

Statutory Requirements and the Front Office Manager

- Registering guests in terms of the Immigration Act
 - Accepting guest property for safekeeping
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This lecture tackles two important statutory requirements which directly affect front office: the duty to keep a Register of guests and the duty to accept guest property for safekeeping.

Registering guest in terms of the Immigration Act

The hotel keeper is required to keep a complete register of guests as prescribed by law. Under the Malta Travel and Tourism Services Act the register of guests must be accessible for inspection by a police officer (not below the rank of Inspector) or an official from the Malta Tourism Authority, duly authorised by the Chairman of the Authority.

The actual requirements are found in the Immigration Act. According to the Immigration Act -

31. (1) It shall be the duty of the keeper of any premises to which this article applies to keep a register of all persons staying at the premises who are not exempt persons.

(2) The keeper of any premises to which this article applies shall, on the arrival of any person who is not an exempt person, ascertain and enter or cause to be entered in the register kept for the purpose the name and nationality of such person, together with the date of his arrival and the address from which he last came; and on departure of any such person the keeper of the premises shall enter or cause to be entered in the register the date of departure and the destination on departure of that person.

The keeping of the register is a duty of the hotelkeeper. But *who* is a hotelkeeper? The law defines the "keeper" as

"keeper" where used in relation to a hotel means a hotel-keeper as defined in the Hotels and Catering Establishments Act, and, where used in relation to premises where accommodation is provided for reward, includes any person who for reward receives any other person to lodge in the premises either on his own behalf or as a manager or otherwise on behalf of any other person;

This definition clearly indicates that a hotel manager may be held responsible for the upkeep of the hotel register. A hotel in the Hotels and Catering Establishments Act is defined as -

"hotel" means any building, howsoever described, containing not less than ten bedrooms, in which accommodation is provided for the public by a common management and includes any number of buildings, howsoever described, which are grouped together, contain in the aggregate not less than ten bedrooms for the accommodation of the public, have in common ancillary hotel services and amenities and are operated by a common management;

It is therefore clear that the duty to keep a register of guests applies to hotels. However, should this requirement apply also for hostels and guest houses. Although in this Article the Immigration Act does not mention any other type of premises, it does however indicate, at the end of the Article that –

(8) This article applies to any premises, whether furnished or unfurnished, where lodging or sleeping accommodation is provided for reward.

Therefore anyone providing lodging or accommodation against payment must keep a register of all guests over the age of fourteen unless they are exempt persons. Exempt persons are listed in Article 3 and include:

- citizens of Malta
- persons entitled to immunities and privileges by virtue of their diplomatic status
- members of the armed forces of a country other than Malta which are present in Malta, provided such presence is part of an arrangement with the government of Malta
- persons in Malta in an advisory or consultative capacity to the Government or invited by the Government
- the dependents or spouses of any of the above persons.

The register must be kept for a period of at least two years from the date of registration. The actual registration must be signed by the person being accommodated and must include:

- the name and nationality of the individual (duly ascertained by the hotel keeper)
- the date of arrival and the origin of arrival
- the date of departure and the destination on departure

The passport number is generally recorded as an indication that the hotelkeeper has duly ascertained the identity of the guest.

What are the penalties contemplated by law?

Any hotelkeeper who contravenes Article 31 is subject to a fine (*multa*) not exceeding Lm25. The Hotel and Catering Establishment Act contemplates a further penalty of at least Lm

100 and not exceeding Lm300 should a hotelkeeper be found guilty of failing to keep a guest register.

Accepting guest property for safekeeping

The general principle at law is that the hotelkeeper is liable up to an amount not exceeding Lm 75 for any damage to or destruction or loss of property brought to the hotel by any guest (Article 1039(1) of the Civil Code). This paltry amount limits the liability of the hotelkeeper. However there are situations where the hotelkeeper's liability is not limited. It is imperative for the Front Office Manager to know that the hotel is liable to the full amount if

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- (a) the property has been deposited with the hotelkeeper
- (b) the hotelkeeper has refused to receive the deposit of property
- (c) the damage, destruction or loss to guest property has been caused (voluntarily, negligently or through lack of skill) by a the hotelkeeper or a person under his employment.

The implications of this is that the hotel can not refuse to receive guest property for safekeeping as the hotelkeeper is "bound to receive for safe custody securities, money and valuable articles except dangerous articles and such articles as having regard to the size or standard of the hotel are cumbersome or have an excessive value." (Article 1039(3)) This particular sub-article is open for interpretation as the hotelkeeper must tread carefully when refusing to accept property for safekeeping.

Can one use safety deposit boxes?

Yes. It is recommendable that hotels use safety deposit boxes. In fact the law states in Article 1039(4) that

A hotelkeeper shall have the right to require that any articles delivered to him for safe custody shall be in a fastened or sealed container.

By providing such a service, whether by means of a safe deposit box located centrally or by the provision of a secure room safe, the hotel is effectively ensuring that it is exempt from liability in the case of loss of valuable items.

Of considerable interest is the following recent case involving the Crowne Plaza and one of its guests:

Alfred Schembri in representation of Harry Calleja v Tigne Development Co Ltd pro et noe, First Hall, October 2000

In this case the plaintiff, a former guest at the Holiday Inn (since renamed Crowne Plaza), used the services of a safety deposit box offered by the hotel. He negligently left the key of the box with the hotel's front desk and later discovered that an expensive watch had gone missing from the box. The safety deposit box required two keys: one which would be kept by the hotel, the other which would be given to the guest - who in this case negligently abandoned it at the Front desk.

The Court held that a hotel could be held liable for the loss of an item placed in a safety deposit box if it was proven that such loss occurred owing to some fault on the part of the hotel or its employees.

The Civil Code provisions on deposit were not applicable in the circumstances. Harry had not "deposited" his watch with the hotel. The use of a safety box was not a deposit in the legal sense, as the item placed in the safety box was not under the control of the hotel. It remained in the material possession of its owner. The fact that the hotel kept one of the two keys necessary to open the box did not mean it assumed responsibilities as depositary.

Referring to Section 1039 of the Civil Code the court explained that the hotel was not responsible if a guest's negligent act precipitated the damages suffered.

In this case therefore the hotel had fulfilled its responsibility by providing the guest with a safety deposit box. The fact that an item had gone missing was as a direct result of the guest's negligence.

Furthermore, whilst we have seen that a hotelkeeper is required by law to provide a deposit service, he may also retain guest property where the guest fails to pay his bills:

17. A hotel-keeper and a hostel keeper shall have the right to retain any goods which a guest brings into the hotel or hostel and which are in the possession of the hotel-keeper or the hostel keeper until such guest has paid any rates lawfully charged by the hotel-keeper or hostel keeper as the case may be. (Hotels and Catering Establishments Act)

In legal jargon this is called a *jus retentionis* and is a right to retain property to the value of the unpaid bill as a way of exerting pressure on a guest to pay

the bill. According to English case law, this right does not extend to detaining the guest or the clothes which they are wearing.

Bibliography

Civil Code

Hotels and Catering Establishments Act, Chapter 197

Immigration Act, Chapter 217

Malta Travel and Tourism Services Act, Chapter 409

Poustie et al, Hospitality and Tourism Law Thomson Business Press, 1999