

LICENSING IN THE TOURISM SECTOR

INTRODUCTION

The Tourism Industry in Kenya is regulated by two Acts of Parliament, namely, the **Hotels and Restaurants Act (Cap 494)** and the **Tourist Industry Licensing Act (Cap 381)**. The various aspects of the two Acts are as follows:

1. LICENSING AND REGULATION UNDER THE HOTELS AND RESTAURANTS ACT (CAP. 494)

Licensing and regulation under the Hotels and Restaurants Act is administered through the Hotels and Restaurants Authority, which is a Board constituted by the Minister for Tourism and Wildlife.

There are three types of licences issued under Cap. 494. These are:

- (a) Hotel Licence
- (b) Hotel Manager's Licence and
- (c) Restaurant Licence.

(a) **Hotel Licence:**

In considering applications for Hotel Licence, the Board requires that operators present the following before approval.

- (i) Title Deed/Lease Agreement for premises.
- (ii) Valid copies of work permit where applicable.
- (iii) Health clearance certificate, which confirms that the premises have been inspected by the Public Health personnel and have therefore met the required health standards.
- (iv) Tariff (bed/room charges)/and menu.

- (v) Appropriate licence fee according to category, size, bed capacity and extent of services provided

(b)Hotel Manager's Licence - the fee is equivalent to 10% of the annual licence fee of the hotel the licensee intends to manage

The Board requires that an application for the above-mentioned licence be supported by:

- i. Prospective Manager's Curriculum Vitae
- ii. Manager's professional certificates for perusal by the Board to verify competence of the applicant.

Restaurant Licence

Requirements:

1. Certificate of incorporation/Pin No. in special cases
2. Health certificates
3. Copy of tariffs
4. Lease agreement
5. Copies of managers professional qualifications & testimonials/C.V.
6. Work Permit for foreigner
7. Relevance license fee
8. Forms requirements HRA 1'/HRA 2 dully filed

Renewal

1. Health certificate
2. Copy of menu/tariff
3. Application form HRA 1, HRA 2 dully filled
4. Valid work permit where applicable
5. Relevant license fee

Classification Certificate

This is not a licence. It is only a certificate issued to a hotel or restaurant immediately after every National Classification exercise such as the one which was carried out and in 2002/2003. Only those properties which voluntarily request for classification or re-classification, are charged a standard fee of Kshs. 3,000.00.

Employment of foreigners in the Tourism Sector

The Hotels and Restaurants Act mandates the Authority, in liaison with the Immigration Department to approve the employment of expatriates in the tourism/hospitality sector. This is meant to ensure that foreigners are not granted opportunities to work in the country at the expense of qualified Kenyans. The service is rendered free of charge.

REQUIREMENTS FOR ENTRY PERMITS

New Applicant (Class A - Employee)

1. Dully completed application form 3.
2. Letter of application explaining the purpose of the permit addressed to the Permanent Secretary
3. Copy of valid passport.
4. C.V. and Professional Certificates.
5. C.V. and Professional Certificates for the understudy.
6. Copy of tourism licence of the establishment forwarding the application

Class H (Investor)

1. Duly competed application for 3.
2. Bank statement and/or Audited report in case of renewal
3. Copy of valid passport.
4. Letter explaining the purpose of the permit addressed to Permanent Secretary
5. Certificate of Incorporation, Articles of Association and Memorandum.

6. Personal Identification Number Certificate (PIN).
7. Title deed/Lease Agreement of the premises bearing stamp duty
8. Copy of tourism licence of the establishment forwarding the application (in case of renewal).

Special Pass (90 days)

1. Dully completed application form.
2. Letter explaining the purpose of the special pass addressed to P.S.
3. No implications of Permanent Employment.
4. C.V. and professional certificates.
5. Copy of Passport.
6. Copy of tourism licence.

NB: For renewal cases a copy of the current work permit must be attached. One full set of documents (with two colour photographs) should be submitted to the Immigration Department and a similar set with above documents submitted to this office.

2. REGULATED TOURIST ENTERPRISES UNDER CAP 381 OF THE LAWS OF KENYA

There is only one type of licence issued under this Act. This is known as **Regulated Tourist Licence** which is issued to various categories of tourist activities by the Licensing Section in the Ministry of Tourism and Wildlife as follows: -

Class A enterprises shall pay.....**Kshs. 8,000**

Class "A" Enterprises

These are enterprises (whether carried on alone or in conjunction with some other enterprise) 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 (AITA appointed Agents)
- A.5 Water Sports
- A.6 Balloon Operators
- A.7 Boat excursions
- A.8 Game Ranches

Class B enterprises shall pay.....**Kshs. 6,000**

Class ‘B’ Enterprises

- B.1 Proprietors, owner-drivers and self employed drivers of passenger vehicles used wholly or partly in a tourist enterprise.
- B.2 Safari Outfitters including shopkeepers, stallholders and any other person offering garments of Souvenir value for sale to tourists as a substantial part of their business.
- B.3 Game fishing outfitters
- B.4 Proprietors of enterprises offering camps and camping equipment for hire.
- B.5 Motor cycle or Bicycle hire enterprises
- B.6 Nature Parks
- B.7 Amusement Parks
- B.8 Non-Citizen tour leaders/guides

Class C Enterprises shall pay.....**Kshs. 2,000**

Class “C” Enterprises

- C.1 Shopkeepers, Stale holders, Stand holders and any other person offering for sale to tourists as a substantial part of their business goods made by hand from indigenous raw materials and manufactures of such goods.
- C.2 Local Traditional Boat Operators
- C.3 Professional Safari Photographers

- C.4 Travel Bureau or booking offices other than those of an airline, which operates international air routes and does not carry on any tourist activities in Kenya.
- C.5 Interpreters
- C.6 Private Zoos
- C.7 Cultural Centres
- C.8 Citizen Tour Leaders/Guides

(d) Exempted Enterprises

Enterprises being either:

- a) an undertaking operated by the Government or the community or
- b) an undertaking consisting of 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.

(f) Tourist Vehicle Stickers

Ministry of Tourism and Wildlife also issues Tourist Vehicle Stickers under Cap 381 which was introduced through Legal Notice No. 97 of 4th October 2002. The stickers are aimed at regulating vehicles involved in the transportation of tourists. They are issued to licensed operators with corresponding vehicles registered in the name of companies in case of a limited company or shareholders names in case of partnerships and sole proprietors. The three main groups of operators are:

1. Tour Operators and Car Hire Firms.
2. Proprietors, Owner/ drivers, Self-employed operators.

(g) Fees (For Sticker)

1. Kenya registered vehicles - Kshs. 200/=.
2. Foreign registered vehicles - US. Dollars 300.00.

LICENCING REQUIREMENTS FOR A NEW APPLICANT FOR TOURISM ENTERPRISES

(Requirements vary depending on the class of activities)

- 1: Certificate of registration of a business name for partnership or certificate of incorporation together with memorandum and articles of association in case of a limited company.
- 2: Lease agreement of the office.
- 3: Curriculum vitae and copies of professional certificates of the key personnel of the company.
- 4: An inspection report by a Tourist Officer on the organisation the office where the business will be conducted
- 5: Application form 1 copy duly filled.
- 6: Vehicle insurance covers and logbook/letter of contact to sub-hire from.
- 7: The tour itineraries and the respective tariffs.
- 8: Entry/work permits for expatriate's directors/employees.
- 9: Copies of aircraft's airworthiness and insurance covers in case of air charter operations.
- 10: Copies of pilot's commercial pilot license and a number of hours flying time in respect of the pilot's license where applicable.
- 11: Copies of sea worthiness certificates and insurance covers of sea. Vessels and boats used by tourists where applicable.
- 12: Copies of testimonials/professional certificates for guides and couriers as well as interpreters (certificate of good conduct).

N.B: Once all the above requirements are fulfilled, the applicant is then advised on the appropriate license fee to pay based on classes of enterprises

JUSTIFICATION FOR THE LICENCES

TILA was enacted by Parliament in 1968 to make provision for regulating the tourist industry with a view to promoting its **well-being and development**. Consequently, the Ministry of Tourism and Wildlife has over the years been charged with the responsibility

of licensing tourist related businesses as well as monitoring the quality of services rendered to tourists by their handlers.

Initially the tourist trade was easy to manage, as there were only a handful of players in the industry. In recent times however, the rapid growth of the sector has resulted in the emergence of a myriad of actors offering a wide variety of services. This in turn has made the industry both delicate and highly sensitive to quality and service standards. The Ministry together with the stakeholders therefore believe that the need for regulation in the industry is even greater today than it was soon after independence.

A good working relationship between the Government and the tourism industry is crucial for the positive growth of the sector. I am happy to report that consultations have revealed that tourism stakeholders are in favour of the licences and would in fact want to see better enforcement of the two Acts by the Ministry so as to guarantee professionalism and integrity.

The reasons are as follows: -

- The Tourist Industry Licensing Act (Cap 381) is actually **one licence**, which has provision for various categories of tourist related activities which have been clustered in classes A, B and C as already indicated above. The trader need only apply to the one relevant to his business.
- Tourist handlers are expected to demonstrate high levels of **professionalism** and **integrity**. Licensing goes a long way to guarantee this requirement as it serves as a vetting instrument to ensure that only qualified personnel are engaged in the industry.
- The license also helps ensure that the licensee concentrates on the **activity for which he/she is licensed** instead of trying to be ' **a jack of all trade and master of none**'.
- Licensing also acts a **deterrent factor** to would-be unscrupulous businessmen since they know that punitive measures are taken against those who contravene laws.

- **Complaints** by tourists arising from activities of their handlers are easily dealt with when we have their records obtained during the licensing process.
- Overseas suppliers have more confidence in dealing with ground handlers who are not only licensed by government but are also members of recognized trade associations such as Kenya Association of Tour Operators (**KATO**) and Kenya Association of Travel Agents (**KATA**), Kenya Association of Hotelkeepers and Caterers (**KAHC**) and Kenya Association of Air Operators etc. A license from the ministry is a prerequisite for membership. These associations have a **code of ethics** with which their members have to comply.
- The Ministry of Tourism and Wildlife has for many years been struggling to curb the **beach operators' menace**. The relocation programme, which is currently underway, will be impossible to manage/complete if the TILA license is done away with.
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- Regulation protects the small-scale trader who runs the risk of being swallowed up by the giants should the industry be deregulated. This would run counter to our key economic objective of **'Poverty Reduction Through Employment Generation and Wealth Creation**
- Tourism licences are more of a control tool than a source of revenue
- It is difficult to simplify licences in the tourism sector because different activities have different requirements for licensing