



LAWS OF KENYA

THE TOURIST INDUSTRY LICENSING ACT

CHAPTER 381

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CHAPTER 381**TOURIST INDUSTRY LICENSING ACT****ARRANGEMENT OF SECTIONS***Section*

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SCHEDULES

CHAPTER 381

THE TOURIST INDUSTRY LICENSING ACT

Commencement: 26th January, 1968

An Act of Parliament to make provision for regulating the tourist industry with a view to promoting its well-being and development

1 of 1968,
10 of 1969,
12 of 1984,
6 of 1989,
L.N. 237/1989,
8 of 1991,
6 of 1994,
6 of 1996,
L.N. 80/1998,
2 of 2002,
L.N. 164/2002,
17 of 2006,
5 of 2007.

1. This Act may be cited as the Tourist Industry Licensing Act.

Short title.

2. In this Act, except where the context otherwise requires—

Interpretation.
10 of 1969, Sch.

“this Act” includes any regulations made under this Act;

“appointed day” means such day as the Minister may appoint, by notice in the Gazette, to be the appointed day* for the purposes of section 3 (1);

“hotel” means any premises used for the reception of guests and travellers desirous of dwelling or sleeping therein, whether or not membership of any club or society is a condition of such reception, but does not include premises so used by a members club or a charity;

“licence” means a licence to carry on a particular regulated tourist enterprise issued under section 4;

“licensee” means the holder of a licence;

“licensing officer” means the person appointed to be licensing officer under section 7;

“members club” means a club whose members for the time being are jointly entitled to its property and funds;

“raw materials” includes any trophy, or any portion thereof, within the meaning assigned thereto by the Wild Animals Protection Act and any such trophy shall be deemed to be indigenous until the contrary is proved;

Cap. 376.

* 1st March, 1968 (L.N. 27/1968).

“regulated tourist enterprise” means any of the enterprises specified in the First Schedule;

Cap. 403.

“vehicle” has the meaning assigned to it in the Traffic Act.

Licence required
for certain tourist
enterprises.

3. (1) No person shall on or after the appointed day carry on, or assist in carrying on, any regulated tourist enterprise otherwise than under and in accordance with the terms of a licence issued to him and for the time being in force:

Provided that this subsection shall not apply —

- (i) to a person employed by a licensee, other than a person whom the Minister has declared in writing to be a person whose employment in the tourist industry is undesirable; or
- (ii) where the licensee is a limited company, to a director of that company,

in respect of any act done by him in the course of his employment or directorship, as the case may be, though without prejudice to section 23 of the Penal Code.

Cap. 63.

(2) Any person who contravenes subsection (1) of this section shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and such imprisonment.

(3) In subsection (1) of this section, carrying on an enterprise includes negotiating, soliciting, canvassing or accepting business for that enterprise and engaging in correspondence with a person who may become a customer of that enterprise, or with the agent of such a person, concerning business of that enterprise.

Issues of
licences.

4. (1) Any person who desires to obtain a licence, or to obtain the variation of a licence already issued to him, shall make application to the licensing officer in the prescribed form, and shall furnish such information as the licensing officer may reasonably require.

(2) The licensing officer shall have power at his discretion to issue a licence or to refuse to issue a licence, or to vary or to refuse to vary a licence, and may in a licence impose such conditions as he thinks desirable in the interests of the tourist industry as a whole.

(3) In the exercise of his functions under this Act, the licensing officer shall be guided by the consideration of promoting the well-being and development of the tourist industry as a whole.

(4) Any person who makes or causes to be made, either orally or in writing, any declaration or representation which he knows or has reason to know to be false for the purpose of obtaining a licence or of obtaining the variation of a licence shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.

5. (1) A licensing officer shall have power—

Powers of
licensing officer

- (a) during the subsistence of a licence, to vary or cancel the licence for good cause, on the application of the licensee or of his own accord:

Provided that no licence shall be varied or cancelled without giving the licensee an opportunity to show cause why the licence should not be varied or cancelled;

- (b) to inquire into complaints against licensees.

(2) Where—

- (a) a person who at the commencement of this Act was carrying on a regulated tourist enterprise is refused a licence; or
- (b) a person who is or has been a licensee is refused a licence or has his licence cancelled,

the licensing officer may issue to that person a permit to carry on the regulated tourist enterprise in question for such period, not exceeding six months, as the licensing officer may consider necessary to enable the person to fulfil his commitments which are outstanding at the time of refusal or cancellation, and such a permit shall be as effectual as a licence during the period of its currency.

6. (1) A licence shall be valid for a period of one calendar year from the date of issue.

Provisions
concerning licences.
2 of 2002, Sch.

(2) A licence shall not be capable of being transferred from the licensee to any other person, and any person who attempts or purports to transfer a licence shall be guilty of an offence.

(3) On cancelling a licence, the licensing officer shall forthwith notify the licensee thereof, and thereupon the licensee shall forthwith surrender his licence to the licensing officer, and if without reasonable excuse he fails to do so he shall be guilty of an offence.

(4) Any person who is guilty of an offence under this section

shall be liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding two months, or to both such fine and such imprisonment.

Appointment of
licensing officer.

7. (1) The Minister may, for the purposes of this Act, by notice in the Gazette appoint one or more persons who are public officers to be licensing officers for the purposes of this Act, either for the whole of Kenya or for a specified area.

(2) The Minister may give to any licensing officer directions of a general or special character as to the exercise and performance of his powers and duties under this Act which he may consider reasonable in the interests of the proper regulation of the tourist industry (including the waiving of fees for any period where he is satisfied that it is in the interests of the well-being and development of the tourist industry) and the licensing officer shall give effect to any directions so given.

Power to enter and
inspect land or
premises.
6 of 1989, Sch.

8. (1) It shall be lawful for a licensing officer, or any person so authorized in writing by the Minister, or any police officer of or above the rank of Assistant Inspector, to—

- (a) stop or seize any vehicle or vessel which he has reasonable grounds for suspecting to be or to contain evidence of an offence under this Act;
- (b) enter without warrant and inspect any premises on which he has reason to believe that a regulated tourist enterprise is being carried on, to see whether this Act is being complied with, and—
 - (i) examine and take copies of any books, accounts and documents found in those premises relating to or appearing to relate to any regulated tourist enterprise;
 - (ii) seize any document or account found on those premises which he has reasonable grounds for suspecting to be or 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 regulated tourist enterprise on those premises to render such explanation and give such information relating to that enterprise as he may reasonably require in the performance of his duties;
- (d) require any person who appears to be engaged in carrying on a regulated tourist enterprise, by notice in writing to that person, to produce to him, at such time and place as he

specifies, all or any of the books, accounts and documents relating or appearing to relate to the enterprise.

(2) Premises shall not be entered forcibly under subsection (1) (b) except by or under the direction of a police officer of or above the rank of Assistant Inspector, unless the licensing officer or the person authorized in writing by the Minister has reasonable cause to believe that the delay occasioned in summoning such police officer would, or would tend to, defeat the purposes of this section.

(3) Any person who—

- (a) resists, hinders or obstructs any person acting in pursuance of subsection (1); or
- (b) fails to comply fully and truthfully with a requirement made of him under subsection (1),

shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

(4) At the time when anything is seized under subsection (1) of this section, the person in whose custody or possession it then is shall be given a written receipt for it.

(5) Anything seized under this section shall be brought before a court and section 121 of the Criminal Procedure Code shall apply as if it had been seized and brought before a court under that Act, but if no prosecution is brought in respect of an offence to which the seizure relates such thing shall be returned to the person from whom it was taken. Cap. 75

9. (1) There is hereby established an appeal board, which shall consist of— Appeals.

- (a) the Permanent Secretary of the Ministry, who shall be chairman; and
- (b) one person appointed by the Minister who has knowledge of the tourist industry; and
- (c) one other person appointed by the Minister.

(2) Any person whose application for a licence is refused, or whose licence is cancelled or (otherwise than at his request) varied, by a licensing officer may, within fourteen days after such refusal, cancellation or variation appeal in writing to the appeal board, whose

decision shall be final.

(3) Where a person holding a current licence appeals under this section against refusal to issue a new licence or against cancellation or variation of the current licence, the current licence shall continue in force according to its terms until the appeal is dismissed or (where an appeal against refusal to issue a licence is allowed) the licence is issued.

(4) Any person who knowingly gives orally or in writing any false information to the appeals board or to any member or officer of the board in connexion with an appeal under this section shall be guilty of an offence and liable to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding one month, or to both such fine and such imprisonment.

(5) A member of the appeal board, and a person taking part in an appeal, shall not be liable in damages in respect of anything done by him in the course of or in connexion with the appeal.

(6) In this section, a reference to a licence being refused includes a reference to a licence being issued or offered on conditions (other than conditions specified in the prescribed form of licence and conditions prescribed by regulations made under the Act) which are unacceptable to the applicant.

Power to amend First
Schedule.
12 of 1984, Sch.

10. The Minister may, by order published in the Gazette, amend the First Schedule.

Fees.
12 of 1984, Sch.

11. (1) The fees specified in the Second Schedule shall be payable for the acts and matters specified in relation thereto in that Schedule.

(2) The Minister may, by order published in the Gazette, amend the Second Schedule.

Regulations.

12. (1) The Minister may make regulations generally for the better carrying out of the provisions and purposes of this Act.

(2) Without prejudice to the generality of subsection (1); regulations under that subsection may make provision for—

(a) the forms of licences;

(b) the conditions subject to which licences shall be issued, which may include the employment as pilots or drivers of only such persons as hold the prescribed qualifications;

- (c) the manner of cancellation of licences;
- (d) the procedure for appeals and of the appeal board; and
- (e) requiring persons to supply information.

13. The provisions of this Act are in addition to and not in derogation of those of the Kenya Tourist Development Corporation Act. Provisions additional to those of Cap. 382.

FIRST SCHEDULE

REGULATED TOURIST ENTERPRISES

A licence granted under classes “A” “B” or “C” shall entitle the holder to carry out all the enterprises set out in the respective class.

CLASS “A” ENTERPRISES

Enterprises (whether carried on alone or in conjunction with some other enterprise) connected with the tourist industry in Kenya (other than the excepted enterprises), and falling within one or more of the following classes:

- A.1. Tour/Safari Operators.
- A.2. Motor Vehicles Hire.
- A.3. Local Air Charter Companies.
- A.4. Travel Agency (I.A.T.A. appointed agents).
- A.5. Water Sports.
- A.6. Balloon Operators.
- A.7. Boat Excursions.
- A.8. Game Ranches.

CLASS “B” ENTERPRISES

Enterprises (whether carried on alone or in conjunction with some other enterprise) connected with the tourist industry in Kenya (other

8 of 1991, s. 79,
6 of 1994, s. 77,
L.N. 80/1998,
17 of 2006, s. 107,
5 of 2007, s. 23.

than the excepted enterprises), and falling within one or more of the following classes:

B.1. *(Deleted by 17 of 2006, s. 107.)*

B.2. *(Deleted by 17 of 2006, s. 107.)*

B.3. Game Fishing Outfitters.

B.4. Proprietors of enterprises offering camps and camping equipment for hire.

B.5. *(Deleted by 17 of 2006, s. 107.)*

B.6. Nature Parks.

B.7. Amusement Parks.

B.8. Non-citizen tour leaders/guides.

CLASS “C” ENTERPRISES

Enterprises (whether carried on alone or in conjunction with some other enterprise) connected with the tourist industry in Kenya (other than the excepted enterprises), and falling within one or more of the following classes:

C.1. *(Deleted by 17 of 2006, s. 107.)*

C.2. Local traditional boat operators.

C.3. Professional safari photographers.

C.4. *(Deleted by 17 of 2006, s. 107.)*

C.5. *(Deleted by 17 of 2006, s. 107.)*

C.6. Private zoos.

C.7. *(Deleted by 17 of 2006, s. 107.)*

C.8. Citizen tour leaders/guides.

EXCEPTED ENTERPRISES

Enterprise being either: —

- (a) An undertaking operated by the Government or the Community; or
- (b) an undertaking consisting of a taxi-cab within the meaning of the Traffic Act, plying for hire within the area of jurisdiction of the Local Authority under whose by-laws it is registered.

Cap. 403.

SECOND SCHEDULE

8 of 1991, s. 79,
6 of 1994, s. 77,
L.N. 80/1998,
L.N. 164/2002.

FEES*KSh.*

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|---|-----------|
| 1. On the grant of a licence in respect of a class "A" regulated tourist enterprise the licensee shall pay a fee of | 8,000 |
| 2. On the grant of a licence in respect of a class "B" regulated tourist enterprise the licensee shall pay a fee of | 6,000 |
| 3. On the grant of a licence in respect of a class "C" regulated tourist enterprise the licensee shall pay a fee of | 2,000 |
| 4. On the grant of a licence in respect of a class "A (1, 2, 3, 7) and B (1, 3, 5)" regulated tourist enterprises the licensee shall pay for a tourist vehicle sticker a fee of | 200 |
| 5. On the grant of a temporary licence in respect of overland vehicles with foreign registration numbers the licensee shall pay a fee of | US\$ 300. |

In this Schedule references to class "A" regulated tourist enterprises, class "B" regulated tourist enterprises and class "C" regulated tourist enterprises are to the classes of these names described in the First Schedule.