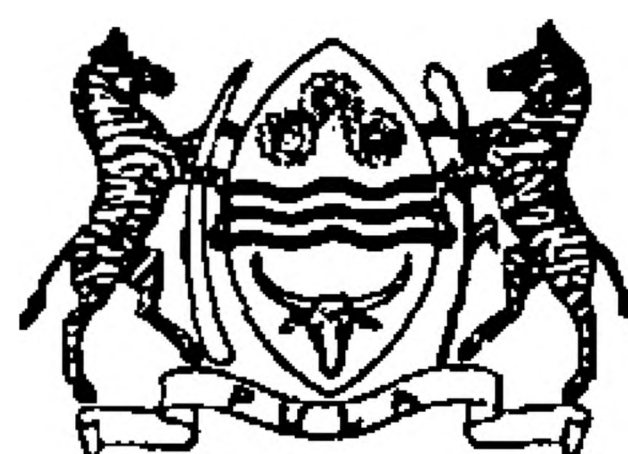


TOURISM ACT, 1992

No. 22



of 1992

ARRANGEMENT OF SECTIONS

SECTION

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

Date of Assent: 8th September, 1992.

Date of Commencement: On Notice.

ENACTED by the Parliament of Botswana

1. This Act may be cited as the Tourism Act, 1992, and shall come into operation on such date as the Minister may by notice published in the Gazette appoint. Short title and commencement
2. In this Act, unless the context otherwise requires — Interpretation
 - “grade” in relation to a tourist enterprise, means to assign thereto a symbol in accordance with criteria prescribed by the Minister for the grading and classification of tourist enterprises, and “regrade” shall have a corresponding meaning;
 - “tourist enterprise” means an enterprise or activity specified in the First 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.
3. (1) There shall be appointed from the public service a Director of Tourism and such other officers as shall be necessary for the proper Appointment of officers

administration of this Act, and to promote and secure the purposes thereof.

(2) The Director shall, subject to the directions of the Minister, which directions may be in general terms or in respect of a specified case or specified cases, perform the duties and exercise the powers conferred upon him by this Act, and may, in an appropriate case or in appropriate cases, delegate such duties or powers to another officer or other officers appointed under subsection (1).

(3) A notification in the Gazette that a person has been appointed to any office referred to in subsection (1), or of a delegation under subsection (2), shall be conclusive evidence of such appointment or delegation.

Licensing of
tourist
enterprises

4. (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:

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

(2) For the purpose of subsection (1), the carrying on of a tourist 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 an agent of such person, concerning the business of that enterprise.

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine of P20 000 and to imprisonment for 2 years.

Categories
of tourist
enterprises

5. (1) Tourist enterprises shall be classified in accordance with the categories specified and described in relation thereto in the First Schedule to this Act.

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

Establishment
of tourist
Industry
Licensing
Board

6. (1) There is hereby established a regulatory body to be known as the Tourist Industry Licensing Board, hereinafter referred to as "the Board".

(2) The composition of the Board, the terms of service of its members, its functions and powers and any other matters relating to the Board shall be as provided in the Second Schedule to this Act.

Issue of
licenses etc.

7. (1) Any person wishing to carry on a tourist enterprise shall apply to the Director in Form A in the Third Schedule to this Act, and shall supply such additional information as the Director may reasonably require.

(2) Bearing in mind the interests of the tourist industry as a whole, and after satisfying himself as to the quality of accommodation or service

offered by the applicant, and the applicant's ability to provide and maintain such quality of accommodation and service, the Director shall forward the application to the Board together with his recommendations as to the issue of a licence and as to the grading of the enterprise.

(3) If the Board, after hearing such evidence or making such further enquiries as it considers necessary or desirable, decides that the licence should be issued, subject to such conditions, and such grading as the Board considers necessary or appropriate, it shall so direct, and on payment of such fee as may be prescribed, the Director shall forthwith issue the licence accordingly, which licence shall be in Form B in the Third Schedule.

(4) Licences shall be issued for such period as may be prescribed, and shall be renewed automatically by the Director on the same terms and with the same grading, on payment of the prescribed fee, without reference to the Board:

Provided that —

- (a) where he considers that there are special circumstances that make such action necessary or desirable, the Director may refer the application to the Board, together with his report on such special circumstances, and his own recommendations, and the application for renewal shall thence be processed in the same manner as an original application for a licence; and
- (b) where the application for renewal is made in good time, the enterprise may continue to operate until the licence is renewed or the application is rejected, as the case may be.

(5) An application for an amendment to a licence, or to the grading subject to which it was issued, or for a transfer of a licence from one company to another or from one establishment to another, shall be made and dealt with in the same manner as an original application for a licence:

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

(6) Public notice of the issue of licences, their amendment or transfer, and of the grading subject to which they are issued, shall be given by notice published in the Gazette.

(7) The Board may cancel, or suspend for such period as it considers appropriate, a licence issued under this section, where the enterprise, or the owner or person in charge thereof, is convicted of a contravention of any of the provisions of this Act, or of any regulations made under this Act, or of any other offence involving dishonesty in connexion with the operation of the enterprise.

8. (1) All tourist enterprises offering accommodation for tourists shall be required to be graded in accordance with such criteria as the Minister may prescribe, and after receiving such grading shall display a sign or notice in the prescribed form, indicating that grading, in a conspicuous place on the premises concerned, on letterheads and in any promotional material relating to the tourist enterprise concerned.

Grading of
tourist
enterprises

(2) For the purpose of such grading the Director shall carry out, or cause to be carried out, such inspections of documents or building plans, or of buildings or sites, with or without the assistance of other officials, such as planners or health inspectors, as he considers necessary or desirable, and shall make full report thereon to the Board together with his recommendations.

(3) Notwithstanding the provisions of subsections (1) and (2), the Minister may, by notice in the Gazette, exempt any tourist enterprise from the requirement of such grading where he considers it appropriate in all the circumstances, taking into account factors such as the small size of the enterprise, its remote location or other pertinent matters.

Appeals to
the Minister

9. (1) Any person aggrieved by any decision of the Board refusing to issue a licence, or to renew or amend a licence, or as to any condition attached to a licence, or as to any grading subject to which a licence is issued, or as to the cancellation or suspension of a licence, may appeal therefrom to the Minister within 30 days of the decision appealed against.

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

(3) After such investigation as he considers necessary or advisable, the Minister may uphold the decision of the Board, may reverse it, amend it or make such other decision as he considers proper in all the circumstances, and his decision shall be final and shall not be subject to any further appeal.

(4) Where the Minister upholds a decision of the Board or himself makes a decision refusing or cancelling the issue of a licence, he may, nevertheless, permit the enterprise a period of up to but not more than six months to wind up the enterprise.

Power
to enter
premises
or land

10. (1) It shall be lawful for the Director or any person so authorized by him in writing, or any police officer to —

- (a) stop or seize any vehicle which he 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 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 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 may reasonably require in the performance of his duties under this Act; or
- (d) require any person who appears to be engaged in carrying on a tourist enterprise to produce to him, at such time and place as he specifies in writing, 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 this section except by or under the direction of a police officer, unless the Director or the authorized officer has reasonable cause to believe that the delay caused by complying with this requirement would, or would tend to, defeat the purposes of this section.

(3) At the time when anything is seized under subsection (1) the person from whose custody it is seized shall be given a written receipt for it, and if 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.

11. Any person who —

- (a) knowingly publishes, or causes to be published, in any manner whatsoever, any false or misleading information in connexion with or in respect of any tourist enterprise;
- (b) fraudulently gives false information to the Director or to the Board for the purpose of obtaining a licence, or a grading to which he would not otherwise be entitled;
- (c) hinders or obstructs the Director or any officer authorized by him or the Board, or refuses, without good or sufficient reason to assist him where this Act requires such assistance, in the performance of his duties, or the exercise of his functions under this Act; or
- (d) contravenes or fails to comply with any provision of this Act or any regulations made there under, with which it is his duty to comply, and for which a penalty has not been provided for elsewhere in this Act,

Offences
and
penalties

shall be guilty of an offence and shall be liable to a fine of P2 000 and to imprisonment for six months.

12. (1) The Minister may make regulations prescribing anything which, under this Act, is to be or which may be prescribed, and generally for the better carrying out of the provisions and purposes of this Act, which purposes shall include the imposition of a levy on all tourist enterprises to assist the training of staff for such enterprises.

Regulations

(2) Without prejudice to the generality of the provisions of subsection (1), the Minister may, by regulations, establish and provide for a national advisory council consisting of not more than fifteen persons drawn from representatives of the Government, the tourist industry and other sectors of the economy and local interests, whose function shall be to advise the Minister on all matters relating to the formulation, planning, development and administration of a policy relating to tourism.

13. The Minister may by order published in the Gazette amend any of the Schedules to this Act.

Amendment
of Schedules

FIRST SCHEDULE
(sections 2 and 5)

<i>Category</i>	<i>Tourist Enterprise</i>
A	Operations that offer facilities only on site, such as hotels, motels, guest houses and apartments.
B	Operations that offer facilities on and off site, such as tourist camps, lodges, caravans, hunting camps and tented tourist camps, which also operate tours which require the services of professional guides or professional hunters licensed under the Wildlife Conservation and National Parks Act, 1992.
C	Operations that offer facilities off site only, such as safari or tour operators, and any enterprise that receives and transports travellers and guests, providing them with sleeping accommodation and food and beverages in equipment that is not geographically fixed.
D	Operations that act as agents only, such as travel agents.

SECOND SCHEDULE
(section 6)

Tourist Industry Licensing Board

1. The Board shall consist of the Director and not more than 5 other members appointed by the Minister from persons, both in the public and in the private sector, who in his opinion are suitable and qualified to assist in the performance of the functions of the Board and the execution of its duties.

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

3. In addition to the normal membership of the Board, the Minister may, where he considers that special expertise is required in any particular case or cases, co-opt not more than 4 additional members, for such period as shall be specified in their appointments. Such co-opted members may attend meetings of the Board, and may participate in deliberations of the Board, but shall not be allowed to vote on any matter before the Board.

4. The Director shall be the chairman of the Board, and he may nominate any other member of the Board to act as chairman on any occasion when he is unable to attend meetings of the Board.

5. A quorum of the Board shall be comprised of the chairman, or the member acting as chairman, and at least another two members of the Board, and decisions of the Board shall be made by a majority of the members present and voting, the chairman or acting chairman having a casting vote in the event of equality of votes.

6. The Minister shall nominate a suitable officer in the Department of Tourism to act as secretary of the Board.

7. The Board shall have power, in accordance with such guidelines on the question of policy in respect of tourism in Botswana as the Minister may provide —

- (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 the grading of any tourist enterprise;
- (d) to determine whether or not a licence or a grading should be amended.

8. The Board shall meet as often as is in its opinion necessary to conduct the business of the Board, and shall regulate its own procedure.

THIRD SCHEDULE
(section 7)

FORM A

REPUBLIC OF BOTSWANA

TOURISM ACT, 1992
(Act No. of 1992)

APPLICATION FOR LICENCE

The Director,
Department of Tourism,
P/Bag 0047
Gaborone

(All information supplied on this form will be treated as confidential)

1a. Please provide the name under which the tourist enterprise to be licensed will operate:

.....

1b. Please list all other trade names that are connected to the above enterprise:

.....

2. Is the enterprise named in 1a registered/incorporated as a business/company in

(i) Botswana: Yes/No

(ii) Elsewhere: Yes/No. If yes, please state where:

.....

3. If registered/incorporated in Botswana, please provide:

(i) Date so registered (attach copy of certificate of registration/incorporation)

.....

(ii) Name, address and citizenship of each shareholder and percentage of shares retained by each shareholder.

.....

(iii) Name, address and citizenship of each director

.....

4. Has any Director or Shareholder been convicted within or outside Botswana of any serious criminal offence involving dishonesty, if so give details.

5. For which category of tourist enterprise is the licence required:

A Facilities offered only on site e.g. hotel, motel. YES/No

B Facilities offered on and off site e.g. tourist camps. YES/NO

C Facilities offered only off site e.g. mobile operators. YES/NO

D Travel agent. YES/NO

6. Does the enterprise currently operate in any of the categories listed under 5:

(a) Yes/no

(b) Yes/no

(c) Yes/No

(d) Yes/No

7. If yes has been given in 6, please provide supporting details for each category concerned in regard to:

(a) Existing premises including offices, workshops, tourist facilities, etc.

(b) Existing leases (please attach copies of such leases).

- (c) Existing operations including details of assets.
 - (d) Existing staffing.
 - (e) Existing training plan (please attach copy submitted to Department of Labour).
 - (f) Tourism based activities or companies conducting such activities outside Botswana, including marketing or other tour operated facilities. In addition please list any international tourism based company in which Botswana shareholders or directors have an interest.
8. Is the licence required for:
- (a) existing operations; YES/NO
 - (b) new operations. YES/NO
9. If seeking a licence that includes new operations, please provide supporting details with regard to own initiative, including proposals in regard sites, scope of enterprise, style of operations, etc.
10. Show proof that you have good prospects of acquiring the personnel, structures, equipment, land and financial resources required to provide the services associated with the business.
11. Please indicate, with supporting details, over the next 5 years:
- (a) What gross receipts are or will be paid outside Botswana?
.....
 - (b) What expenditure is or will be incurred outside Botswana?
.....
 - (c) What percentage of overall gross profit is or will be represented by the gross receipts which are paid outside Botswana ?
.....
 - (d) What percentage of gross receipts paid outside Botswana is or will be brought back to Botswana?
.....
12. Please indicate, with supporting details, the proposed business plan for the tourist enterprise over the next 5 years.
.....
.....
.....
13. Please indicate, with supporting details the proposed manpower training plan for the tourism enterprise (should not be less than two years).
.....
.....
.....
14. If applying for a licence in regard to categories A or B, please indicate for each "on site" facility the suggested grading or regrading that should be applied.
.....
.....
.....

FORM B
REPUBLIC OF BOTSWANA
TOURISM ACT, 1992
(Act No. of 1992)

TOURIST ENTERPRISE LICENCE

1. In terms of section 7 of the Tourism Act, 1992, a licence is hereby granted to: (name and address of the enterprise)

for the purposes of conducting a tourist enterprise at
in the category of

2. This licence is issued subject to the following conditions:—

(a)

(b)

(c)

(d)

3. The star symbol grading/regrading allocated your enterprise is

Place of issue.....

Date of issue.....

Expiry Date.....

DIRECTOR OF TOURISM

PASSED by the National Assembly this 6th day of August, 1992.

C.G. MOKOBI,
Clerk of the National Assembly.

L2/4/892 I