

THE TOURISM (AMENDMENT) ACT 2005

Act No. 10 of 2005

I assent

SIR ANEROOD JUGNAUTH

President of the Republic

7th April 2005

ARRANGEMENT OF SECTIONS

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AN ACT

**To give the Tourism Authority the power to regulate the licensing of the use of
pleasure craft**

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the **Tourism (Amendment) Act 2005**.

2. Interpretation

In this Act -

“principal Act” means the Tourism Act 2004.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended -

- (a) by deleting the definition of “authorised officer” and replacing it by the following -

“authorised officer” means an employee of the Authority authorised by the Director or a public officer authorised by the Permanent Secretary under section 41;

- (b) by deleting the definition of “licence” and replacing it by the following definition –

“licence” –

- (a) means a licence issued under this Act;
- (b) in relation to Part IV, means a licence to carry out or operate a tourist enterprise under section 25;
- (c) in relation to Part IVA, means –
 - (i) a licence in respect of a pleasure craft under section (36D);
 - (ii) a skipper's or a boatman's licence issued under section (36K).
- (c) in the definition of "tourist enterprise" by deleting the word "Schedule" and replacing it by the words "Second Schedule";
- (d) by inserting the following definitions in the appropriate alphabetical order –

"approved surveyor" means a person who holds a Master Class I Certificate of Competency recognised by the International Maritime Organisation, or an alternative qualification acceptable to the Authority;

"base of operation" means the place from which the holder of a pleasure craft licence is permitted to use his pleasure craft for a commercial purpose;

"boatman" means the assistant to the skipper;

"coast guard station" means a Coast Guard Shore Establishment or a Coast Guard Station set up under the National Coast Guard Act;

"equipment" means the equipment specified in the First Schedule;

“National Coast Guard” means the National Coast Guard established under the National Coast Guard Act;

“pleasure craft” –

- (a) means a vessel used for fishing as a sport, for watersports, or pleasure purposes generally; and
- (b) includes a recreational platform placed either in or beyond the lagoon; but
- (c) does not include a pedal boat, canoe, kayak, surfboard or a non-motorised rubber inflatable boat;

“survey” means a survey by an approved surveyor;

4. Section 4 of principal Act amended

Section 4 of the principal Act is amended in subsection (2) by adding immediately after paragraph (g) the following new paragraphs –

- (h) advise the Minister on all matters of general policy relating to the use of pleasure craft;
- (i) enquire into, and report to the Minister on, any specific matter relating to the use of pleasure craft as may be referred to it.

5. Part IV of principal Act amended

Part IV of the principal Act is amended in the heading, by adding immediately after the word “LICENCES” the words “FOR TOURIST ENTERPRISES”.

6. New Part IVA added to principal Act

The principal Act is amended by inserting immediately after Part IV, the following new Part –

PART IVA – LICENCES FOR PLEASURE CRAFT

36A. Restriction on use of pleasure craft

A pleasure craft shall not be used for commercial or private purposes unless -

- (a) a valid licence has been issued in respect of the pleasure craft;
- (b) the pleasure craft is fitted or provided with such items of equipment, in such number and according to such specifications, as may be specified in the licence; and
- (c) there is in force, in relation to the use of the pleasure craft, a policy of insurance issued by an insurer registered under the Insurance Act and insuring such person as may be specified in the policy of insurance in respect of any liability which may be incurred by the holder of the pleasure craft licence by reason of the death of, or bodily injury to, any person, or damage to any property, arising out of the use of the pleasure craft.

36B. Application for issue and renewal of pleasure craft licence

- (1) Every person who wishes to obtain or renew a licence for the use of a pleasure craft shall make a written application to the Authority in such form and manner as may be approved by it.
- (2) Every applicant shall provide the Authority with such additional information as it may require to determine the application.

- (3) The Authority shall, on receipt of an application under subsection (1), order a survey of the pleasure craft to be effected by an approved surveyor.

36C. Report of survey

- (1) Where an approved surveyor has been requested by the Authority to carry out a survey, he shall submit a report of the survey to the Authority within 7 days of the request.
- (2) The report referred to in subsection (1), shall include information relating to –
 - (a) the general condition and seaworthiness of the pleasure craft;
 - (b) any item of equipment found on the pleasure craft and the condition of every such item of equipment;
 - (c) any additional item of equipment needed on the pleasure craft;
 - (d) the maximum number of persons that the pleasure craft may carry;
 - (e) the general condition and efficiency of the engine and of any alternative propelling device;
 - (f) such other matters as the National Coast Guard or the approved surveyor thinks fit to report upon.

36D. Issue and renewal of pleasure craft licence

- (1) The Authority may, on receipt of an application under section 36B, issue a pleasure craft licence to the applicant authorising him to use the pleasure craft for private or commercial purposes –
 - (a) where it is in presence of a favourable survey report;
 - (b) upon payment of the prescribed fee by the applicant; and
 - (c) on such terms and conditions as the Authority deems appropriate.
- (2) Where the Authority considers that an applicant continues to meet the requirements for the issue of a licence, it shall renew such licence.
- (3) Any terms, conditions or limitations attached to a licence under subsection (1), shall be set out in the licence.

36E. Restriction on number of pleasure craft licences

Where the Minister has reasonable grounds to believe that it is necessary in the public interest to restrict the number of pleasure craft of any type that may be used in any particular area or base of operation, he may make an order limiting the number of licences that may be issued for that area or base of operation.

36F. Markings

- (1) Every licensed pleasure craft shall be marked permanently and in a conspicuous manner on each bow, with –
 - (a) in respect of a pleasure craft to be used for private purposes, the letters “PPC” followed by the number allotted to it;

- (b) in respect of a pleasure craft to be used for commercial purposes, the letters “PC” followed by the number allotted to it;
 - (c) the maximum number of passengers it is authorised to carry;
 - (d) a load line below which the pleasure craft shall not be loaded.
- (2) The markings required under subsection (1) shall be –
- (a) in respect of a pleasure craft to be used for private purposes, in white on a black background;
 - (b) in respect of a pleasure craft to be used for commercial purposes, in black on yellow background; and
 - (c) in letters and figures of a height of not less than 20 centimetres.

36G. Register of pleasure craft

- (1) The Authority shall cause to be compiled and maintain a register showing in respect of each licence issued for a pleasure craft such particulars as are specified in the Third Schedule.
- (2) The register shall at all reasonable times be available for inspection by member of the public.

36H. Suspension and revocation of pleasure craft licence.

- (1) The Authority may, by written notice, suspend or revoke a licence issued in respect of a pleasure craft -
 - (a) on receipt of an unfavourable report following a survey; or
 - (b) where the owner or licensee, or any person in charge of the pleasure craft, has been convicted of an offence under this Act.
- (2) Subject to subsection (3), the Authority may at any time revoke or refuse to renew a licence where he is satisfied that -
 - (a) a condition attached to the licence has not been complied with; or
 - (b) the licence has been obtained by fraud or misrepresentation.
- (3) Before revoking or refusing to renew a licence under subsection (2), the Authority shall, by notice in writing, require, within such reasonable time as it deems fit, the licensee to show cause why his licence must not be revoked or renewed.

36J. Transfer of ownership

Any change of ownership of a pleasure craft shall, within 15 days, be notified to the appropriate authority by a joint letter signed by the previous owner and the new owner and sent by registered post together with a copy of the duly registered deed of sale.

36K. Skipper's or boatman's licence

- (1) No person shall act as a skipper or a boatman unless he holds a valid skipper's or boatman's licence, as the case may be.

- (2) Any person who wishes to obtain or renew his boatman's or skipper's licence, as the case may be, shall make a written application to the Authority in such form and manner as may be approved by it.
- (3) Upon receipt of an application under subsection (2), the appropriate authority shall forthwith refer the application to the Competency Test Panel.
- (4) Where the Competency Test Panel is satisfied that the applicant -
 - (a) has the necessary knowledge and competence to act as a skipper or boatman;
 - (b) has attained the age of 18 years; and
 - (c) is a fit and proper person,it shall recommend to the Authority that the applicant be issued with a skipper's or a boatman's licence, as the case may be.
- (5) Upon receipt of a recommendation under subsection (4), the Authority shall issue the skipper's or boatman's licence, as the case may be, made such terms and conditions as the Authority thinks fit, and on payment of the prescribed fee for such licence.

36L. Competency Test Panel

- (1) The Authority shall establish a Competency Test Panel which shall consist of -

- (a) the Commandant of the National Coast Guard or his representative who shall act as Chairperson;
 - (b) a representative of the Ministry responsible for the subject of tourism;
 - (c) three other members with at least one having wide experience as skipper;
- (2) The quorum of the panel referred to in subsection (1) shall constitute of 3 members.
- (3) The Competency Test Panel shall conduct competency tests as it considers appropriate, to assess whether any applicant for a skipper's or boatman's licence is competent to act as a skipper or a boatman, as the case may be.
- (4) The Competency Test Panel may, for the purpose of a competency test under subsection (3), issue a provisional authorisation to an applicant for a licence authorising that person to use such type of pleasure craft on such conditions and for such period of time, as may be specified in the authorisation.

36M. Duration of boatman, skipper and pleasure craft licence

- (1) A licence issued under this Part, shall, unless, previously suspended or revoked, be continued to be in force until 30 June next following the date when it was issued or last renewed, but shall, subject to subsection (2), be renewed for yearly periods ending 30 June.
- (2) Subject to subsection (1), a person who fails to renew his licence within 15 days before the expiry of his licence shall, on renewal,

be liable to a surcharge equivalent to 10 per cent of the fee payable in respect of such licence.

- (3) Where a person fails to renew a licence within 15 days after the expiry of the licence, the licence shall lapse.

36N. Obligations on skipper and boatman

- (1) Every skipper and boatman of a pleasure craft shall, at all times whilst being in charge of a pleasure craft, carry his skipper's licence or boatman's licence, as the case may be, on him.
- (2) The skipper shall, in addition to his skipper's licence, carry at all times the pleasure craft licence whilst being charge of it.

36P. Unlicensed skipper and boatman

No person shall employ, cause or permit a person, who is not licensed under this Act to act as a skipper or a boatman.

36Q. Pleasure craft exceeding 5 metres in length

Every person who acts as a skipper in respect of a pleasure craft which exceeds 5 metres in length, shall be assisted by a licensed boatman.

36R. Prohibition

A member of the National Coast Guard may prohibit the use of a pleasure craft where in his opinion, the journey which is being or to be undertaken by the pleasure craft is unsafe having regard to the prevailing climatic conditions.

36S. Report of accident

Where a pleasure craft is involved in an accident, the skipper or the owner of the pleasure craft shall, within 24 hours of the accident, report the matter to the nearest Coast Guard Station.

36T. Right of entry and inspection

(1) Any –

- (a) public officer authorised in writing by the Permanent Secretary; or the Director;
- (b) police officer; or
- (c) member of the National Coast Guard,

may, for the purposes of this Act, inspect any pleasure craft and request the production of –

- (i) the licence issued in respect of the pleasure craft;
- (ii) the skipper's or boatman's licence from any person who purports to act as a skipper or boatman, as the case may be.

(2) An officer specified in subsection (1) may take such appropriate action as may be necessary to prevent the use of a pleasure craft where –

- (a) in his opinion, such use constitutes a danger to any person on the pleasure craft or to any other person;
- (b) the pleasure craft is not licensed; or

- (c) the person who purports to act as a skipper or boatman does not hold a valid skipper's or boatman's licence, as the case may be, in respect of the pleasure craft.

7. Section 26 of principal Act repealed and replaced

Section 26 of the principal Act is repealed and replaced by the following -

26. Duration of licence

- (1) A licence issued, shall, unless, previously suspended or revoked, be continued to be in force until 30 June next following the date when it was issued or last renewed, but shall, subject to subsection (2), be renewed for yearly periods ending 30 June.
- (2) Subject to subsection (1), a person who fails to renew his licence within 15 days before the expiry of his licence shall, on renewal, be liable to a surcharge equivalent to 10 per cent of the fee payable in respect of such licence.
- (3) Where a person fails to renew a licence within 90 days after the expiry of the licence, the licence shall lapse

8. Sections 32 and 33 of principal Act repealed

Sections 32 and 33 of the principal Act are repealed.

9. New sections 37A and 37B added to principal Act

The principal Act is amended by adding immediately after section 37, the following sections –

37A. Duplicate of licence

- (1) Where a licence is lost, defaced or rendered illegible, the Authority shall issue a duplicate licence on payment of the prescribed fee.
- (2) Where a licence which has been lost is subsequently found, the licensee shall forthwith surrender any duplicate licence issued under subsection (1) to the Authority.
- (3) Any person who knowingly retains, or has in his possession, an original licence and its duplicate shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding one year.

37B. Forged licence

Any person who –

- (a) forges any licence;
- (b) is in possession of any forged licence;
- (c) affixes or displays a forged licence,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 25,000 rupees and to imprisonment for a term not exceeding 2 years

10. Section 39 of principal Act amended

Section 39 of the principal Act is amended by adding -

- (a) the words “café, cafetariat” immediately after the words “B&B – Bed and Breakfast”
- (b) the words “car rental” immediately after the words “café”;
- (c) the word “ecotourism” immediately after the word “cruise”;

- (d) the words “helmet diving” immediately after the word “guide”;
- (e) the words “pensionnat, pension de famille, pub” immediately after the word “motel”;
- (f) the word “rest”, table d’hôte” immediately after the word “resort”;

10A. Section 41 of principal Act amended

Section 41 of the principal Act is amended by deleting subsection (1) and replacing it by the following subsection –

- (1) The Permanent Secretary or the Director may give authority in writing to an authorized officer to perform the duties specified in subsection (2).

11. Section 42 of principal Act amended

Section 42 of the principal Act is amended –

- (a) by numbering the existing provision as subsection (1);
- (b) by adding immediately after subsection (1) as numbered, the following subsections -
 - (2) An officer specified in section 36T may, on reasonable suspicion that a pleasure craft has been or is being used in the commission of an offence under section 49(5)(a) or (b), seize the pleasure craft together with any accessory or equipment found on it and notify the owner forthwith and in any case not later than 15 days from the date of seizure.
 - (3) A pleasure craft, accessory or equipment seized under subsection (2) shall be returned to its owner where –

- (a) the officer is satisfied that the pleasure craft was not used in the commission of an offence; and
 - (b) the owner claims the pleasure craft within 30 days of the date of notification under subsection (2).
- (4) Where the pleasure craft is not claimed in accordance with subsection (3), it may be disposed of in such manner as the National Coast Guard thinks fit.

12. Section 49 of principal Act amended

Section 49 of the principal Act is amended by deleting subsection (4) and replacing it by the following subsections –

- (4) Any person who –
- (a) fails to submit a pleasure craft to a survey where so required under sections 36B;
 - (b) contravenes a prohibition imposed under sections 36P and 36R;
 - (c) being the owner, licensee or person in charge of a pleasure craft, permits the pleasure craft to be used –
 - (i) in contravention of this Act or in breach of any condition of the licence issued in respect of the pleasure craft; or
 - (ii) where the pleasure craft is unseaworthy;
 - (d) obstructs an officer specified in section 36T in the exercise of his functions or fails to comply with a request made by that officer under that section; or

(e) contravenes this Act or any regulations made under this Act,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5,000 rupees and to imprisonment for a term not exceeding 2 years.

(5) Any person who uses a pleasure craft –

(a) recklessly or imprudently;

(b) at a speed or in any manner likely to cause injury to any person or damage to any property;

(c) in such a manner as to create a nuisance;

(d) without the pleasure craft licence on board;

(e) without his skipper's licence in his possession;

(f) without being assisted by a boatman,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5,000 rupees and to imprisonment for a term not exceeding 2 years.

(6) (a) Any skipper or boatman who uses a pleasure craft whilst being under the influence of intoxicating liquor or dangerous drugs to such an extent as to be incapable of having proper control of the pleasure craft, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5,000 rupees and to imprisonment for a term not exceeding 6 months.

- (b) On a second or subsequent conviction under paragraph (a), the person shall be liable to imprisonment for a term of not less than 3 months but not more than 12 months.
- (7) Any person who commits an offence under this Act shall, on conviction, be liable, where no special penalty is provided, to a fine not exceeding 25,000 rupees and to imprisonment for a term not exceeding 2 years.
- (8) The Court before which a person is convicted of an offence may, in addition to any other penalty that it may impose, order the forfeiture of any pleasure craft used in the commission of an offence under this Act or any regulations made under it.

13. Section 53 of principal Act amended

Section 53 of the principal Act is amended in subsection (2) by deleting paragraphs (e) and (f) and replacing them by the following paragraphs –

- (e) the operations of tour operators and travel agents;
- (f) the prohibition of the use of pleasure craft within such areas as may be prescribed;
- (g) the regulation of the speed of the pleasure craft within any area;
- (h) any type of pleasure craft which the Minister considers may constitute a danger to life at sea; and
- (i) the amendment of the Schedule.

14. Section 54 of principal Act amended

Section 54 of the principal Act is amended by adding immediately after subsection (3), the following new subsections -

- (4) Notwithstanding section 36D, any licence issued under the Pleasure Crafts Act which has not expired at the commencement of this Act shall remain valid after the commencement of this Act, on the same conditions as if this Act had not come into operation.
- (5) All proceedings, judicial or otherwise, commenced before and pending immediately before the commencement of this Act under the Pleasure Crafts Act shall be deemed to have commenced and may be continued under the Act.

15. Schedule to principal Act amended

The Schedule to the principal Act is amended by deleting the title "SCHEDULE" and replacing it by "SECOND SCHEDULE".

16. New Schedule added to principal Act

The principal Act is amended by adding the Schedule to this Act.

17. Repeal

The Pleasure Crafts Act is repealed.

Passed by the National Assembly on the twenty second day of March two thousand and five.

Ram Ranjit Dowlutta
Clerk of the National Assembly

FIRST SCHEDULE

(section 2)

EQUIPMENT

Anchor and mooring chains or ropes

Compass

First aid kit and manual

Life jackets

Lifeboats, inflatable lifecrafts and buoyant apparatus

Lifebuoys

Portable fire extinguisher capable of discharging froth or other substance

Red handflares stored in a suitable water-tight container

System for the discharge of bilge-water

VHF Marine radio transmitter/receiver

SCHEDULE

(Section 16)

THIRD SCHEDULE

(Section 36G)

Particulars of pleasure craft to be kept in register

- (a) its type
- (b) any name given to it
- (c) the date of construction
- (d) the number allotted to it
- (e) the name of the owner
- (f) the base of operation
- (g) the method by which the pleasure craft is propelled including details of engine, if any
- (h) details of equipment on board
- (i) other relevant details comprised in respect of a survey.

