

Dr.Akmal Ramadan Amin
Assistant prof. at the Faculty of
Tourism and Hotels management,
Alminya University, Egypt

**The Legal Framework of the International
Timeshare Systems: an applied study on
Egypt**

Abstract

Timeshare is one of the vital elements of the contemporary tourism industry. It has recently been used in many countries as an ownership system of housing units in tourist destinations for the purpose of holidays. It has been successfully used in Egypt since the 1990s. Despite its importance to the industry, there is lack of understanding of the legal issues related to timeshare in Egypt. Therefore, the purpose of this study is to explore various systems of timeshare around the world from the legal point of view and compare them with the Egyptian version in order to identify key aspects of the legal framework of timeshare in Egypt. The study relies mainly on the descriptive analytical approach.

Keywords

Timeshare - multi-ownership of tourism accommodation – Tourism Law - Comparative legislations.

Introduction

Although multi-ownership of tourism accommodation known as "Timeshare" is not a recent system, it has been very ambiguous and controversial since its beginning. Despite the strong support this system received from the companies, the public received it with reserve.

In France, timeshare has been called "temps portage" or timeshare ownership, which mix it with concepts such as "propiete hotelier" or hotel service and property, "multipropriete" or multi-ownership that depends essentially on the multiplicity of owners to the same housing unit, "propiete spatio temporpelle" or timeshare property and the English "time propriety" which means sharing in time and not in ownership (El Nakhas, 1996).

The main purpose of this study is to explore the nature and realize the meaning of this relatively ambiguous system which has been surrounded by many legal, financing and marketing question marks. Investigating the beginning of the system, its definition, advantages and different international forms, the study ultimately aims at defining the most suitable form to be applied to the Egyptian state of affairs.

The concept of timeshare

Timeshare is an old management system used by many countries all over the world. It means buying the right to spend a set period once a year; this period is one week in the year. It also means adding the temporal dimension to the spatial dimension in a way to occupy the tourism and hotel-housing unit (Warnken and Guilding, 2009).

The total periods bought by timeshare are fifty weeks a year; the other two weeks are allocated for the annual maintenance works. These fifty weeks are to be sold to a number of owners and the price is set according to the time of the week in the year. Beginning as an untraditional system in the tourism and hotel industry, timeshare thus adopted the slogan, “No need to rent the room; buy the hotel, it's cheaper!” (Salama, 2006).

Switzerland witnessed the beginning of timeshare in 1963. Still a successful company today, Hapimag was the first Swiss company to use timeshare, marketing it in about 12 European countries. Timeshare began in France in 1967, the United States in 1969, and the UK in 1975 (Tammie,J and Lashley.C , 2009).

Timeshare institutions have spread all over the world as the international foundation for timesharing. The European ST Federation, Timesharing Council and the American Resort and the Residential Development Association (ARRDA) are just a few examples of such international institutions and bodies (Abualam, 1995).

Al-Muntaza Company for Tourism and Investment is the first company in Egypt to use this system in the tourist village of Marakia on the North Coast in 1987; it sold Al-Morgan village using timeshare in the Egyptian city of Fayed in Ismailia governorate. Many timeshare projects then follow (Abualam, 1995).

Today, timeshare has become one of the vital elements of the contemporary tourism industry. The increasing world tourism movement is accompanied by an increasing growth in timeshare industry as a result of the advantages this system has brought to the relevant countries, the investing companies and the benefited tourists.

The advantages of the timeshare system

Timeshare has become one of the most important factors of the tourism boom in many world countries by way of increasing the number of tourists

who own or benefit from timeshare, especially when foreign tourists exchange their vacations with other people.

Making it available for foreign tourists to own a housing unit in any country, timeshare leads to the increase of the tourism nights as it constitutes a constant link between the tourists and the country in which they own a timeshare, encouraging them to repeat their visit to that country or at least offer their week as a present to friends or relatives.

Timeshare also helps to prolong the tourist season and achieve a high rate of occupancy by distributing the utilization of the unit throughout the year. Moreover, it is friendly to the environment as it lessens the tourist density of a specific season that causes damage to the environment and the country's infrastructure (Kamel, 1991).

Timeshare makes the country benefit from its citizens' savings through investing them inside the country instead of transferring them abroad. Simultaneously, it offers the citizens of the state an opportunity to know many tourist places and consequently arouse the feeling of loyalty to their native land. opening the door for many classes of the society to make tours and travels all over the country, it enhances social security and stability and contributes to solve the problems of depression and real estate stagnancy that threaten the real estate activity in many world countries (Ramadan, 2001).

For the benefited tourist, timeshare is a relatively cheap system that enables the tourist and his family to spend their annual vacation in a well-furnished housing unit and make use of all hotel services in return for a sum of money to be paid just once at the time of concluding the contract and with the price of the local market. The timesharer does not pay the costs of management or maintenance works for the administration of the complex pays these costs as security and insurance (Abualam, 1995). As a matter of fact, timeshare copes with the practical thinking of the interest of the tourist who is in no need to own a full and complete unit and bear all its costs while he does not benefit from this unit except for one or two weeks throughout the year. Timeshare moreover allows the buyer to enjoy the international vacation exchange system making him able to exchange his period in one country with another in a different country (Abdelkadir, 1998).

As far as the investment companies are concerned, timeshare enables them to avoid the risks of depression and stagnancy that dominated the construction and real estate construction field at the end of the 1960s and the beginning of the 1970s. Timeshare has absorbed a great amount of

investment that accounted to \$2 billions in 1990 and \$16 billions in 2000 (Hayden, 2004). The companies have been able to double their benefits through timeshare by marketing their hotel services along with their tourist units. The most notable advantage is the rapid marketing due to the participation of many people in one ownership, which relieves the purchase burden on the buyers (Gemeei, 1997).

Different world timeshare Systems

Timeshare has witnessed many different forms according to various legal regulations. These legal regulations differentiate in specifying the nature of the buyer's right in the timeshare contract. The French timeshare, the Anglo-Saxon one represented in England and the United States, and other applied timeshares in Germany, Italy, Greece, Portugal, Spain and Switzerland will be discussed below. Then the Egyptian timeshare, which is regulated by the ministerial decision No. 96 of the year 1996, will be discussed with an eye to benefit from the best in the world timeshare systems.

I. The French Timeshare

To deal with the French timeshare we have to mention law no. 18-86 issued in 6/1/1986. This law adopted the French timeshare until the appearance of law 566/98 issued in 1998 to regulate timeshare contracts (Al-Nakkas, 1996).

A: The issuance of law 18/86 in 6/1/1986

Because of the quick spreading of tourism compounds that apply timeshare, the French legislator interfered to specify one system to regulate the timeshare and how to manage it (Henze, 1987). This interference resulted in issuing law no. 18/86 in 6/1/1986. The legal nature of timeshare that is mentioned in its provisions as well as the management and monitoring provisions will be identified as follows:

- The legal nature of timeshare under law no. 18/86

Law no 18/86 gives the owner tourist a full guarantee mentioned in article 11. This guarantee is represented in the need for specifying the rights and duties of the partners before taking any procedure of buying or constructing the compound through issuing three documents:

- 1- A document including timeshare and the representation of all partners of the compound's board of directors.
- 2- A document to specify the purpose of buying or constructing the compound, dividing its different parts and how to use its public installations.
- 3- A document to specify a system for the allotment of its parts, dividing the building or the compound into units, allotting the units that belong to every part-owner and also specifying a date of his right to use and utilize this unit.

Article 23 provides that the part-owner has the right to rent or lend his unit during the time of the year allotted to him. Moreover, it gives him the right to dispose of his shares in the company by sale or transferring them to anyone else (Al-Nakkas, 1996).

With regard to the contribution in the maintenance and management of the building, the above-mentioned law in its ninth article sets forth that every partner's contribution is to be equal with his share in the company. The costs of the services offered in the building or the compound like cleaning, security, and maintenance are to be according to the period in which the part owner uses the unit allotted to him. And the proceeds coming from these services are to be distributed to every unit.

In case any part-owner neglected his duty to contribute in these costs the company through the general association of partners will prevent this partner from using his unit until he pays his duties or else his share is to be offered for sale (Zahra, 1993).

- The provisions of managing and monitoring timeshare

1- With respect to managing the company, according to article 5 of the French law no. 18/86, a board of directors is to be appointed with the knowledge of all partners to manage the company, and this body is to be elected by all partners provided that their shares are not less than 50% of the gross shares of the company. This is the general system of the company that can not be violated (Gemeei, 1997).

According to article 7 of the same law, a manager is to be appointed from the partners to manage the compound's affairs. The partners should appoint the manager provided that their shares are not less than 50% of the gross shares of the company (Gemeei, 1997).

Article 13 of the same law provides that the decisions regarding the management, maintenance and the modifications of the compound are to be

taken with the knowledge of the general association of owners. The law provides that the members of this association are to meet at least one time a year (Gemeei, 1997).

2- With respect to monitoring the company's activity, article 18 of the above-mentioned law provides that if a board of directors is not appointed from the owners to contribute in the management of the compound, an elected monitoring council is to be appointed from the partners to give their opinions on the method of managing the company itself and the general association of partners. This council "monitoring council" has the right to see all the documents that are of concern to the company or compound (Al-Nakkas, 1996).

To protect the right of the owner, article 16 of the same law provides that all the important decisions are not to be taken if the partners' gross shares are less than 40% of the gross shares of the compound. This is to prevent the tourist from having control of the compound by taking arbitrary or wrong decisions when the number of the sold units is few. Some members of parliament insisted on adding this stipulation when discussing the law in order to protect the owners from the control of the investor (Al-Nakkas, 1996).

It is believed that the French legislator by approving law 18 of the year 1986 has put the basis for one form of timeshare in which the tourist is considered a partner with a share in the country that is equal to his financial contribution. Regarding all these things, the tourist has the right to use his unit according to the value of his share and for a specific period of the year (Ramadan, 2001).

This system has many advantages especially in facilitating the tourist ownership and encouraging the joint tourist compounds. However, it is to be criticized essentially because the part-owner will be subject to the decisions of the majority, which is dominated by the investor for being the biggest partner. Thus, the part-owner may be exposed to the arbitrary and wrong decisions of the investor (Warnken and Guilding, 2009).

Some scholars like Gemeei (1997) have made a good point to be agreed with that the best way of protecting the tourist part-owner is to establish his right in the company by buying some of its shares and making it possible for him to sell his shares to the same investor if he does not want to continue his partnership in using his joint housing unit. Although the part-owner will accept some loss in the value of his unit, this is a good solution especially in France where the offer is more than the demand and so it is

difficult for the part owner to sell his share if he does not want to continue this partnership (Gemeei, 1997).

B: the issuance of law no. 566/89 in 8/7/1998

Law no. 566/89 issued in 8/7/1998 defined the timeshare contract as “every contract or a set of contracts concluded for at least three years”. By virtue of these contracts the right to utilize real estate money is transferred directly or indirectly and for a gross price for a specified period of the year not less than a week (Zahra, 1993).

This law regarded timeshare contracts as consumption contracts. It put a pack of legal rules that aimed at protecting the buyer, considering him a consumer who faces a professional investor or company that owns this project. This protection is represented in specifying some provisions in the interest of the buyer.

The above-mentioned law provides that timeshare contract is to be written in French if the buyer or the unit which is the subject of the contract is in France. It also provides that the company has to provide the buyer with a brochure with the information contained in the contract. It also provides that the propaganda is to be in the French language.

In addition to giving him a right to a 10-day cooling off period counted from the day he signs the timeshare contract, the buyer, during the cooling off period, has the right to cancel the contract without giving any reason and at no cost. It gives him the right of enough time to think, study other offers and choose the most suitable for him (Zahra, 1993).

It also provides that a monitoring council is to be formed and elected by taking votes in the general association in order to allow the buyer to monitor the management of the company and how it fulfills its requirements concerning good management and maintenance works mentioned in the contract (Zahra, 1993).

It is noteworthy that the French law no. 47/94 issued in 8/7/1998 has adopted the European Directive no. 47/94 issued in Oct. 1994 concerning the protection of buyers in timeshare contracts, organizing information and propaganda, purifying the real estate market of the irresponsible companies and granting buyers the right to cancel the contract individually. This aspect will be discussed later in detail when dealing with the legal protection of the buyer in timeshare contracts (Guilding and Ardill, 2005).

II. The American Timeshare

An American writer said that the practical application of regulating and managing timeshare has witnessed numerous systems that versify according to the versification of the investors who invest in that economic real estate domain. This saying asserts the importance and wide spreading of timeshare all over the United States (Hayden, 2004).

In view of the wide spreading of timeshare, most American states have resorted to adopting legislations to regulate this kind of ownership. These legislations are harmonized because many American states have regulated the tourism real estate ownership depending on two legislative suggestions: The first proposed in 1979 and presented by the national committee for the unification of the states' legislations under the title "the unified law of regulating the tourism real estate ownership"; the second presented by the national union of real estate owners under the title "a model draft of the tourism ownership law" (Al-Nakkas, 1996).

From here on, the legislations regulating timeshare became unified federal legislations all over America, regarded as the unified legislations of protecting the consumers. Through these unified legislations timeshare in the United States can be divided into three major forms as follows:

The first form: the real estate ownership of the unit

This form considers the ownership of an apartment or unit a basis for regulating timeshare. Two systems come under that form when applied. *The first is internal ownership* in which the investor establishes an ownership for the apartments of the compound in a way that makes every owner enjoy the advantages of the system of the ownership of the apartments. But this enjoyment is limited by a period of time in the year for every owner through a contract between the investor and the owner (Warnken and Guilding, 2009).

This system of timeshare includes some characteristics that approve the rights of the owner of a tourist ownership by timeshare. He has the right to dispose of his right in the period allotted for him in the year, which is called legal estate in the land. The owner also enjoys another real estate right called future tenancy in the land; it has a real estate nature for every owner, and this owner has the right to dispose of it directly during a specific period of the year without taking the risk for dividing the tourism ownership by timeshare (Tammie,J and Lashley.C , 2009).

The second system is timeshare ownership; it also approves the previous form of ownership of the apartments, but the tourist ownership is brought nearer to the real estate ownership and the owner tourist is called tenant in common.

This system has two defects: the first is that it does not allow the division of the tourist real estate ownership considering it a common ownership. This is because of the absence of a legislative wording to prevent the division of this ownership; the second defect is that the contract that allots the units to the tourists with respect to individuals or the annual usufruct period is applicable only to the owner tourists making it void in face of the other cases due to the absence of a legislative wording that is Res Judicata in face of the other cases (Warnken and Guilding, 2009).

The second form: the right to use

This form is the most popular one in which the owner tourist has the right to use the tourism unit for a specific period of the year and for a limited number of years to be from 12 to 50 years. In this case, it is called the vacation license. It gives the owner tourist the right to sublease the unit and also the right to dispose of his ownership by sale or mortgage, but it does not give him the right of the real estate ownership (Lancaster and Bougopoulos, 1994).

The third form: Free simple estate

It is a complex form that means a real estate ownership of a special kind. Here the owner tourist is not a tenant in common but he owns the unit independently for a specific period of the year. This will give the tourist a peace of mind because he is not subject to the system of the ownership of the apartments or the internal order of the compound that is divided into apartments. But the essential defect of this form is the absence of harmony between the different owners inside the community or the compound as a whole (Yvette, 1989).

III. The English timeshare

The appearance of timeshare was late in Britain; it did not appear until 1976. It began in Scotland by building tourism compounds that use timeshare. But this lagging was a result of the fear and caution of the investors and citizens from timeshare. After this caution vanished, timeshare compounds have spread largely in Britain to account to 120000 units in 1988 and 270000 units in 1995 all over the UK, in addition to

thousands of time share compounds owned by English citizens in Europe and America (Pierce, 1993).

The spreading of timeshare in Britain pushed investors to establish the Timeshare Developers Association. The association tends to regulate the social and economic activity related to the tourism ownership. It includes only the real estate investors of that domain while owner tourists are not allowed to join it, but its regulation provides in its third article that it will protect the owner tourist too (Pierce, 1993).

This association has adopted a trend to protect consumers from trickery and misleading practiced by some of the companies working in this field. Its regulation provides that it will prohibit some of the inaccurate and misleading propaganda forms that urge the citizens to join timeshare programs under urgency and confusion. It also provides that the companies working in this domain are obliged to give the consumers or buyers a cooling off period of five days if they want to change their minds and cancel the contract at no cost or compensation. It also helped to settle disputes arising between the buyers and the timeshare owners. Undoubtedly the role of timeshare developers association has contributed in the quick spreading of timeshare in Britain (Pierce, 1993).

In light of the fact that the British legislation is based on what is called the regulation of judicial precedents without the legislative interference of the written laws, four forms of timeshare have appeared (Pierce, 1993).

The first form: the lease

In this form a lease is concluded to a tourist unit for a specific period of the year and also for a limited number of years. The buyer's right is characterized by stability because it is coming from a right in rem.

The second form: the license

This form is done by a contract between the investor and the buyer, giving the buyer, like the lease, the right to use the unit personally for a specific period of the year and a specific number of years. But unlike the lease, this form does not entitle the buyer to enjoy full rights over the unit. Whereas the buyer of a lease enjoys a right in rem, the buyer of a license has only a right in personem (Guilding and Cassidy, 2008).

The third form: the company

According to this form, a company that was established before the coming of the investor has a limited responsibility and the buyers are partners in that company with specific shares (Guilding and Cassidy, 2008).

The fourth form: the club.

In this form the investor establishes a club for the buyers; everyone is to be a member of his club and has the right to own the tourist unit for a specific and limited period of time. This form is also called propriety club because the owner preserves the ownership for himself. The investor may also establish what is called "the trust" for the buyers, dividing the ownership among them, which will strengthen the right of the buyer because he will be a buyer of a unit with a real state nature (Warnken and Guilding, 2009).

IV. Other world forms of timeshare

Other forms of timeshare in other world countries such as Germany, Spain, Italy, Switzerland, Greece and Portugal will be tackled briefly because of the scarcity of the English and French references in that domain.

- **Timeshare in Italy**

Under the absence of a legislation of timeshare in Italy, practical application of timeshare took two basic forms on a common basis.

The first form

It is the form supported by the Italian jurisprudence. It is based on the partnership of a group of owner tourists of a common property, giving the owner tourist the right to use and utilize it in a specific period of the year provided that he bears its costs during this period.

According to article 2/1112 of the Italian civil law the tourists are prohibited from demanding the division of the housing unit as long as this division leads to the prevention of using the unit according to its specified purpose.

In case of the intention to change the aspect or the purpose of utilization of the housing unit, the majority of buyers have to agree on this change (Al-Nakkas, 1996).

The second form

It is based on dividing the housing compound into shares; every buyer has an amount of shares equal to the value of the unit he wants to use. What he pays is determined by that basis and using the unit is for a specific period of the year. This form was criticized for the possibility of dividing the tourism housing units and changing the aspect of their utilization, which may lead to the termination of timeshare (Guilding and Ardill, 2005).

- **Time share in Spain**

Timeshare in Spain is considered a specific form of the ownership of apartments and floors; the buyer enjoys his right to use and utilize a specific unit in a specific period of time. He has the same power and rights of the owner of the unit and he has also some obligations and duties according to the value of the unit and its specified period of time.

The application of timeshare in Spain as a form of ownership of apartments and floors has received much objection from the Spanish jurisprudence which seeks to regulate the relevant right of ownership to prevent the tourist buyers from enjoying the right to demand division (Woods,2002).

- **Timeshare in Germany**

Due to the absence of a legislative provision to regulate timeshare in Germany, the German Civil law has been applied through article 2/749. The buyer is considered an owner of the housing unit along with other buyers in a way that gives him the right of the owners and also his duties and obligations. This ownership is for a specific period of the year and for a week or more according to his share of the ownership provided that no owner will have the right to ask for division. Some German legislators object to the prohibition of division regarding timeshare because they consider it a restriction on the owner's freedom to dispose of his property, but the supporters of the prohibition of ownership say that it is necessary to preserve the timeshare and not to divide it (Woods, 2002).

- **Timeshare in Switzerland**

Coping with the wide spreading of timeshare in Switzerland, the legislative wordings regarding timeshare became numerous; the most important versions are as follow:

- 1- The first wording gives the buyer a right in rem on the whole compound with a limited usufruct on a specific unit of this compound. It is crystal clear that the wording brings timeshare nearer to the regulation of owning an apartment that the Swiss law of 1963 regulates in its articles 21650 –21648. The most important point in this wording is that it prevents the division of the common property or changing the aspect of utilization of the tourist compound unless all partners agree on this change (Woods, 2002).
- 2- There is a wording that combines the ownership of apartments' regulations with the ownership of floors'. Here the buyer has a combined right of ownership of the whole building and also of joint tourist unit. The system and management of this version are advantageous to the buyer in the eye of Jurisprudence.
- 3- There is another version practiced by Interhome institution to manage these apartments or investing them in favor of the buyer, so the buyer will not pay any costs but the ones that are in proportion to his share of management and maintenance works. He also receives the returns of investing his unit even if nobody invested it. The buyer has also the right to exchange his unit with any other unit that the company owns in any part in the world.

In Switzerland which is considered one of the most advanced countries in the domain of timeshare, the buyer's rights include using the unit, investing it, exchanging it or even disposing of it in proportion to his share by sale or mortgage. On the other hand, he has obligations to respect the internal order of the compound, respect the neighboring right as well, and not to make any essential modifications to his unit. He is accountable for any damages he makes in the compound or unit and has to pay the costs of maintenance and management (Guilding and Ardill, 2005).

• **Timeshare in Portugal**

Law 81-355 issued in 31/12/1981 regulates timeshare in Portugal. This law provides in its first and second articles that the benefited tourist has the right of a registered usufruct at the registry office. This right is considered a real estate right to the compound and the usufruct of its furniture and facilities. It is an individual right enjoyed by one person only and for a specific week or more of the year for a period that is not more than 20 years. The buyer is given a document that specifies the unit, how to enjoy his right and the period of enjoying that right, in addition to his financial obligations concerning maintenance and how such costs are counted. The buyer has the right to sell or mortgage his unit which is to be transferred to his heirs by endorsing the document that his right is to be transferred from

the owner tourist after his death to his direct or indirect heirs (Guilding and Ardill, 2005).

According to the general rules, if the buyer fails in fulfilling his obligations, the owner of the compound has the right to prevent him from enjoying his unit and at the end he may attach his unit and sell it as a final procedure.

- **Timeshare in Greece**

The Greek legislator has made a special system regulating timeshare through law 1654 issued in 14/10/1986 (Guilding and Ardill, 2005). This system mixes the lease with the usufruct contract. The owner of the tourism compound is to give a lease for every buyer and has the right to use the unit for a specific period and for a limited number of years in return for a specific rent to be agreed upon by the two parties.

The Greek law concerning timeshare has submitted in its first article the construction of tourist compounds using timeshare to the monitoring of the Greek tourist office. In its fourth article, this law restricts the construction of these compounds to specific geographical areas according to the state's plan of tourism and real estate investment.

The law has given the buyer the right to sublease and also exempted the tenants from the costs of maintenance and management and obliged the buyer to pay for these costs. Of course the buyer will put these things into consideration when specifying the rent and will naturally add these costs to the rent. But this law has been criticized for not regulating all the aspects of timeshare as it includes only eight articles related to certain aspects, leaving the other aspects to be examined and regulated by the civil law provisions.

- **The Egyptian timeshare**

Timeshare in Egypt began in 1986 by one of the private investing tourism companies (Al Muntaza for tourism and investment). It sold the usufruct of a number of units of one of the touristic villages in the North coast (Marakia) for an annual specific period and for only 14 years. After that tourist compounds using timeshare developed. For instance, the international NR Company established many timeshare projects in the Red Sea and North and South Sinai, and Omega for Investment established projects in Hurghada, North and South Sinai in addition to the Egyptian North Coast and other few projects is Luxor and Aswan (Abualam, 1995).

Investigating the timeshare market in Egypt, it is discovered clearly that these projects did not receive the adequate success in a first class touristic country like Egypt in comparison with other countries which do not have the great touristic status enjoyed by Egypt. There are many problems that prevent timeshare from spreading in Egypt as required for adequate tourism development. There are problems such as the difficulty of convincing common people of time share, and the lack of financial and independent legislative regulations for timeshare, making its contracts subject to the general rules of the Egyptian Civil Law (Gemeei, 1997).

Investigating these general rules of the Egyptian Civil Law, and the relevant regulations and provisions, one finds that they are not suitable for timeshare which is a relatively modern system. To be able to circulate and spread the timeshare ownerships in order to boost tourism development, an independent legislative regulation for timeshare has to be established in Egypt to specify its nature, identity, the suitable ways of financing it, the manner of contracting and the ways of usufruct, in addition to organize the issues of maintenance and management costs and finally to settle to whom these projects will return if the buyer wants to cede them or if all the buyers wanted to divide the project.

Under the absence of a legislative regulating timeshare contract, nothing is there to refer to except the tourism minister's decision regarding timeshare. This administrative decision lacks the legal stature and the adequate and precise wording (Salama, 2006). However, it has to be examined carefully as it provides the sole regulation that is applied to the timeshare contracts in Egypt.

The ministerial decision no. 96 of 1996 considers in its first article the institutions using timeshare as hotel ones, and it is not allowed to build, manage or benefit from such hotel institutions except with a license from the ministry of tourism. The owner of the project has to present certain documents to be able to have a license from the bodies responsible for the timeshare details such as giving the land, insurance and investment contracts, in addition to the internal regulation of the project, the management contracts with the hotel management company and the buyers' real estate contracts.

The decision approves in its third article that the timeshare contracts are to be three copies, one copy is to be kept at the ministry of tourism.

The contract will be in effect from the date of giving the unit to the buyer provided that the period of the contract is not less than 20 years to be

counted from the date of handing the unit over to the buyer “the usufructuary” if it is a long term lease.

For the protection of the buyer from timeshare companies, the ministerial decision provides in its sixth article that the return of the annual use and the replacement and restoring operations are to be specified and known by way of an approved feasibility study from the ministry of tourism at the time of contracting. According to the above-mentioned article it is not allowed for the timeshare companies to ask the buyers when using their units for any costs more than the prices specified by the ministry of tourism. In addition they are not allowed to refrain from giving the services in full for the buyer with the same price (The ministerial decision no. 96, 1996).

In accordance with the ministry of tourism monitoring of timeshare contracts, the independent ministerial decision provides in its eighth article that a register has to be kept and approved by the ministry of tourism. This register has a detailed statement of timeshare clients including the client address, job, tel. number, the number of the contract, the date of the period specified for him and the number of the unit that is the subject of the contract. The deputies of the ministry of tourism have the right to see all the data of this book note or register in any time (The ministerial decision no. 96, 1996).

According to the nineteenth article of the same decision, the buyer has to give the ministry of tourism a copy of the concluded contracts immediately along with approving their content and data in the register prepared for this at the concerned administration in the ministry. The buyer’s copy is to be stamped with the stamp of the above-mentioned register. According to the 19th article, the buyer has to inform the ministry of tourism of any amendments occurring to the contract or its data by virtue of a registered letter (The ministerial decision no. 96, 1996).

In its eighth article, the above-mentioned decision prevents the benefited buyer from subleasing or ceding the unit which is the subject of the contract to anyone else except with a written statement from the buyer before the end of the specified period for the annual use by at least two months. According to the eleventh article, it is allowed to bequeath the timeshare contract to the heirs of the buyers for spending their vacation. And this is not in compliance with the general rules of the Civil Law which provides that the usufruct is a temporary right that expires with the expiration of its period or after the buyer’s death (The ministerial decision no. 96, 1996).

It is crystal clear the above-mentioned ministerial decision is far from the legal stature and the right wording because it does not approve any punitive measures against the timeshare companies if they fail to fulfill their obligations mentioned in the decision, leaving the matter to the general rules. It does not also approve proper protective measures for the buyer of the timeshare in comparison with other legislations, which makes it necessary to issue a special legislation for timeshare with specific and accurate provisions. Such a legislation that provides the buyer with an effective protection will make the timeshare system spread largely in Egypt, promote the tourism development and contribute to solving the problems of real estate stagnancy especially regarding the tourist real estate institutions (Salama, 2006).

Comparing various timeshares targeting the best for Egypt

Constituting a competent legislation for timeshare in Egypt is not a difficult task, for the Egyptian legislator can benefit from the experiences of the other countries which have various timeshare systems regulated by various legislations. What is needed is to study, compare and contrast the various world timeshare systems in order to reach the best model that suits the Egyptian state of affairs.

Analyzing the above-mentioned timeshare systems through a comparative lens, one finds that almost all the mentioned systems agree on the general definition of timeshare as a system of common ownership through which each part-owner tourist has the right to use the tourism unit for a specific period of the year. On the other hand, these systems differ in the details of ownership, the legal framework which govern the relationship between the partners, their rights and their obligations and the amount of protection given to the buyer. In this context, each system has its own advantages.

The French system, for instance, gives the part-owner the right to rent or lend his unit during the time of the year allotted to him. It also gives him the right to dispose of his shares in the company by sale or transferring. Its main advantage, especially under the French law no. 47/94 issued in 8/7/1998, is the great protection it gives to the buyers in timeshare contracts, organizing information and propaganda, purifying the real estate market of the irresponsible companies and granting buyers the right to cancel the contract individually, and even giving him a cooling off period during which he has the right to cancel the contract without giving any reason and at no cost.

The main advantage of the American timeshare system is its flexibility and adaptability to the requirements of the market. Thus, there are numerous American timeshare systems that versify according to the versified needs of the investors and the buyers.

The English timeshare combines the advantages of both the French and the American systems. Like the French timeshare, the English system offers high consumer protection for the buyer. It adopts, through the Timeshare Developers Association, a trend to protect consumers from trickery and misleading practiced by some of the companies working in this field, prohibiting inaccurate and misleading propaganda that urge the citizens to join timeshare programs under urgency and confusion. It also provides that the companies working in this domain are obliged to give the buyers a cooling off period of five days if they want to change their minds and cancel the contract at no cost or compensation. The English timeshare also specifies clear-cut procedures to settle disputes arising between the buyers and the timeshare owners. Like the American timeshare, the English system offers several choices to suit the various needs of the investors and buyers through four different forms of timeshare.

Of the other world timeshare systems, the Swiss system is almost the most advanced, offering a model to be followed especially in the balance it sets between the buyer's rights, on the one hand, which include using the unit, investing it, exchanging it or even disposing of it in proportion to his share by sale or mortgage, and his obligations, on the other hand, to respect the internal order of the compound, the neighboring right as well, and be accountable for any damages he causes to the compound or unit. The flexible nature of the Swiss system is reflected in the numerous legislative wordings regarding timeshare that have been drafted to cope up with the wide spreading of the system in Switzerland.

For Egypt, a legislation that benefits from the advantages of the Anglo-Saxon, the French and the Swiss timeshare system will be ideal to suit the needs of the Egyptian Market.

Conclusion and Recommendations

Timeshare has undoubtedly become an important tourism component that needs to be fully perceived along with its legal regulations to reach its desired outcomes. Other world legislations have preceded the Egyptian legislator in regulating timeshare contracts and clarifying their provisions. There is no specific law regulating timeshare in Egypt apart from the ministerial decision no. 96 of the year 1996 that has been issued to be

applied on timeshare contracts. Accordingly, the interference of the Egyptian legislator is required to regulate timeshare contracts in Egypt in a way that makes benefit from the world legislative experiences in the domain of timeshare.

The main target of this study is the Egyptian legislator who is called upon to perform his duty for establishing an effective legal protection suitable for the usufructuary of timeshare contracts, instead of leaving the matter to the general civil law rules and the above-mentioned ministerial decision. This will help spread timeshare, making it acceptable and trustable in the eyes of the public, and thus contribute to solving the problems of real estate stagnancy in the tourism market

Concerning the drafting of the timeshare contract, it is necessary for the contract to include specific data defining the project, its legal homeland and the company's headquarter along with making clear the legal capacity of the institution which is the subject of the contract provided that the contract specifies the legal nature of the right acquired by the buyer by virtue of the contract.

Many of timeshare contracts do not specify the place of contracting accurately and consequently make it difficult to specify the obligations incurred upon the two parties of the contract and the impacts of that contracting.

In case the units, which are the subject of the contract, are still under construction, the owner company has to mention this in the contract in clear terms, specifying the period in which the construction works will be completed. It is obliged also to mention the data regarding the contractor who is contracted with. The contract is to include an obligation to the owner company to issue an insurance policy on its responsibility to give the units to the buyers at the specified time along with its responsibility for refunding the buyers in case it is difficult to complete the construction works.

It is also recommended that the propaganda and advertising of timeshare projects have to include all the sufficient data about the owner company and the license issued to it to practice its activity provided that the used advertising means is considered as documents that represent essential parts of the contracts. The suggested legislation has to prohibit timeshare from making any propaganda by calling on people or to interest the buyers to attend the meetings by way of enticing them with free presents whatever their kinds are.

Timeshare contract has to be written in Arabic or any language specified by the buyer. It shall be in effect from the date of depositing it in a specific register at the ministry of tourism provided that the contract includes the buyer's signature and preceded by some phrases written by him that signify that he read the documents appended to the contract and understood its items in order to make the buyer pay attention to the date and obligations mentioned in the contract.

With respect to the obligations of the institution or the owner company, the contract has to provide that the institution is obliged to give the unit which is the subject of the contract to the buyer at the specified time in a manner that is fit for use for the purpose that the unit has been prepared for. The institution has to provide the buyer with all the services suitable for the nature of timeshare contract according to a financial return to be specified annually.

For the interest of the buyer and for the contractual balance between the two parties of the contract, the suggested legislation of organizing timeshare contracts has to secure the right of the buyer to cancel the contract by his free will during a specific period to be counted from the date of contracting, for example 15 days provided that the buyer does not pay any costs for using his right to cancel the contract. This cancellation is to be through a registered letter to be sent to the institution and in this case the company has to refund the buyer during a period of not more than 15 days to be counted from the date of the arrival of the letter.

It is necessary to subject the timeshare projects to an organized and accurate management; this will not happen except through the interference of the legislator to specify a system of management that includes the representation of the buyers without stipulating anyone's presence at the meetings of the general association. But the legislation has to allow them to deputize a representative for them to be present at the meetings of the general association or the owners' union, or to vote on decisions by correspondence provided that the agenda reach the buyer before at least 10 days from the convening of the meeting.

A regulation for penalties has to be approved to provide protection for the buyer in facing the owner company provided that the regulation includes that timeshare contract is void absolutely if the institution is not licensed for practicing its activity, and also the arbitrary stipulations that exempt or lessen the responsibility of the owner company in facing the buyer, whether this responsibility is approved according to the suggested legislation of regulating timeshare or any other legislation. The suggested

legislation has also to impose penalties on the owner companies in case they fail to fulfill their obligations or one of them. These penalties are represented in imposing severe fines that amount to canceling their licenses.

It is proper to approve the arbitration as a system for settling disputes between the institutions and the buyers of timeshare provided that the wording of the suggested legislation is as follows: “any dispute arises from applying this contract or interpreting its provisions and it is difficult to settle it friendly during a period of 60 days, this dispute is to be referred to an arbitration commission. It has to be consisted of three arbitrators provided that every party chooses an arbitrator; the two arbitrators choose the third one that will be the head of the arbitration commission.

Logically the suggested timeshare legislation has to permit the bequest of the usufruct and transferring it to the buyer’s heirs in a way that all the members of his family are usufructuaries of the unit which is the subject of the contract. Consequently the usufruct will expire if all of them died or the period of the contract expired and of course without prejudice to the general rules of the civil law (article 993 of the Egyptian Civil Law) that approves that the usufruct is a temporary right that expires after the expiration of its period or the death of the buyer. This was considered an essential defect of the current timeshare in Egypt because the buyer may die after a short period of the beginning of usufruct.

It is worth mentioning that the ministerial decision no. 96 of the year 1996 has solved the question of bequeathing the timeshare contract after it permitted the transferring of the contract to the buyer’s heirs.

One of the means that encourages the spreading of timeshare is acknowledging the right of the buyer to rent or lend the unit which is the subject of the contract during his allotted time. He has also the right to dispose of it by sale or ceding it; it is possible to stipulate that the buyer has to sell his unit to the owner company provided that the company buys it with the market price.

There is no doubt that the protection of the real estate tourism market in particular and the national economy and the reputation of the tourist countries in general requires prohibiting the persons who have been convicted of immoral crimes from establishing the timeshare projects even if it is falsely or under fake names to escape from this stipulation. To deal with such a case, the French legislator, in article 15 of the law of Jan. 3 / 1967, prohibited those that have been convicted of immoral crimes from doing business in the real estate works that are under construction whether

for their account or for anyone else in order to purify the real estate domain from the weak souls who act in bad faith (Zahra, 2003).

To sum up, the success of timeshare in Egypt requires the legislative interference to regulate timeshare contracts independently in order to protect the buyers, stabilize the real estate tourism market and purify it from those who cheat and act in bad faith especially under a ministerial decision that is not fit for regulating and encouraging the domain, which leads to the continuous complaints of the buyers from the practices of the timeshare companies.

References

Abdel-kadir,N.(1998): Tourism and Hotels legislations, Dar Alnahda Alarabia, Egypt,pp.275-288.

Abualam, W. (1995): Timeshare in Egypt, Faculty of Tourism and Hotels managemet, Helwan University, Egypt, pp.11-25.

Al-Nakkas, G. (1996): Tourism Ownership Systems, The Kuiti Law magazine, Year 20 ,Juin 1996,pp.85-132.

Gemeei,H. (1997): Contracting in Time Share Contracts, Dar Alnahda Alarabia, Egypt. pp.54, 132.

Guiding .C, Ardill. A , Fredline E. , Warnken J (2005): An agency theory perspective on the owner/manager relationship in tourism-based condominiums,Tourism Management, 26 (3),pp.409-520.

Hayden, L. (2004): Timeshare Answers Guide, The Timeshare Handbook for Beginners to Experts, Secrets and tips from the net's leading timeshare broker., Available at : <http://www.alltimeshare.com>.

Kamel, S. (1991): The legal framework of Time Share system, Dar Alnhda Alarabia, Egypt,pp77-80.

Tammie, J., Lashley.C and Schreier,L.(2009): Timeshare Management: The Key Issues for Hospitality Managers,pp.14,28,full copy available at: <http://books.google.com.eg/books?id=RJzThFBh9KoC&printsec=frontcover&dq=references+:Tammie+J.+Kaufman,+Conrad+Lashley,+Lisa+Ann+Schreier&source=bl&ots=vvHTBDXuon&sig=4EK2P2G42UpYTyKPMmxRUQLQWPY&hl=en&sa=X&ei=IOE3UMrvNcfOsga9nYGABA&sqi=2&ved=0CC0Q6AEwAA>

Pierce , R. (1993): Time-Share Interests in Real Estate: A Critical Evaluation of the Regulatory Environment. Available at: <http://www.lexisnexis.com.au.ezproxy.utas.edu.au/cui/uni-login/default.htm?login.asp?uni=unitas>.

Ramadan, A. (1998): The legal protection of the submissive side in the contract Law, Dar Alnhda Alarabia, Egypt, pp.222-225.

Salama, A. (2006): Timeshare in The Specific Private international Law, The Bahrin Law magazine, 2006(6)pp.7-54.

Warnken,J. and Guilding,C. (2009): Multi-ownership of tourism accommodation complexes: A critique of types, relative merits, and challenges arising., *Tourism Management* ,Volume 30, Issue 5, October 2009,pp.615-782.

Warnken.J, Guilding .C and Cassidy.K(2008): A review of the nature and growth of multi-titled tourism accommodation complexes , *International Journal of Hospitality Management*, 27 (4),pp.574-580.

Woods, R. (2002): Opinions of their profession by sales and marketing experts in the timeshare industry. *International Journal of Hospitality Management*, 21 (3) pp.239-244.

Yvette, C (1989): Timesharing and Realty Interests Under the Martin Act: Consumer or Investor Protection? *Intenational Contract Law journal*, Law school, Tasmania University, Australia. Avialable at: <http://www.lexisnexis.com.au.ezproxy.utas.edu.au/cui/uni-login/default.htm?login.asp?uni=unitas>.

Zahra, M. (1993): Selling the buildings under construction. *Dar Alnahda Alarabia*, Egypt, pp.127-132.