative of travel agencies or tour operators with documented experience in this sector;
 - d) An expert in the foreign languages being examined.
2. At its first meeting, the Selection Board shall appoint a Vice-Chairman and a Secretary from among its members. The Vice-Chairman shall replace the Chairman in case of absence or impediment.

CHAPTER II

Protection of Tourists

Art. 7

(Protection of Tourists)

1. In addition to what is indicated in Article 2 with regard to insurance coverage, travel agencies and tour operators shall comply with the provisions contained in this Chapter for the protection of users-tourists.

Art. 8

(Tourist packages)

1. Tourist packages shall concern package travel, package holidays and package tours and shall be the result of the predetermined combination of at least two of the following elements, sold or offered for sale at an all-inclusive price:
- a) Transport;
 - b) Accommodation;
 - c) Tourist services not ancillary to transport or accommodation referred to in Article 9, paragraph 3, letter h), which constitute a significant part of the tourist package.
2. The separate invoicing of the elements of the same tourist package shall not exempt the organiser or seller from the obligations laid down in this Delegated Decree.

Art. 9

(Form and elements of the contract for the sale of tourist packages)

1. The contract for the sale of tourist packages shall be drawn up in writing in clear and precise terms.
2. The user shall be provided with a copy of the contract concluded, signed and stamped by the seller. The same contract shall also be signed by the user.
3. The sales contract shall contain the following elements:
 - a) Place and date of issue, destination, duration, start and end date. If a split stay is planned, the duration of the stay and the relevant start and end dates;
 - b) Name, address, telephone number of the user and, where applicable, name of the traveller or travellers and, if the contract was made by another person, the latter's name;
 - c) Price of the tourist package, landing taxes, embarkation and disembarkation fees at ports and airports and other charges to be paid by the traveller(s);
 - d) Amount, in any case not exceeding thirty percent of the price, to be paid at the time of booking, unless otherwise agreed, as well as the deadline for payment of the balance. This amount shall be an advance payment or a confirmation deposit;

- e) Details of the traveller's insurance coverage and any additional policies in accordance with Article 2 of this Regulation;
- f) Means of transport, date, time, place of departure and return;
- g) If the tourist package includes hotel accommodation, the official category, the type of service and the meals provided;
- h) Tour, visits, excursions and other services included in the tourist package, including the presence of tour leaders and guides;
- i) Time-limit of not less than 20 days within which the user shall be informed of the cancellation of the trip due to lack of the minimum number of participants, if any;
- l) Specific agreements on the arrangements for the trip expressly agreed between the organiser or seller and the user at the time of booking;
- m) Any costs charged to the user for transferring the contract to a third party upon acceptance by the travel agent and/or the tour operator;
- n) Time-limit of 10 days within which the user shall, by registered letter with acknowledgement of receipt, complain to the tour operator about the defective performance of the contract;
- o) Time-limit of two days within which users shall communicate their choice with regard to modifications of the contractual terms and conditions referred to in Article 14.

Art. 10

(Information to users)

1. In the course of negotiations, and in any case prior to the conclusion of the contract, the seller or the organiser shall provide general information on passports and visas, with an indication of the time-limits for their issue, as well as on health requirements and the relevant formalities for travel and accommodation.
2. Before the start of the trip, the organiser and the seller shall provide the user with the following information in writing:
 - a) Timetables, stopovers and connections;
 - b) Personal details and telephone number of any local representatives of the organiser or seller or of local offices that can be contacted by the traveller in case of difficulty;
 - c) Telephone number of the organiser or seller in case of difficulties and in the absence of local representatives;
 - d) For trips and stays of minors abroad, telephone numbers to establish direct contact with them or with the person responsible for their stay;
 - e) Optional conclusion of an insurance contract to cover the costs incurred by the user for the cancellation of the contract or for repatriation in the event of accident or illness.
3. If the contract is concluded immediately before departure, the details referred to in paragraph 1 shall be provided upon conclusion of the contract.
4. However, it shall be prohibited to provide misleading information on the terms of the service offered, the price and other elements of the contract, whatever the means by which such information is provided to the user.

Art. 11

(Information brochure)

1. Where made available to users, information brochures shall indicate, in a clear and precise manner:
 - a) The destination and the means of transport;
 - b) The hotel or other accommodation and the official category;
 - c) The meals provided;
 - d) The tour;

- e) General information on passports and visas, with an indication of the time-limits for their issue, as well as on health requirements and the relevant formalities for travel and accommodation;
- f) The amount or percentage of the price as an advance payment and the deadlines for payment of the balance;
- g) An indication of the minimum number of participants, if any, required for the package travel, and the time-limit within which the user shall be informed of the cancellation of the tourist package;
- h) The terms and conditions and the person against whom the right of withdrawal is exercised in the case of an off-premises or distance contract.

2. The information contained in the brochure shall be binding on the organiser and the seller in relation to their respective liabilities, unless changes to the conditions set out therein are communicated to the user prior to the conclusion of the contract or are agreed by the contracting parties in a specific written agreement after the conclusion of the contract.

Art.12

(Transfer of the contract)

1. Users may be substituted by a third party who fulfils all the conditions for the use of the service, in the relationships deriving from the contract, if they notify the organiser or the seller in writing, no later than four working days before departure, that they are unable to benefit from the tourist package, as well as the personal details of the transferee, upon acceptance by the travel agency or the tour operator.

2. The transferor and the transferee shall be jointly and severally liable to the organiser or the seller for the payment of the price and any additional costs arising from the transfer.

Art. 13

(Price revision)

1. The revision of the all-inclusive sales price of the tourist package agreed upon by the parties shall only be permitted when such revision has been expressly provided for in the contract, including the definition of the calculation methods, as a result of changes in the cost of transport, fuel, landing taxes, embarkation and disembarkation fees at ports and airports, and the exchange rate applied. The costs shall be properly documented by the seller.

2. Upward revisions shall in no case exceed ten percent of the original price.

3. Where the increase in price exceeds the percentage referred to in paragraph 2, the purchaser may terminate the contract, subject to reimbursement of the amounts already paid to the other party.

4. The price shall not in any case be increased in the twenty days preceding departure.

Art. 14

(Modifications of the contractual terms and conditions)

1. Before departure, if the organisers or sellers need to significantly modify one or more elements of the contract, they shall give immediate written notice to the users, indicating the type of modification and the resulting change in price.

2. If the users do not accept the proposal for modification within the meaning of paragraph 1 above, they may withdraw from the contract without penalty and shall be entitled to the provisions of Article 15.

3. The users shall inform the organiser or seller of their choice within two working days after receiving the notice referred to in paragraph 1.

4. After departure, if a substantial part of the services envisaged in the contract cannot be provided, the organiser shall arrange suitable alternative solutions for the continuation of the planned trip, without any charge to the user, or shall reimburse the latter within the limits of the difference between the services originally envisaged and those provided.

Art. 15

(Users' rights in case of cancellation of the service)

1. If the tourist package is cancelled prior to departure for any reason whatsoever, other than through the fault of the user, the latter shall be entitled, vis-à-vis the travel agent, to another tourist package of equivalent or higher quality with no extra charge, or to a tourist package of lower quality with a refund of the difference in price. In the alternative, the amount of money paid shall be reimbursed within seven working days of the cancellation.
2. In the cases provided for in paragraph 1, the user shall be entitled to be compensated for any further damage resulting from the non-performance of the contract.
3. If the cancellation of the tourist package is due to the failure to reach the minimum number of participants required, and the user has been informed in writing at least twenty days before the date of departure, or is due to force majeure, the user shall only be entitled to a refund of any sums paid.

Art. 16

(Non-fulfilment or defective fulfilment)

1. Without prejudice to the obligations provided for in the preceding Article, in case of non-fulfilment or defective fulfilment of the obligations undertaken with the sale of the tourist package, the organiser and the seller shall be obliged to pay damages, according to their respective liabilities, if they fail to prove that the non-fulfilment or defective fulfilment was caused by the impossibility to provide the service deriving from causes not attributable to them, including the case of overbooking.
2. The organiser or the seller shall be obliged to pay compensation for the damage suffered by the user, who shall provide the documents proving the disservice.
3. Any failures in the performance of the contract shall be reported by the user without delay, so that the organiser, the relevant local representative or the tourist leader may remedy them promptly.
4. The deadlines and procedures for lodging complaints are set out in Article 2, paragraph 7 of this Delegated Decree.

CHAPTER III

Accreditation of tour operators, administrative sanctions and transitional and final provisions

Art. 17

(Accreditation of tour operators)

1. The Ministry of Tourism shall be the body responsible for issuing accreditation certificates to San Marino tour operators intending to operate in countries, where tourist entry visas are required.
2. Tour operators shall be accredited following a request submitted to the Office for Tourism, which shall be responsible for vetting the application and verifying that the requirements are met. The Office for Tourism shall transmit the relevant outcome to the Ministry of Tourism for the issue of the certificate referred to in paragraph 1.
3. The Congress of State shall issue a regulation establishing the procedures, methods and documents to be submitted by tour operators interested in obtaining accreditation.

Art. 18

(Administrative sanctions)

1. Without prejudice to the offences and the competence of the Office for Industry, Handicraft and Trade provided for by the legislation in force on the suspension, revocation and termination of the operating licence and the application of administrative fines, the supervision and control of the activities of travel agencies and tour operators shall be carried out by the Office for Tourism and by the Office for Industry, Handicraft and Trade, which shall resort to the Civil Police.
2. The exercise of activities without a licence and/or outside the scope of the licenced business shall constitute a violation of paragraph 1, letter c) and paragraph 2 of Article 25 of Law no. 129 of 23 July 2010 "Regulations governing licences to pursue industrial, service, handicraft and commercial activities", and shall be subject to the sanctions provided for therein.
3. The activity of travel organisation shall be permitted, provided that it is non-profit, by companies, bodies and associations if the tourist packages are aimed exclusively at their employees, members and associates within the scope of the purposes expressly indicated in the corporate purpose or statute. Any failure in this respect shall constitute a violation of paragraph 1, letter c) of Article 25 of Law no. 129 of 23 July 2010 and shall be subject to the sanctions provided for therein.
4. No form of advertising of the activities referred to in paragraph 3 shall be allowed, since such advertising shall be considered the exclusive prerogative of travel agencies and tour operators. Non-compliance therewith shall constitute a violation of Article 26, paragraph 4, letter c) of Law no. 129 of 23 July 2010 and shall be subject to the sanctions provided for therein.
5. In case of violation of the provisions contained in this Delegated Decree, the Office for Industry, Handicraft and Trade shall, independently or upon report of the Office for Tourism, apply the following administrative pecuniary sanctions, following the outcome of the control activity and also in addition to the suspension, revocation and termination of the operating licence:
 - a) From €1,000.00 to €5,000.00 for misleading information, i.e. information provided to users in such a way as to mislead them or which is likely to mislead them, or in violation of the provisions contained in the articles of Chapter II;
 - b) €500.00 for failure to indicate the details of the insurance coverage and of any additional policies taken out by the traveller referred to in Article 9, paragraph 3, letter e);
 - c) €500.00 for failure to indicate the name of the Technical Director on the travel proposals referred to in Article 3, paragraph 4;
 - d) From €2,000.00 to €20,000.00 for failure to notify the termination of the activity as Technical Director and his simultaneous replacement.
6. The Director of the Office for Industry, Handicraft and Trade shall suspend the authorisation to exercise the activity of travel agency or tour operator in the event of:
 - Repeated violations of the provisions on users' protection contained in Chapter II;
 - Failure to notify the termination of the activity as Technical Director and his simultaneous replacement. In this case, the suspension shall be for a minimum of one month and a maximum of six months from the non-notification.
 - Failure to comply with the obligation to submit the annual insurance coverage, as referred to in Article 2, paragraph 9. The suspension shall start on the date of non-submission and shall cease when the obligation is complied with.
7. The travel agent and tour operator shall be subject to termination and revocation of the licence:
 - In case of conviction for offences connected with the exercise of the activity of travel agent or tour operator;
 - For repeated violations after suspension.
8. In relation to paragraphs 6 and 7 above, the provisions of Article 27 of Law no. 129 of 23 July 2010 shall apply in case of repeated violations.

Art. 19

(Transitional and final provisions)

1. Anyone who, at the time of the entry into force of this Delegated Decree, legitimately exercises the combined tourist activities of travel agency and tour operator in a single location shall be required to separate the locations within six months of the entry into force of this Delegated Decree, failing which their operating licence shall be suspended.
2. Travel agencies and tour operators already operating prior to this Delegated Decree shall be required to deposit the insurance policies referred to in Article 2 within 60 days, failing which their operating licence shall be suspended.
3. The Technical Directors of tourist intermediation companies already established and operating at the time of the entry into force of this Delegated Decree shall be automatically registered in the List of Technical Directors referred to in Article 5, provided that they meet the requirements laid down in Law no. 22 of 27 January 2006. Similarly, tourist intermediation companies set up after this Delegated Decree may appoint the Technical Directors who are not registered in the List referred to in Article 5 until 31 December 2016, and in any case until the outcome of the first session of the qualification exam referred to in paragraph 1 of Article 5, provided that they meet the requirements laid down by Law no. 22 of 27 January 2006.
4. Travel agencies shall be obliged to observe the daily and weekly opening and closing times displayed, in accordance with the relevant laws in force.

Done at Our Residence, on 24 October 2013/1713 since the Foundation of the Republic.

THE CAPTAINS REGENT

Gian Carlo Capicchioni - Anna Maria Muccioli

THE MINISTER OF
INTERNAL AFFAIRS

Gian Carlo Venturini