



ARRANGEMENT OF SECTIONS

SECTION

PART I – Preliminary

1. Short title and commencement
2. Interpretation

PART II – *Tourism Industry Licensing Committee*

3. Establishment of Tourism Industry Licensing Committee
4. Membership of Committee
5. Director of Tourism as Chairperson of Committee
6. Powers and functions of Committee
7. Tenure of office
8. Disqualification, removal, suspension, and resignation
9. Vacation of office
10. Meetings of Committee
11. Co-option of advisory personnel to Committee
12. Disclosure of interest
13. Confidentiality
14. Remuneration of Committee members

PART III – *Licensing and classification of tourist enterprises*

15. Licensing of tourist enterprises
16. Categories of tourist enterprises
17. Application for licence
18. Duration of licence
19. Amendment, transfer or duplication of licence
20. Persons in charge of tourist enterprise
21. Suspension of licence
22. Revocation of licence
23. Reservation of certain licences for citizens
24. Proof of shareholding

PART IV – *Miscellaneous provisions*

25. Safety and sanitation
26. Power to enter premises or land
27. Appeals to the Minister
28. Indemnity
29. Other offences
30. Regulations
31. Amendment of Schedule
32. Savings
33. Revocation of Cap. 42:09

SCHEDULE

An Act for licensing and regulating the tourist industry with a view to promoting its development and well-being.

Date of Assent: 24.12.2009

Date of Commencement: On Notice

ENACTED by the Parliament of Botswana.

PART I – *Preliminary*

Short title
and
commencement

1. This Act may be cited as the Tourism Act, 2009 and shall come into operation on such a date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

“Committee” means the Tourism Industry Licensing Committee established under section 3;

“Director” means any person holding the public office of Director of Tourism;

“licence” means a licence for a tourist enterprise issued under section 17;

“police officer” includes an officer of the Botswana Police Service; and

“tourist enterprise” means an enterprise or activity specified in the Schedule, undertaken by a person, or a firm, for the purpose of, or to promote or facilitate, tourism in Botswana in return for financial reward.

PART II – *Tourism Industry Licensing Committee*

Establishment
of Tourism
Licensing
Committee

3. There is hereby established a body to be known as the Tourism Industry Licensing Committee.

Membership
of Committee

4. The Committee shall consist of the Director and five other members appointed by the Minister from persons in the public and private sector, who in his or her opinion are suitable and qualified to assist in the performance of the functions of the Committee and the execution of its duties.

5. The Director shall be the chairperson of the Committee and he or she may nominate any other member of the Committee to act as chairperson on any occasion when he or she is unable to attend meetings of the Committee.

Director of
Tourism as
Chairperson
of Committee

6. (1) The Committee shall have power —

Powers and
Functions of
Committee

(a) to determine whether or not a licence should be issued for any particular tourist enterprise;

(b) to decide whether or not to cancel or suspend a licence for good cause;

(c) to determine whether or not a licence should be amended or transferred.

(2) For the purpose of licensing and monitoring tourist enterprises, the Director shall carry out, or cause to be carried out, such inspections of documents or building plans, or of buildings and sites, with or without the assistance of other officials, such as planners or health inspectors, as he or she may consider necessary, and shall make a report thereon to the Committee together with his or her recommendations.

7. Members of the Committee shall be appointed for periods of three years, but shall be eligible for re-appointment.

Tenure of
office

8. (1) No person shall be appointed as a member of the Committee or be qualified to continue to hold office who —

Disqualification,
removal,
suspension,
and
resignation

(a) has, in terms of a law in force in any country —

(i) been adjudged or otherwise declared bankrupt and has not been discharged; or

(ii) made an assignment to, arrangement or composition with his or her creditors, which has not been rescinded or set aside;

(b) has within the period of 10 years immediately preceding the date of his or her appointment, been convicted —

(i) of a criminal offence within Botswana; or

(ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence,

and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon.

(2) The Minister shall, in writing, suspend from office a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed, and whilst that member is so suspended, he or she shall not carry out any duties or be entitled to any remuneration or allowances as a member of the Committee.

(3) The Minister shall remove a member if the member —

(a) is absent without reasonable cause from three consecutive meetings of the Committee of which he or she has had notice;

(b) has been found to be physically or mentally incapable of performing his or her duties efficiently, and a medical doctor has issued a certificate to that effect;

(c) contravenes the provisions of this Act or otherwise misconducts himself or herself to the detriment of the objectives of the Committee;

- (d) has failed to comply with the provisions of section 13;
- (e) has been convicted of an offence under this Act, or under any other Act for which he or she is sentenced to imprisonment for a term of six months or more without an option of a fine.

(4) A member may resign from office by giving 30 days' notice in writing to the Minister.

(5) For the purpose of subsection (3)(c) "misconduct" includes any act done without reasonable excuse by a member which —

- (a) amounts to a failure to perform in a proper manner, any duty imposed on him or her as such;
- (b) is prejudicial to the efficient carrying out of the functions of the Committee; or
- (c) tends to bring the Committee into disrepute.

Vacation of
office

9. (1) A member of the Committee shall vacate his or her office and his or her office shall become vacant —

- (a) if he or she becomes disqualified, in terms of section 8;
- (b) upon his or her death;
- (c) upon the expiry of 30 days' notice in writing to the Minister of his or her intention to resign from office;
- (d) if he or she is summarily dismissed by the Minister on the grounds of contravening any of the provisions of this Act;
- (e) after a period of 30 days from the date that a ruling against the member is made on all appeals made in respect of a conviction of an offence under this Act, or under any other Act for which he or she is sentenced to imprisonment for a term of six months or more without an option of a fine.

(2) Where the office of a member becomes vacant before the expiry of the member's term of office, the Minister shall appoint another person to be a member in place of the member who vacates office, until the expiry of a period during which such member would have otherwise continued in office.

(3) The provisions of subsection (2) shall not apply where the remainder of the period for which the member whose office has been vacated would otherwise have held office is less than 6 months.

Meetings of
Committee

10. (1) Subject to the provisions of this Act, the Committee shall regulate its proceedings.

(2) The Committee shall meet as often as is in its opinion, necessary to conduct its business.

(3) The Director may, at any time, convene a special meeting of the Committee whenever he or she considers it desirable to do so.

(4) A quorum of the Committee shall be comprised of the Director, or the member acting as chairperson, and at least two other Committee members, and decisions of the Committee shall be made by a majority of the members present and voting, the chairperson or acting chairperson having a casting vote in the event of equality of votes.

Co-option of
advisory
personnel to
Committee

11. The Committee may co-opt any person to attend any meeting of the Committee on any matter for the purpose of assisting or advising the Committee, but such person shall have no right to vote.

12. (1) If at any Committee meeting a Committee member is aware that any matter directly or indirectly affects him or her in a private capacity, he or she shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Committee otherwise directs, take part in any consideration or discussion of, or vote on any question relating to such matter.

Disclosure of interest

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) Where a member of the Committee fails to disclose his or her interest in accordance with subsection (1), and a decision by the Committee is made benefitting such member, such decision shall be null and void.

(4) Any member of the Committee who fails to comply with the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P4 000, or to imprisonment for a term not exceeding two years, or to both.

(5) This section shall, with the necessary modifications, apply to a person who is co-opted to a Committee meeting in accordance with section 11.

13. (1) A member of the Committee and any other person assisting the Committee shall observe and preserve the confidentiality of all matters coming before the Committee, and such confidentiality shall subsist even after the termination of their terms of office or their mandates.

Confidentiality

(2) Any person to whom confidential information is revealed through working with the Committee shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(3) Any person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding 12 months, or to both, and for a second or subsequent offence to a fine not exceeding P5 000, or to imprisonment for a term not exceeding five years, or to both.

14. A member of the Committee or any person co-opted under section 11, shall be paid such remuneration, and such other allowances, incurred in connection with his or her service in the Committee, if any, as the Minister may from time to time determine.

Remuneration of Committee members

PART III — Licensing and classification of tourist enterprises

15. (1) No person shall carry on, or assist in carrying on, any tourist enterprise otherwise than under and in accordance with the terms and conditions of a licence issued under this Act:

Licensing of tourist enterprises

Provided that the provisions of this subsection shall not apply to an employee of a tourist enterprise in respect of the performance of his or her duties as such employee, or to such enterprise as the Minister may, by regulation, where he or she considers it appropriate in all the circumstances, taking into account factors such as the size of the enterprise, its location or other pertinent matters, exempt.

(2) For the purpose of section (1), the carrying on of a tourist enterprise includes negotiating, soliciting, canvassing or accepting business for an enterprise and engaging in correspondence with a potential customer of the enterprise, or with an agent of the potential customer, concerning the business of that enterprise.

(3) Any person who contravenes the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P20 000, or to imprisonment for a term not exceeding five years, or to both.

Categories of
tourist
enterprises

16. (1) The licensing of tourist enterprises shall be classified in accordance with the categories set out in the Schedule to this Act.

(2) A licence to carry on one category of a tourist enterprise shall not entitle the holder to carry on any other category of tourist enterprise.

(3) An enterprise issued with a licence under a specific category shall not use a name that denotes a different category other than that which it has been classified under, except for those that have been in existence before the coming into operation of this Act.

(4) Any person who contravenes the provisions of subsection (2) or (3) commits an offence and is liable to a fine not exceeding P5 000, or to imprisonment for a term not exceeding two years, or to both.

Application
for licence

17. (1) An application to operate a tourist enterprise shall be made to the Director in such form and accompanied by such fee as may be prescribed.

(2) Subject to subsection (3), where the application meets all the necessary requirements, the Committee shall issue a licence for the tourist enterprise in such form as may be prescribed.

(3) No licence shall be issued in respect of any tourist enterprise offering accommodation unless the premises to which an application relates meets the prescribed requirements;

Provided that the Committee may issue a provisional licence in such form as may be prescribed, pending the meeting of all requirements by that tourist enterprise.

(4) The Committee may refuse to issue a licence where the proposed application does not meet the requirements of this Act:

Provided that the Committee shall not refuse to issue a licence without first informing the applicant of the reasons for such refusal.

Duration of
licence

18. (1) Subject to section 22, a licence shall be issued for an indefinite period from its date of issue.

(2) Notwithstanding the provisions of subsection (1) —

(a) a licensed tourist enterprise shall pay the prescribed annual licence fees 30 days before the elapse of a 12 month period from the date of issue of the licence;

(b) a category I licence shall be issued for a period of 12 months.

Amendment,
transfer or
duplication of
licence

19. (1) An application for an amendment to a licence, or for a transfer of a licence from one company to another or from one establishment to another, shall be made to the Director in such forms as may be prescribed and shall be dealt with in the same manner as an original application for a licence:

Provided that whilst such application is being considered, the enterprise may continue to operate in accordance with the terms and conditions of the existing licence.

(2) The Director may transfer a licence where —

- (a) the licensee has been declared insolvent or has surrendered his or her estate for the benefit of his or her creditors, to his or her trustees;
- (b) the licensee becomes subject to any legal disability; or
- (c) the licensee has died.

(3) The Director shall —

- (a) where he or she considers that there are special circumstances that make such action necessary or desirable, refer an application for amendment to the Committee, together with his or her report on such circumstances, and his or her recommendations, and the application shall be processed in the same manner as an original application for a licence; or
- (b) not refuse to amend a licence without first informing the licensee of the reasons for such refusal.

(4) An application for a duplicate licence shall be made to the Director in such form as may be prescribed, and upon payment of the prescribed fees, the Director shall issue a duplicate licence.

(5) The Committee shall, by notice in the *Gazette*, publish the issue of licences, their amendment or transfer, and the category subject to which they are issued.

20. (1) A licensee shall not permit any person to manage, conduct or operate a tourist enterprise unless such person is fully conversant with the operations of the enterprise, and when called upon to do so, supply any information relating to the enterprise as may be required under this Act.

Persons in charge of tourist enterprise

(2) Without prejudice to the generality of subsection (1), a licensee shall not allow a person who —

- (a) is below the age of 18 years;
- (b) has, during the two years preceding the issuing of a licence, been convicted of an offence under this Act or for an offence involving dishonesty; or
- (c) does not have a residence or work permit, to manage the tourist enterprise.

(3) A licensee who contravenes any of these provisions commits an offence and is liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding two years, or to both.

21. The Committee may suspend, for such period as it considers appropriate, a licence issued under this Part, where —

Suspension of licence

- (a) the licensee has failed to conduct business in accordance with the conditions attached to the licence he or she holds;
- (b) an inspection report made in accordance with section 6 (2) has recommended its suspension.

(2) A suspension under this section shall be for such period as the Committee may determine to enable the licensee to take remedial action so as to comply with such requirements of his or her licence and the provisions of this Act, the non compliance of which form the basis of his or her licence.

Revocation
of licence

22. The Committee may revoke a licence where —

- (a) the enterprise, or the owner or person in charge, is convicted of a contravention of any of the provisions of this Act, or of any regulations made under this Act, or of any offence or act involving dishonesty;
- (b) in terms of the Botswana Tourism Organisation Act, the tourist enterprise has failed to meet the minimum grading requirements within the set time limit;
- (c) the licensee has failed to commence operation one year after the issue of the licence; or
- (d) a licensed enterprise ceases to operate for a continuous period of 12 months.

Cap. 42:10

Provided that the Committee may, before revoking a licence, carry out such investigations as may be necessary.

Reservation
of certain
licences for
citizens

23. (1) The Minister may make regulations reserving certain licences of prescribed tourist enterprises for citizens or to companies wholly owned by citizens of Botswana to ensure their active involvement and participation in areas where their involvement is otherwise deemed minimal.

(2) Regulations made in accordance with subsection (1) may further provide that only citizens of Botswana shall be entitled —

- (a) to carry on a tourist enterprise in such areas in the country as may be prescribed, or
- (b) to engage in specific categories of tourist enterprises.

Proof of
shareholding

24. A tourist enterprise licensed under section 23 shall —

- (a) maintain the shareholding in the tourist enterprise at a 100 per centum citizens; and
- (b) upon payment of such annual fees as may be prescribed or, in the case of a category I licence, upon renewal of its licence, furnish the Committee with proof that its shareholding continues to be maintained in accordance with paragraph (a).

PART IV – *Miscellaneous provisions*

Safety and
sanitation

25. (1) A licensee shall ensure that all equipment and facilities supplied by the tourist enterprise for the use of tourists shall at all times be safe, maintained in a good state of repair, kept clean and in good sanitary condition as may be prescribed.

(2) Notwithstanding the generality of subsection (1), the licensee shall ensure that —

- (a) adequate safety equipment, as may be prescribed, is provided;
- (b) vehicles used for the transport of tourists are regularly tested for roadworthiness in accordance with the requirements of the Road Traffic Act; and

Cap. 69:01

- (c) all game drives, walking safaris and other tours are issued under the Wildlife Conservation and National Parks Act, and where relevant the licensee shall ensure that tourists are made aware of any potential dangers that may be encountered around the premises of such enterprises.

(3) A licensee who contravenes or fails to comply with any of these provisions commits an offence and is liable to a fine not exceeding P5 000, or to a term of imprisonment not exceeding two years, or to both.

26. (1) It shall be lawful for the Director or any person authorised by the Director in writing, or any police officer to —

Power to enter premises or land

- (a) stop or seize any vehicle which he or she has reasonable grounds to believe to be or to contain evidence of an offence under this Act;
- (b) enter without warrant and inspect any premises on which he or she has reason to believe that a tourist enterprise is being carried on, and there examine and seize or take copies of any books, accounts or documents relating to or appearing to relate to a tourist enterprise, or which on reasonable grounds he or she suspects to contain evidence of an offence under this Act;
- (c) require any person who appears to be engaged in carrying on, or employed in, a tourist enterprise, to give such explanation or information relating to that enterprise as he or she may reasonably require in the performance of his or her duties under this Act; or
- (d) require any person who appears to be engaged in carrying on, or employed in a tourist enterprise to produce to him or her, at such time and place as he or she specifies in writing, all or any of the books, accounts and documents relating or appearing to relate to the enterprise.

(2) Premises referred to under this section shall not be entered forcibly except by or under the direction of a police officer, unless the Director or the authorised officer has reasonable cause to believe that the delay caused by complying with this requirement would defeat the purposes of this section.

(3) Where the Director, an authorised officer or a police officer seizes anything in accordance with subsection (1), the Director, authorised officer or police officer shall —

- (a) give a written record or inventory of the property to the person from whose custody the property is seized; and
- (b) if, within six months, no prosecution is brought in respect of an offence to which the thing seized relates, it shall be returned to the person from whom it was seized.

(4) Every authorised officer shall be issued with an identity card in such form as may be prescribed, and shall have such identity card in his or her possession when performing any functions under this Act.

27. (1) Any person aggrieved by any decision of the Committee in refusing to issue, transfer or amend a licence, or as to any condition attached to a licence, or as to the revocation, suspension or duplication of a licence, may appeal to the Minister within 30 days of that decision.

Appeals to the Minister

(2) Upon receipt of an appeal under subsection (1), the Minister may cause an investigation into the matter as he or she considers necessary or advisable, and may, during such investigation, permit the enterprise to operate, subject to such conditions as he or she thinks necessary.

(3) After the investigation, the Minister may dismiss the appeal or make an order to reverse, amend, uphold the decision of the Committee, or make such other decision as he or she considers proper in the circumstances.

(4) Where the Minister upholds a decision of the Committee to revoke a licence, he or she may, nevertheless, permit the enterprise a period of up to six months to wind up the enterprise.

Indemnity

28. No matter or thing done or omitted to be done by a member of the Committee or any person co-opted to the Committee shall, if the matter or thing is done bona fide in the course of the operations of the Committee, render the member or the co-opted person, personally liable to an action, claim or demand.

Other offences

29. Any person who —

- (a) knowingly publishes, or causes to be published, in any manner whatsoever, any false or misleading information in connection with or in respect of any tourist enterprise;
- (b) fraudulently gives false information to the Director or to the Committee for the purpose of obtaining a licence which he or she would not otherwise be entitled;
- (c) hinders or obstructs the Director or any officer authorised by the Committee, or refuses, without good or sufficient reason to assist the Director or any officer authorised by the Committee where this Act requires such assistance, in the performance of his or her duties, or the exercise of his or her functions under this Act; or
- (d) contravenes or fails to comply with any provision of this Act or any regulations made thereunder, with which it is his or her duty to comply and for which a penalty has not been provided for elsewhere in this Act, commits an offence and is liable to a fine not exceeding P5 000, or to imprisonment for a term not exceeding two years, or to both.

Regulations

30. (1) The Minister may make regulations prescribing anything under this Act which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to its provisions.

(2) Without prejudice to the generality of subsection (1), regulations may provide for —

- (a) the imposition of a levy on tourist enterprises, tourists or tourist product consumers to assist the training of staff for such enterprises;
- (b) setting safety and sanitation standards, as well as prescribing minimum requirements for tourist enterprises which offer accommodation;
- (c) the imposition of a moratorium on the issuance of licences;
- (d) the payment of fees for anything to be done under this Act;
- (e) an operational code of ethics for the tourism industry; and
- (f) the imposition of any fines, the payment procedures for such fines and any other matter relating to the enforcement of such fines.

31. The Minister may, by Order published in the *Gazette*, amend the Schedule to this Act.

Amendment
of Schedule

32. Notwithstanding the repeal effected under section 33 —

Savings
Cap. 42:09

(a) any subsidiary legislation made under and in accordance with the provisions of the *Tourism Act* shall continue to be of force and effect as if made under the provisions of this Act, to the extent that it is not inconsistent with such provisions, until revoked or amended.

(b) any licence issued to a tourist enterprise immediately before the commencement of this Act shall be deemed to have been issued under this Act and shall remain valid until its expiry date whereupon the licensee shall apply under this Act for a new licence.

33. The *Tourism Act* is hereby repealed.

Revocation of
Cap. 42:09

SCHEDULE

TOURIST ENTERPRISES

(Section 16 (1))

Category

- A For operations that offer accommodation facilities on a fixed site such as hotels, motels, guesthouses including corporate guesthouses, bed and breakfast, self catering apartments, backpackers tourist accommodation, campsites outside protected areas and cultural villages, including operations that offer such accommodation facilities on a timeshare basis;
- B For operations that offer accommodation facilities on a fixed site such as photographic/hunting camps and lodges, public camping sites or caravan sites that offer game drives and other outdoor activities within wildlife management areas and protected areas, including operations that offer such accommodation facilities on a timeshare basis;
- C Operations that offer off-site facilities such as mobile safaris operators that receive and transport travellers and guests within protected areas;
- D Operations that make, plan or reserve travel arrangements for clients but do not offer accommodation (whether fixed or not) or other tourist services;
- E Operations that receive and transport guests to tourist attractions including road transfer activities other than within protected areas;
- F Operations that offer motor boating activities other than within their leased land which is in protected areas, private reserves and wildlife management areas;
- G Other enterprises (excluding air charter companies and car rentals) that conduct tourism related activities e.g. hot air ballooning, cycling, bungee jumping, etc.;

- H Operations that offer *mekoro* activities;
- I Foreign based companies that offer tourism related activities in Botswana. They may transfer tourists along the main roads and utilise public facilities. Licence holders are not allowed to conduct their own safaris into the game reserves or national parks, but may hand over to a Botswana licensed operator if they wish to utilise these facilities.
- J Houseboats operations – a mobile self contained accommodation facility that operates in water bodies.

PASSED by the National Assembly this 17th day of December, 2009.

B.N. DITHAPO,
Clerk of the National Assembly.