HOTEL ASSOCIATION OF TANZANIA: LICENSING PROJECT UNDER BEST-AC 2012

CONSULTANCY SERVICES FOR REVIEW OF TANZANIA TOURISM LICENSING LAWS FROM A HISTORIC PERSPECTIVE AND PROPOSALS FOR REFORM
FINAL REPORT-LEGAL INPUT

BY DR. EVE HAWA SINARE OF

REX ATTORNEYS
REX HOUSE
145 MAGORE STREET, UPANGA
P. O. BOX 7495
DAR ES SALAAM
EMAIL: e.sinare@rexattorneys.co.tz
WEBSITE: www.rexattorneys.co.tz

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INTRODUCTION

1. We refer to the contract for consultancy services for the review of tourism licensing laws through an understanding of the history and rationale of tourism licensing law and the various changes over the time. The licensing regime is regulated by the Tanzania Tourism Licensing Board (TALA).

2. Tanzania ranks 2nd in the world for its natural resources but comes a distant 110 in its overall tourism competitiveness having dropped 12 points between 1998 and 2009. Tourists are coming back but spending less time in Tanzania. Tourists are budget conscious and are looking for value for money. When a tourist comes to Tanzania what the tourist takes home with is the experience from arrival at the airport, the immigration services, taxi services, air travel, the infrastructure, the hotel services, ease of access to tourist attractions, the fees payable, and the quality and price of the services. The experience Tanzania affords tourists has to be competitive relative to quality, efficiency, and price compared to other countries. Tanzania’s competitiveness has been declining and not improving.

3. Tourism is one of the few sectors of the Tanzanian economy that can easily create thousands if not millions of jobs at the lower end of the skills set requirements within the direct tourist sector as well as indirectly through other sectors such as agriculture, agro-processing, road infrastructure construction, aviation industry if tourist numbers increase, travel, education, trade, cultural heritage products, and finance which would lead to need for more hotel accommodation and tourism services and more employment. Given that about 50% of the population in Tanzania is at 15 years of age and more than 50% of those are not appropriately educated or employed, promoting tourism in its fullest potential (to be second ranked in tourism competitiveness) should be a priority.

4. It is a sector that can only be promoted as a package touching on every aspect to the tourism experience attending to immigration at arrival points, aviation and availability of safe flights and other means of travel, the taxi driver and services from the airport or other points of arrival to the hotel destination; the quality of accommodation and service at the hotels or other facilities; the quality of tourist sites and associated services up to the time a tourist exits the country, the attitude of those providing the services to tourists; availability of good food; availability of other items needed in the hotel industry that are necessary for the experience; the infrastructure, (quality roads, air travel, access roads to tourist
sites; telephone connection, internet and email connections; availability of TV in the hotel rooms and access to cable news; the quality of the hotels, the tourist attractions and access, security of tourists and their safety; promotion and product development the capacity of human resources; training facilities; treatment of investors in the tourist sector both local and foreign; the quality of the service and the overall price for the experience. These need to be promoted and invested into as a package together with tourist numbers targets per year based on a sector strategy and annual growth plans.

5. If in terms of attractions Tanzania is ranked 2\textsuperscript{nd} in the world, but in terms of the experience it affords tourists it is ranked 110 out of 133 countries, then Tanzania has a unique opportunity to tap into the potential that the attractions present by improving the conditions for investing in the sector. If investors are not happy the volume of investment in the sector falls and so would be the number of tourists coming to Tanzania compared to numbers going to other countries.

6. To put it in perspective relative to the performance of other countries, in 2010 Tanzania received about 782,000 tourists (MNRT statistical Bulletin 2010) out of a total of 49 million tourists to Africa alone and out of total global tourist number of 940 million. Despite Tanzania’s impressive attractions, smaller countries in size such as Jordan (received 8 million in 2010) or Singapore (received 9.16 million in 2010) received more tourists per year than Tanzania.

7. The political will to develop tourism is evidently there what is missing is the type of vision and strategy we should have that will achieve the type of tourist numbers that would be beneficial to Tanzania, coordinated items that make up the tourism experience package.

**INVESTMENT CONDITIONS UNIQUELY RESTRICTIVE HINDERING INVESTMENT GROWTH**

8. What is hindering Tanzania from tapping fully into its tourist potential (as this review will reveal) includes the following:

(1) Entry conditions are uniquely restrictive for both local and foreign investors compared to other sectors in Tanzania and compared to other countries;

(2) License fees uniquely high and uncompetitive compared to other sectors as well as compared to other countries (too many categories of business and too many licenses required for each activity within a class of activities (see the Tourism (Fees and Charges) Regulations, 2009 below);
(3) high administration costs to both Government and investors for complying with licenses, levies and fees (on average close to 2,000 hours per investor in a year to comply with the regulatory requirements);

(4) Entry requirements not sequenced properly (for instance, an investor has to have all the number of cars purchased in the name of the company and imported into the country before a license can be considered but in order for the investor to have a certificate of incentives from TIC which would entitle him to incentives set in the Tax laws for his investment, he must have the tourist license, in order for the investor to open a bank account in the name of the company he must have the tourist license which he cannot get until he gets TIC certificate!);

(5) Duplicative registration and licensing and duplicative documentation for no regulatory, maintenance of standards of service or oversight reasons;

(6) Hotel licenses not sufficient for all the business related to hotel without further licenses, for liqueur, restaurant, a spa, a curio shop or a heritage center within hotel premises and others such as a travel agent and a tour agent which naturally relate to the business of a hotel for tourists;

(7) Legal and regulatory framework- policies and regulations that hinder rather than promote investment in the sector;

(8) Change of policy that discourages a fully integrated market development and investment without declaration of change of investment policy (exclusion of investors in some segments of the tourism sector without consideration as to level and competitiveness and quality of service to tourists);

(9) Safety and security issues (dynamite fishing close to the shores where a hotel is, threats of terrorism, piracy, community attack fueled by politics);

(10) Lack of effective partnership between the Government and the investors in the sector (investors not appreciated as partners in the development of the sector);

(11) Poor infrastructure; and

(12) Inadequate skills and underinvestment in human capital development.

REVIEW FOCUSING ON TOURISM LICENSING AND REGISTRATION
9. In this review, we will focus only on licensing and registration and related requirements having the same effect and the impact of licensing, registration and other similar requirements have on the tourism sector. This is because the Tanzanian tourism market is, effectively fragmented into hundreds of small markets as many as there are Local Government Authorities who all have the power to impose permit requirements as well as issue business licenses under the Business Activities Registration Act 2007 (since January 2012) on tourism operators. This has, in turn, increased the cost of doing business both in terms of the money paid and the time needed to comply.

10. A case in point is the amendment to the amendments effected to sections 8(1) and 9(1) of the Local Government Finance Act made under Act No. 5 of 30 June 2011 empowering Local Government Authorities (LGA) to charge fees for licensing under the Business Activities Registration Act, 2007. A registration certificate which each tourism operator must obtain is limited to the jurisdiction of the relevant business premises of the relevant local government authority. This departmentalises the Tanzanian tourism market into hundreds of small closed up markets each one of them being subject to a business license even if located on one street but different premises under the same LGA and owned by the same person!

TOURISM LICENSING HISTORIC PERSPECTIVE

11. Licensing taken in historic perspective, used to be a tool for entry conditions aimed at protecting tourists. A Hotel investor would require only one license applicable throughout the country, issued free of charge. With the same license the investor needed not obtain a license (see the Hotels Act CAP105 No. 22 of 1963 (Hotels Act) for tour agent services. because hotels were exempted from having to obtain a license under the Tourist Agents (Licensing) Act CAP 65. A copy of the Tourist Agents (Licensing) Act CAP 65 is hereto attached at Annex-3. The Hotels Act was however subsequently amended in 1966, 67, 68, 69, and 1970 and revised in 2006 to change all that. A copy of the Hotels Act as revised in 2006 and a copy prior to the amendments are hereto attached at Annexes-1 and 2 respectively. The licensing regime was truly for ensuring that standards were maintained and for customer protection. There was no revenue collection purpose or mistrust reflected in the provisions.

12. A brief review of licensing law in Kenya and Mauritius comparison purposes has also been made especially regarding who is licensed, whether activities are
licensed or subject to license, whether there are distinctions between local and foreign investors, whether there are categories of fees for local and foreign investors, who issues the license and whether hotels can also carry out related activities such as tourist tour operations and car rentals without specific license including any institutional reforms.

13. We wish to review the Hotels Act separately from the Tourism Act, 2008 because of the need to provide historical perspective and because of substantive differences in content and approach to the regulation of the tourism market in Tanzania.

**LICENSING OF THE HOTEL INDUSTRY UNDER THE HOTELS ACT NO. 22 OF 1963 AS AMENDED**

14. No person was permitted to conduct any hotel business in Tanzania without a hotel license issued by the Licensing Board established under the Hotels Act No. 22 of 1963 CAP 319 of the laws of Tanzania (Hotels Act) later revised under the 2006 edition. A licensed person could carry out hotel business either personally or through the agency of another person on the premises specified in the license would not need to obtain a separate license. One license, issued free of charge, was valid for the whole country but renewable yearly (section 10 of the Hotels Act). An investor in a hotel did not need to have to apply for a license for each area of his hotel business. The license was, with the approval of the Licensing Board, transferable to another person.

**MANAGER’S LICENSE**

15. By 1982 changes to the law had been introduced adding to licenses for managers of hotels. The 1982 Regulations GN No. 55 of 23 April 1982, introduced a manager’ license which was not provided in the Principal Act! The Regulations defined “manager’s License” as a license issued to a person authorizing such person to carry on the business of a hotel”. A Hotel License is the same. The manager’s license was duplication because investors in the hotel industry used and continue to use the company form to invest and it should be the company owning the hotel premises which should make the application for a hotel license. There should not have been hotel manager’s license and a Hotel license. A copy of the 1982 Regulations is hereto attached at Annex-4.

**HOTELS ACT CONDITIONS AND STANDARDS**
16. The Hotels Act defined a hotel to mean “any establishment intended for the reception of travelers or visitors who may choose to stay therein and carried on with a view to profit or gain but does not include any such establishment which has accommodation for less than 6 guests or provides sleeping accommodation in dormitories only or Government rest house”.

17. In contrast to the Hotels Act, the Tourism Act, No 11 of 2008 (Act) does not define a hotel and the definition of a “tourism facility” excludes hotels because of the use of the term “tourism operator” which from its definition specifically applies to tourist agents, photographic safaris operators and tour and travel service providers. However, hotels are covered in the Regulations as accommodation facilities.

18. The Hotels Act regulated entry into the hotel industry as well as the conduct of and standard of service. The entry conditions formed key standards that the hotel facility had to meet without which no license could be issued and other conditions that had to be complied with but were not conditions precedent. Section 10 (2) of the Hotel Act provided to the effect that no license should be issued or renewed by the Board (these were conditions precedent) unless the applicant therefor satisfied the Board:

(1) that the premises in respect of which the application is made are structurally suitable for use as a hotel and proper provision has been made for the health and comfort of the guests;

(2) that proper provision has been made for the sanitation of the premises; and

(3) that proper provision has been made for the storage, preparation, cooking and serving food in the hotel.

19. There were other conditions of service which a hotel investor had to comply with. These included the following key conditions that a hotel:

(1) should be open to all travelers (to prohibit discrimination of guests based on any of the grounds listed in the Constitution of the United Republic of Tanzania) save where a hotel has reasonable grounds for refusing accommodation;

(2) may demand reasonable payment in advance as a condition of provision for accommodation desired by the traveler;

(3) has to make reasonable provisions for reception of a traveler’s luggage;

(4) set the limit of hotel’s liability for any loss or damage to a traveler’s property brought to a hotel;

(5) have the right of sale of property or goods deposited with him and left in the hotel; and
(6) keep a register of guests which shall contain the name and address of every guest and such other particulars as may be prescribed.

20. The Regulations provided for further specified service standards about the numbering of hotel rooms, the handling of refuse and fifth, the standard of the kitchen, storage of food, the cleanliness of persons working in the kitchen, the requirement for adequate shelves, supply and adequacy of crockery, glass and cutlery and prohibiting any person from sleeping in the kitchen.

21. The regulations also provide for classification of hotels into tourist and non-tourist hotels. Tourist hotels are further classified by Star, 1,2,3,4 or 5.

22. Although the Hotels Act provided that the hotel license was free and did not mention any other licenses, the regulations introduced a Hotel Manager’s license and a liquor license.

23. The Board had power to inspect the hotel, the furniture and equipment or the register of guests. Where the Board was satisfied that the premises of a hotel had ceased to be structurally suitable for use as a hotel or that a hotel was being kept in an unclean or insanitary condition or that the provision made in a hotel for the health and comfort of the guests had ceased to be adequate or that a hotel was being so conducted as to constitute a nuisance or annoyance to persons in the neighborhood, the Board could, by notice in writing, require the hotel to remedy the situation within a time frame the Board may specify failing which the Board, after due process, suspended or cancelled the license.

**TOURIST AGENTS**

The Tourist Agents (Licensing) Act of 1969 was passed in 1969.

24. A tourist agent was defined to include a travel agent or tour operator or any person who for reward, undertook to provide for tourists and other members of the public in relation to tours and travel within or outside Tanzania, transport, whether by air, sea, railway or road including the procuration of tickets, accommodation, professional advice on tourism and other travel matters relating to tourism, and also includes any person who for reward operates as an agent for a transporter for the purposes of soliciting customers for such transporter. Hotels were exempted from the application of the Act. This meant that a hotel could provide tour and travel services to its guests, procure tickets for its guests, provide professional advice on tourism and operate tour transport for its customers without having to obtain a tourist agent license.
THE TOURISM ACT NO. 11 OF 2008

25. The Tourism Act No. 11 of 2008 (Act) consolidated the laws applicable to different areas of the tourism industry and with the consolidation introduced changes for the worse. The decline in ranking of Tanzania's competitiveness compared to other countries is evidence of the impact of the Act to investment in the tourism sector in Tanzania as well as comparatively lower tourism numbers when compared to the growing numbers of tourists in other countries. Under the Act tourism services and products and facilities have all been fragmented and categorized into many different classes each of which was subject to a license and registration fee except for travel guides services. Some specified activities are not available to foreign investment. A copy of the Act is hereto attached at Annex-5.

26. The Act repealed the Hotels Act and the Tourist Agents (Licensing) Act of 1969. It defines “tourist operator” to mean a tourist agent or photographic safaris operator or any person who for reward conducts an activity or operates a facility or undertakes to provide services for tourists and other members of the public in relation to tours and travel within or outside the country. Tourist facility means a place, thing or premises managed by a tourism operator and which regularly or occasionally provides services or products for utilization by tourists or visitors for purposes other than exercise of an activity remunerated from within the place visited. If a shop owner anywhere in Tanzania has most of its products for sale to tourists, he becomes a tourism operator and would have to obtain a tourist license! The new law has complicated the tourism sector and made it more difficult to invest in!.

REGISTRATION OF TOURISM FACILITIES AND ACTIVITIES UNDER THE ACT

27. The Act provides for registration and licensing of tourist facilities and activities. The registration of facilities and activities is done by the Director of Tourism (section 8 of the Act) who has to maintain a register of classes of tourism facilities and activities. However, tourist facilities or activities registered before the Act became operational were exempted from having to register afresh (sub-section (5) of section 11 of the Act). The Director is required to publish in the official Gazette every year a list of tourism facilities and activities that have been registered or graded including any other information relating to the grades and standards of such facilities and activities.

28. The Act empowers the Minister to declare any premises, place or activity which affords amenities to tourists to be designated tourism facility and attach
conditions and terms to such designation (section 17 of the Act)! Such designated tourism facility or activity will have to obtain registration and license. The registration procedures, fees and charges are to be found in the Regulations which we will discuss after the review of the Act.

LICENSING TOURISM FACILITIES AND ACTIVITIES UNDER THE ACT

29. The Act establishes a Tanzania Tourism Licensing Board (Board) whose functions include licensing tourism facilities and activities (section 18 of the Act). Every tourism facility or activity has to obtain a license issued by the Board. Where before the operational date of the Act, a tourism facility was in operation, anybody who is required to hold a license in respect of a tourism facility or activity must, within 30 days after commencement of the Act, apply for a license (section 25 of the Act). The section gives the impression that it applies to existing licensed facilities already with valid licenses since no tourism facility could have been in operation without a tourism license. Where existing licensees apply for renewal, the Board applied to the renewal application the law wrongly, retrospectively and on that basis declined to issue renewals contrary to the right to protection for an investor who has acquired rights legally prior to the change of the law provided for in the Tanzania Investment Act, 1997 as amended.

LIMITATION OF LIABILITY

30. Without prejudice to other expenses incurred by him in respect of any property brought to the facility or activity, a hotel investor is not liable to make good to a guest for any loss or damage to such property except where “(a) at the time the loss or damage (occurred), accommodation or services at the tourist facility or activity, had been engaged for the guest; or (b) the loss or damage occurred during the period of which the guest was at the tourist facility or activity and entitled to use the facility or activity” (section 27 of the Act).

31. The Hotel investor has to post a Notice in the form set out in the Second Schedule to the Act conspicuously displayed at the place where it can conveniently be read by guests stating the benefits of section 27 in respect of property brought to the facility or activity (section28 of the Act)! Despite its marginal title, the provision is not a liability limitation provision! The liability is not limited at all!

32. A liability limitation should have had provisions similar to the provisions of section 15 of the Hotels Act (now repealed) which reads as follows:
“15. - (1) Without prejudice to any other liability incurred by him in respect to any property brought to the hotel, a hotel-keeper shall not be liable as an innkeeper to make good to any traveler any loss of or damage to any property except where—

(a) at the time of the loss or damage sleeping accommodation at the hotel had been engaged for the traveler; and

(b) the loss or damage occurred during the period commencing with the midnight immediately preceding, and ending with the midnight immediately following, a period during which the traveler was a guest at the hotel and entitled to use the accommodation so engaged.

(2) Without prejudice to any other liability or his right with respect to it, a hotel-keeper shall not as an innkeeper be liable to make good to any of his guests any loss or damage to, or have any lien on any vehicle or any property left there, or any live animal or its harness or other equipment.

(3) Where a hotel-keeper is liable under subsection (1) to make good any loss of or damage to property brought to the hotel, then, subject to the provisions of section 16, his liability to any one guest shall not exceed five hundred shillings in respect of any one article or one thousand shillings in the aggregate, except where—

(a) the property was stolen, lost or damaged through the default, neglect or willful act of the hotel-keeper or any person in his employ; or

(b) the property was deposited by or on behalf of the guest expressly for sale custody with the hotel-keeper or a person in his employ authorized, or appearing to be authorized, for the purpose and, if so required by the hotel-keeper or the person in his employ, in a container fastened or sealed by the depositor, or

(c) at a time after the guest had arrived at the hotel, either the property in question was offered for deposit as aforesaid and the hotel-keeper or a person in his employ refused to receive it, or the guest or some other guest acting on his behalf wished so to offer the property in question but, through the default of
such hotel-keeper or a person in his employ, was unable to do so.”

33. The above provision in the repealed Hotels Act had limitation of liability and we have quoted it in full to show the difference between the provision in the repealed Hotels Act and the provisions in section 27 of the Act. There seems to have been no practical reason why the new Act did not provide for limitation of liability which is an international practice that the hotel owner is only liable where there is neglect or willful act on the part of the hotel or its agents.

**LICENSE REQUIREMENT IN THE ACT**

34. Section 31 provides for every tourism operator to have to obtain a license, not transferable, issued by the Board and section 34 of the Act provides for the need to register under the Act. The Director of tourism is enjoined to publish a list of all tourism operators licensed under the Act every year. In terms of section 21 of the Act, every person who owns conducts or operates a tourism facility of activity must obtain a license issued by the Board.

**LICENSE DISQUALIFICATIONS UNDER THE ACT**

35. The Act lists disqualifications to obtaining a license instead of the usual conditions precedent as was provided in the repealed law and similar laws in other countries. For instance, an applicant would be disqualified if he, in the opinion of the Board, does not have at his disposal the means, resources, vehicles or other necessary facilities or equipment for the proper and efficient carrying out the business to which the application for the grant of a license relates. There are other disqualifying circumstances listed in section 35 of the Act which include the above disqualification.

36. The provision is a bit strange because “an applicant not having at his disposal the means, resources, vehicles or other necessary facilities or equipment for the proper and efficient carrying out the business to which the application for the grant of a license relates” should be a condition precedent and not a disqualification. A condition precedent would allow the same investor to meet the condition and apply afresh where as a disqualification means that the applicant should not be able to resubmit an application after meeting the conditions.

**REVOCATION OF A LICENSE ON THE ORDERS OF A MINISTER**

37. The Minister has discretion to order the Board to revoke a license granted to a tourism operator if such operator has conducted himself that, in the opinion of
the Minister, it is in the public interest that such person should cease to be a tourism operator (section 41(2) of the Act. This provision gives arbitrary powers to the Minister without any protection to an already approved investment and without recourse to the investor if wronged and without an objective definition of what constitutes “public interest”. This should be a course of worry for any investor because no provision is made for time to be given to the affected person to close down the business and disinvestment since if a license is revoked the person affected must surrender the license to the Secretary to the Board (the Director of Tourism) within 14 days (section 52).

38. Tour guides must be registered and must be Tanzanians of not less than 21 years. Registered guides are issued with identity cards. However, as we shall demonstrate very few Tanzanians can meet the other entry conditions set out in the Regulations!

**DISPUTE RESOLUTION**

39. A person who is aggrieved by a decision of the Director with regard to application for registration or renewal, cancellation or alteration of registration or grading or regarding of a facility or an activity or variation of the conditions attached to it, may, within 30 days from the date of the decision, appeal to the Minister in writing (section 51 of the Act). This dispute resolution procedure constitutes conflict of interest as the Minister will depend on the Director's recommendation to consider the appeal and therefore will not be impartial. In practice, those who have appealed to the Minister, as was the case of retroactive application of section 58 of the Act to existing tourism tour guides were not redressed because the position of the Minister was similar to that of the Board.

**INSPECTIONS**

40. The Director is empowered, where he has reasonable cause to believe that such premises are kept in breach of the Act and after he has informed the
person for the time being in charge or control of such premises for the purposes of his inspection, to enter or inspect the premises of a facility or activity or a tourism operator and the Director or an authorized officer may:

(1) examine and make copies of any books, accounts and documents found in the premises relating or appearing to relate to the business of a facility, activity or tourism operator;

(2) seize any books, documents or accounts found in the premises which he has reasonable cause to believe that certain evidence of an offence committed against the Act;

(3) question any person who appears to him to be engaged in or carrying on, or employed in the business of a tourism facility, activity or tourism operator on the premises on any matter concerning the application of the Act;

(4) require, by notice in writing, any person who appears to be engaged in, or carrying out the business of a tourism operator to produce to him at such time and place as he may specify in such notice, any of the books, accounts or documents relating to the business of a tourism operator; or

(5) stop and seize or search any vehicle on which he has reasonable grounds for suspecting that it is used or contains any matter which may be used as evidence in respect of an offence committed under the Act.

41. The inspections relate more to the financial affairs of the company. However, the power to enter and inspect and seize documents has no process in which the investor can be heard if wronged. The same applies to the powers of the Director under section 54 of the Act whereby the Director may require a tourism operator to furnish him with such information and statistics in regard to customers and the operation of the facility or activity as he considers necessary. If the intention is to collect information then there should be a much more structured information gathering than what is covered under section 54 of the Act. It appears that the Director may require information and statistics at any time and whether or not he has any reasonable cause to believe that the provisions of the Act are not complied with.

**REGULATIONS, CRIMINALIZATION OF BREACH OF THE PROVISIONS OF THE ACT**

42. Section 56 of the Act empowers the Minister to make regulations. It has listed 25 different types of regulations. Item (z) of subsection (2) of Section
allows the Minister to make even more regulations in anything to do with
the promotion, development or regulation of the tourism industry in the
country, making the tourism sector to be one of the most heavily regulated
sectors in Tanzania. The listed Regulations which the Minister may make
include prescribing the following:

(1) the registration of any tourism facility or activity;
(2) the requirements to be complied with before any facility or activity
is registered;
(3) the grades of tourism facilities and the requirements to be
complied with, before a facility or activity can qualify for any
particular grade;
(4) the licensing of any person who owns, conducts or operates a
tourism facility or activity, or provides or assists in providing any
service which is a facility or an activity;
(5) the requirements to be complied with or the qualifications to be
held by a person before he may be issued with a license referred
to in paragraph (b) which is (2 herein) (the paragraph refers to
registration not licensing) or his facility or activity be classified;
(6) the issuance or replacement of a license and certificate of
registration;
(7) Insignia or logo for various groups and grades of tourism facilities
or activities and licensed persons, the circumstances and manners
in which they shall be used and displayed;
(8) the publication and display of particulars relating to the nature,
grade, name or style of tourism facilities, activities and licensed
persons;
(9) the duties of licensed persons and operators of tourism facilities or
activities in relation to the provision of services;
(10) the records and accounts to be kept by licensed persons and
operators of tourism facilities or activities;
(11) insurance to be taken out by licensed persons and operators of
tourism facilities and activities in respect of any death, injury of or
loss sustained by clients and other persons;
(12) fees and charges payable for registration, certificates, licenses and
other documents issued, inspections carried out and other things
done under the Act;
(13) the provision of bonds or other security by licensed persons in
respect of their operations or business;
(14) the undertaking of training or instructions by, or certification of
persons employed in the tourism industry;
the declaration of tourism development zones for the orderly development of the industry in such zones and, for that purpose, providing for the rights, privileges and obligations of persons who establish, operate, propose to establish or operate facilities in such zones;

submission by licensed tourism operators of returns and information relating to their business;

the activities of tourism operators with respect to the issuing of travel tickets and making reservations for accommodation facilities;

The activities undertaken in facilities and activities by tourism operators in order to maintain high standard of services in tourism industry;

condition or requirements for application of license of a tourism facility;

penalties for contravention of any regulations or any other subsidiary legislation made thereunder?

Formation of any committee or subcommittee under the Act;

prohibition of use of certain words or phrases under the Act;

the manner under which tourism operators may contribute to costs related to upgrading of facilities;

the grading and classification of tour guides, and the manner under which tour and photographic safari may be conducted;

qualification of, and the manner under which tour guides may operate; and

anything with promotion, development and regulation of a tourism industry in the country.

OVERSIGHT BY THE MINISTRY

43. The approach taken in the Act for oversight by the Ministry is one for any breach of the Act to constitute a criminal offence. Contravention of the provisions of the Act is an offence in sections 31 (6), 38, 45 (2), 46, 47 (2), 48 and 49 specifically provide for breach to be an offence. Once a breach constitutes an offence, the Director of Tourism cannot impose any penalty until he has referred the matter to criminal prosecution and a court has convicted the offender. This makes oversight ineffective because in order to impose a penalty the Director will have to refer the matter to the prosecution Services and criminal proceedings have been preferred against a tourism operator, facility or activity. Criminal proceedings take long and cost a lot of money. This would make oversight sluggish and inefficient.
RESTRICTIONS AND EXCLUSIONS

44. The Minister may specify facilities and activities which can only be operated by Tanzanian citizens and put in place mechanism on how tourism facilities and activities can benefit local surrounding the same (section 58 (1) of the Act. Sub-section 2 of section 58 which provides that, no person who is not Tanzanian citizen should engage him in a business of, save for foreign airlines:

(1) travel agency;
(2) mountain climbing or trekking;
(3) tour guide;
(4) car rental; or
(5) any other activity the Minister may, by order published in the gazette specify.

EXPROPRIATION BY THE BOARD’S ACTIONS AND NOT THE LAW

45. These restrictions, however, should apply as of the date the Act became operative or section 58 became operative and should not be operated retroactively to affect investors existing prior to the operation of the new law, who had invested in the prohibited activity or business legally under the laws then existing. These investors entered the market in those restricted activities when the law permitted them to do so. Any change of the law subsequent to their investment should not operate to expropriate their investment by forcing them out of business without compensation.

46. Section 64 of the Act is a savings section in respect of repealed Acts. In this regard, all hotels, restaurants and other tourism facilities and activities which fall under the category of tourism facility or activity as provided in the Act, immediately after the commencement of the Act, were deemed to be tourism facilities and activities required to be registered and every person required to be licensed under the repealed Acts to be required to be licensed under the Act. Saved were requirements and qualifications for registration or the issuance of license. The section also saved any registration, classification, grading, certificate or license effected or issued pursuant to the repealed Acts and in force, to continue to be in force as if it had been effected, made or issued under the Act.

47. The retroactive application of the Act occurs where existing tourism facilities and activities have to renew their licenses whereby the Board declines to renew their licenses citing the restrictions in section 58 of the Act wrongly.
There is no retroactive application of the section in the Act or the Regulations except for the manner in which the Board implements the law.

TOURISM MARKET IN TANZANIA REQUIREMENTS UNDER THE ACT AND REGULATIONS REFLECT ADMINISTRATIVE BUREAUCRACY AND HIGH FEES AND CHARGES

CLASSES OF SERVICES, OPERATORS AND LICENSING

48. Whereas in the past there were essentially two categories of hotels and tourist agent now there are many different activities and facilities divided into Classes and each activity within the class subject to licesing. Where one license was adequate for the entire hotel business segments and applicable in the whole country, there is a license required for every facility and activity within a business and for each Local Government Area in respect of business licenses. Where licensing was to the hotel owner, manager now there are many licenses required of a tourist operator, of its facilities and activities. Whereas they were no fees for activities and facilities now there are fees for the numerous classes of facilities and activities and whereas there were no charges for licenses in the past (see the 1963 Hotels Act) now there are fees for licenses and registration of activities and facilities. The impression that the Act and Regulations reflect is of an overriding need to increase the collection of revenue from the sector regardless of harm that does to investments in the sector.

49. The practice in other countries such as Mauritius and Kenya is to classify the sector into classes and for each class to be either subject to license or both licensing and registration but the number of categories of activities or facilities is not the same and the management of the process is business friendly. In Tanzania the sector is divided by classes as well but very many activities and facilities as well as classes. The other difference in Tanzania is what is required in terms of documentation, the investment capital, the license fees, the process and the time needed to comply and the details of reporting required, all of which make it more difficult to enter the Tanzanian market multi- markets. The past categories of Hotels and tourist Agents were simpler and more practical.

50. The Regulations have been gazetted but are not available to the public (there are no copies available at the Government printers or bookshop. We had to obtain an only copy available in the Ministry from the Tourism Department) but are applied by the Ministry of Natural Resources and are in force. There are 5 Regulations as follows:
(1) The Tourism (Tourism Development Levy) Regulations, 2009, (published under GN. No.227 dated 29 June 2009);

(2) The Tourism (Fees and Charges) Regulations, 2009, (published under GN No.228 dated 29 June 2009);

(3) The Tourism Operator (Registration and Licensing) Regulation, 2009 (published under GN No.229 dated 29 June 2009);

(4) The Tourism (Tour Guides) Regulations, 2009 (published under GN No. 230 dated 29 June 2009); and


THE TOURISM (TOURISM DEVELOPMENT LEVY) REGULATIONS, 2009, (PUBLISHED UNDER GN. NO.227 DATED 29 JUNE 2009)

51. The Act imposed a development levy on the sector (section 59) and enjoins the Minister after consultation with the Minister Responsible for Finance to make regulations prescribing the manner and modality under which the levy may be collected and used. A tourism levy should apply to persons doing business in the tourism sector (facilities or activities) and not the entities regulating or overseeing the investors in the sector as is the case now.

52. In terms of the Regulations, the levy is to finance implementation of activities related to tourism which include tourism research, community development projects, awareness campaign, destination, marketing promotion of small and medium enterprises in tourism and capacity building for development of the sector. The levy was not meant for the purposes listed in the Regulations. The purposes listed there in should be funded from the consolidated fund or from the fees collected from the sector. The levy was proposed in 1996 to improve tourism infrastructure related to tourism investments. For instance the small by road going into ngurudoto hotel in Arusha is not tarmacked. The fund would be used to tarmac that road in order to improve tourism investment.

| Hotels | will contribute 1% of a bed night levy or any other form as may, from time to time, be determined by the Minister. |
53. This will be on top of any other charges that hotels have to pay. It also means that the Minister may increase the percentage without having to consult the affected investors. Unrelated to tourism facilities or activities are new levies imposed on three parastatals involved in regulating their areas of responsibility namely:

<table>
<thead>
<tr>
<th>Parastatal</th>
<th>Percentage of Gross Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tanzania National Park (TANAPA)</td>
<td>3% of its gross income</td>
</tr>
<tr>
<td>Ngorongoro Conservation Area Authority</td>
<td>3% of its gross income</td>
</tr>
<tr>
<td>Tanzania Wildlife Protection Fund</td>
<td>3% of its gross income</td>
</tr>
</tbody>
</table>

54. Section 59, although wide, does not cover non-investors and a levy that is based on gross income undermines the tourism sector because the levy diverts money meant to fund the activities of the relevant parastatal. The levy payable based on the gross income creates a situation where the levy, (which is a form of tax) is charged on tax or statutory pension contributions, skills development levy, any service levy payable for Local Government Authorities or councils again based on gross income, all of which is money that do not belong to the entity and therefore not otherwise chargeable. If a country has huge tourist potentials such as Tanzania, the advance tax on tax is not the best way of promoting the sector.

THE TOURISM (FEES AND CHARGES) REGULATIONS, 2009, (PUBLISHED UNDER GN NO.228 DATED 29 JUNE 2009)

55. Fees and charges are provided in the First, Second and Fifth Schedules to the Tourism (Tourism Fees and Charges) Regulations 2009 (Fees Regulations) which classify activities and facilities and impose fees and charges on those activities and facilities.
56. **ACTIVITIES UNDER CLASS A**

(1) Tour operator  
(2) Hunting safaris, Safari outfitters  
(3) Hot Air balloon safaris  
(4) Horse riding  
(5) Air Charter service  
(6) Photographic safaris  
(7) Handling Agent  
(8) Mountain Climbing or trekking  
(9) Travel agency

57. **FACILITIES UNDER CLASS A**

(1) Lodges  
(2) Semi- Permanent Tented Camps

**CLASS B**

58. **ACTIVITIES UNDER CLASS B**

(1) Professional Hunters  
(2) Tour guides

**CLASS C**

59. **ACTIVITIES IN CLASS C**

(1) Town Hotels/vocation  
(2) Motels  
(3) Villas/cottages/serviced apartments  
(4) Exclusive facilities  
(5) Home stay  
(6) Approved facilities  
(7) Caravan and camping sites

**CLASS D**

60. **CLASS D ACTIVITIES**

(1) Curio Shops  
(2) Cultural Heritage centers
## SECOND SCHEDULE

License Fees

### 61. CLASS A

<table>
<thead>
<tr>
<th>Activity</th>
<th>Citizen</th>
<th>Non-citizen</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tour operator, hot air balloon, hunting safaris, photographic safaris,</td>
<td>2,000</td>
<td>5,000</td>
</tr>
<tr>
<td>Horse riding, Air Charter, Safari outfitters</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Travel Agents, Car Rental, Mountain Climbing or trekking, Handling</td>
<td>2,000</td>
<td></td>
</tr>
<tr>
<td>Agents</td>
<td></td>
<td>Not permitted to invest in these activities</td>
</tr>
</tbody>
</table>

### 62. CLASS B

**PROFESSIONAL HUNTERS**

<table>
<thead>
<tr>
<th>Professional Hunters</th>
<th>Citizen</th>
<th>Non-Citizen</th>
</tr>
</thead>
<tbody>
<tr>
<td>USD</td>
<td>200</td>
<td>1,000</td>
</tr>
</tbody>
</table>

### 63. Tour Guide

<table>
<thead>
<tr>
<th>Tour Guide</th>
<th>Citizen</th>
<th>USD100</th>
<th>Non-Citizen not permitted to operate</th>
</tr>
</thead>
</table>
64. **CLASS C**

**ACCOMMODATION FACILITIES - HOTELS**

<table>
<thead>
<tr>
<th>Grades</th>
<th>5 Star</th>
<th>4 Star</th>
<th>3 Star</th>
<th>2 Star</th>
<th>1 Star</th>
<th>Approved facility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citizen</td>
<td>2,500</td>
<td>2,000</td>
<td>2,000</td>
<td>1,300</td>
<td>1,200</td>
<td>1,000</td>
</tr>
<tr>
<td>Non-Citizen</td>
<td>2,500</td>
<td>2,000</td>
<td>1,500</td>
<td></td>
<td></td>
<td>1,000</td>
</tr>
</tbody>
</table>

65. **EXCLUSIVE FACILITIES**

<table>
<thead>
<tr>
<th></th>
<th>Fees in US$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citizen</td>
<td>5,000</td>
</tr>
<tr>
<td>Non-Citizen</td>
<td>5,000</td>
</tr>
</tbody>
</table>

66. **CLASS D**

**CULTURAL HERITAGE CENTERS**

<table>
<thead>
<tr>
<th></th>
<th>Fees in US$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citizen</td>
<td>2000</td>
</tr>
<tr>
<td>Non-Citizen</td>
<td>Non-citizens not permitted</td>
</tr>
</tbody>
</table>

67. **CURIO SHOPS**

<table>
<thead>
<tr>
<th></th>
<th>Fees in US$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citizen</td>
<td>200</td>
</tr>
<tr>
<td>Non-Citizen</td>
<td>Non-citizens not permitted</td>
</tr>
</tbody>
</table>

---

**THIRD SCHEDULE**

68. **FEES FOR GRADING OR RE-GRADING OF FACILITIES**

<table>
<thead>
<tr>
<th>Fees for grading or re-grading</th>
<th>Fees in US$</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,500</td>
<td></td>
</tr>
</tbody>
</table>
Fees for a plaque 1,000
Applicant has to pay for transport together with accommodation where necessary for the grading or re-grading

FOURTH SCHEDULE

69. OTHER FEES AND CHARGES

<table>
<thead>
<tr>
<th>Lost or destroyed certificate</th>
<th>USD20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Renewal of licenses</td>
<td>USD2,000</td>
</tr>
</tbody>
</table>

FIFTH SCHEDULE

70. ACCOMMODATION FACILITIES- HOSTELS

<table>
<thead>
<tr>
<th>No. of Beds</th>
<th>Citizen</th>
<th>Non- Citizen</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 - 50</td>
<td>US$ 200</td>
<td>-</td>
</tr>
<tr>
<td>51 -100</td>
<td>US$ 300</td>
<td>-</td>
</tr>
<tr>
<td>101 and above</td>
<td>US$ 500</td>
<td>-</td>
</tr>
</tbody>
</table>

ACCOMMODATION FACILITIES

71. HOMESTAYS, CAMP AND CARAVAN SITE

<table>
<thead>
<tr>
<th>ESTABLISHMENT</th>
<th>CITIZEN</th>
<th>Non- Citizen</th>
</tr>
</thead>
</table>

24
| Home stays 4-9 rooms | US$200 | Not available to non-citizens-
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Caravan and Campsite</td>
<td>US$200</td>
<td>Not available to non-citizens--</td>
</tr>
</tbody>
</table>

72. **SEMI-PERMANENT TENTED CAMPS AND LODGES**

<table>
<thead>
<tr>
<th></th>
<th>Citizen</th>
<th>Non-Citizen</th>
</tr>
</thead>
<tbody>
<tr>
<td>Semi-Permanent Tent Camp</td>
<td>US$ 2,000</td>
<td>US$ 5,000</td>
</tr>
<tr>
<td>Lodges</td>
<td>US$ 2,000</td>
<td>US$ 5,000</td>
</tr>
</tbody>
</table>

**PROCEDURES FOR REGISTRATION OF FACILITIES OR ACTIVITIES**

**TOURISM OPERATOR (REGISTRATION AND LICENSING) REGULATIONS, 2009**

73. In terms of section 8 of the Act, no person may conduct or operate a tourism facility or tourism activity unless such tourism facility and activity is registered. The tourist operator has to apply to the Director of tourism for a certificate of registration of the facility or activity. The application is to be made in the prescribed form attached to the 2nd Schedule to the Act. There is a long list of documents that must accompany the application for a certificate of registration. The registration of businesses and activities is segmented into different categories.

74. Registration of tour operators must be by application to the Director of Tourism (see Regulation 4). Every application for registration of a tour or travel agent operator company shall be in the prescribed form and be submitted by post or left at the office of the Tourism Division and shall be accompanied with-

1. Evidence that the business is licensed by the Business Registration Licensing Authority (BRELA);
2. A business plan relating to the proposed business; and
3. Proof of having suitable office premises for carrying the business of tour operation.

75. If the operator is a company, then the application must be accompanies with:

1. A certificate of incorporation;
2. Memorandum and articles of association or similar constitutive documents;
3. A list of directors, their titles, TIN numbers and qualifications;
(4) Evidence that the business is licensed by the Business Registration Licensing Authority (BRELA);
(5) Business plan relating to the proposed business; and
(6) Number of motor vehicles as prescribed under the regulations.

76. A tour operator, if a citizen, has to submit, in addition the above

   (1) proof of fleet of 3 vehicles whereby within 24 months the number has to
        increase to 5 vehicles;
   (2) roadworthy vehicles of not more than 5 years since registration;
   (3) registered under the company’s name;
   (4) comprehensively insured and
   (5) vividly display in writing the name of the tour operator on each side of the
        vehicle, stickers shall not be allowed and display the tourist agent license
        on the vehicle.

77. Where the application for tour operator is made by a non-citizen or a company
    which is not owned fully by citizens shall, in addition show:

   (1) Proof of having a fleet of new vehicles not less than 10 of the type
        approved for the tour business by the licensing authority and registered in
        the name of the company; and
   (2) Evidence that the business is registered and **certified by the Tanzanian
        Investment center** (why certification by TIC?) TIC does not certify
        businesses and has no power to do so!

78. In case of a travel agent the application must be accompanied with:

   (1) Evidence that the applicant is Tanzanian;
   (2) Evidence that the applicant is qualified and registered by the IATA;
   (3) A Curriculum Vitae of at least 2 employees who possess the minimum
        requirement prescribed by IATA; and
   (4) Proof of having suitable office premises for carrying the business of travel
        agent.

79. The requirement of submission of a business plan shall also be rendered by the
    applicant who is intending to expand or change the business. The Director if
satisfied that the conditions for registration have been met will issue a certificate of registration.

80. Further, a tour operator must provide the information provided for in 1st Schedule to the Tourism Operator (Registration and Licensing) Regulations as follows:

Part A

(1) Business or trading name;
(2) Date of incorporation;
(3) Nationality or in the case of a corporation and country of incorporation (attach certificate of incorporation/previous license, memorandum and articles of association);
(4) Address of principal premises of business;
(5) Postal address;
(6) Telephone number;
(7) Fax number;
(8) Exact location of any other premises (state whether owned or rented and the nature of such office, garage or store);
(9) Class of license required; and
(10) Previous license number, if yes, state date of issue and expiring date.

Part B

(1) Full names of proprietors or shareholders of the company and their percentage of shares;
(2) Age, country of birth and present nationality of persons named above;
(3) Nature of tourism business in respect of which this application is being made;
(4) Name, qualifications, experience and nationality of all permanent employed professional hunters/tour guide;
(5) Total number of employees- citizens, skilled and unskilled;
(6) Names of non-citizens employees, age, qualification and experience; position held and duration of the contract
(7) Experience and other requirements for a newly qualified worker to perform independently upon completion of training; and
(8) What efforts employer has done to employ a citizen for the job.

Part C
(1) If the business includes transportation, car hire or any other similar purposes;
(2) License numbers;
(3) Types and make; and
(4) Carrying capacity.

(Attach photocopies of vehicle license card under business name, current insurance comprehensive covers and vehicles inspection report)

81. Number of international tourists handled monthly during the previous year

(1) Amount of forex earned monthly;
(2) Tourist circuits operated; and
(3) Safari trip tariffs and other relevant standing charges which have been in use during the previous year.

82. Local tourists handled monthly during the previous year

(1) Areas/circuits operated during the previous year.

83. Projections for the next year.

Part D

(1) Names and addresses of branches of local banks in which the applicant holds an account;
(2) Details of the means and resources at disposal of the applicant;
(3) If application is for variation of an existing license, the details of the variation required and the reasons for them; and
(4) If the applicant has held a license previously the reasons for the present application.

84. The applicant has to make a statement as to whether he has ever been convicted of a tourism offence or any other offence involving fraud or dishonesty under any other law.

85. That the applicant is not charged bankrupt or corporation is not in liquidation or order for winding up the corporation has been made by any court.

86. Some of the requirements of registered and licensed tour operators or travel agents include, the requirement to maintain records, appropriate books of entry including books of accounts containing tourism transactions, documents providing details of tourist names, address, services arranged and passport details as well as details of country of origin which shall be made available to the
Division; take adequate public liability insurance for their vehicles, clients, clients’ properties and service provided.

87. A registered tour operator (see Regulation 19) must ensure that:

Where the licensee is a sole proprietor or a partnership and is registered as a Citizen, the Firm’s registered share capital is not less than Tanzanian Shillings equivalent of USD100,000 and USD300,000 where the sole proprietor or partnership is by non-Citizen and in both cases the net worth shall not be respectively less than the amount prescribed.

88. Where the licensee is a company registered in Tanzania, its issued and paid up capital shall not be less than Tanzanian equivalent to USD200,000 and its net worth shall not be less than the amount prescribed and if the company is incorporated outside Tanzania, its issued and paid up capital must be the Tanzanian equivalent of USD500,000 and its net worth shall not be less than that amount.

89. A company shall not reduce its share capital without the approval of the Director. Minimum financial requirement is a pre-condition to being registered or a ground for revocation of a registration.

90. A registered operator must open accounts in local banks.

PROCEDURE FOR REGISTERING TOUR GUIDES

THE TOURISM (TOUR GUIDES) REGULATIONS, 2009

THE DIRECTOR HAS TO KEEP A REGISTER OF ALL TOUR GUIDES

91. An Application by tour guide registration has to be in the prescribed form and shall be accompanies with documents to prove that he is:

(1) a Tanzanian Citizen;
(2) has secondary school education or above;
(3) has experience of at least 5 years in relevant field;
(4) has adequate knowledge of the area and has knowledge in the field applied for;
(5) holds a valid first aid certificate;
(6) has passed relevant examination as prescribed and applied to be registered as a tour guide in a form prescribed in the First schedule to the Regulations; and
(7) has satisfied the Director that he is of good character and is fit and proper person to act as such.

92. A registration is deemed to be a license (see Regulation 3 (2) (4) of the Regulations. A registered tour guide may be required from time to time to take to attend courses organized by the Division or by a recognized person or institution for the purposes of continued professional development.

93. Tour guides have to belong to a Tanzania Tour Guide Association.

94. There are very detailed regulations on the number of persons a guide may provide tour guide services, the number of guides for coach, boat and other vehicles, duration of organized excursions, commencement and end of organized excursions, the requirement to prepare a report after every excursion, fees for organized excursions, prescribed qualities required of a guide (Regulation 18 (1); porters who may be employed by tour guides etc. It is incredible the details of regulation given to this activity.

THE TOURISM (ACCOMMODATION) REGULATIONS, 2009

95. Every person who intends to carry on a tourist accommodation business shall make an application in the prescribed form for registration to the Director. An application by an individual shall be submitted by post to or left at the office of the Tourism Division and shall be accompanied by:

(1) Evidence that the business is licensed by business Registration Licensing Authority (BRELA);
(2) Tax identification Number;
(3) Staff health certificate from the relevant authority;
(4) Fire and rescue certificate from relevant authority;
(5) Evidence of compliance of applicable building requirements;
(6) Title deed, lease agreement or contract;
(7) Feasibility study of the business; and
(8) Statement detailing tariff charges which the applicant proposes for services provided during the certificate period.
96. Every person intending to carry on a tourist accommodation business must apply for a license in the prescribed form in the 1 schedule to the Regulations. The form is used for both registration and licensing applications. It requires the particulars of the applicant, of the organization and company registration number, office physical address, postal address, plot number, date of registration of the plot, TIN number, telephone numbers, email address, website address, fax number, name and contact person about the application, type of accommodation and inventory of services.

97. A license will be in force until the next 31 day of December. This means depending on the date a license is issued, it could be valid for more than 12 months or less. Fortunately the Act has clear provisions that the license is valid for 12 months meaning from the date it is issued. Accommodation facility would operate only after the facility has been certified (by whom?) and entered in the appropriate register. Every registered operator must pay annual fees as set out in the schedule to the Regulations.

98. The Regulations are the most detailed regulation for a tourism sector anywhere in the world prescribing the quality of the facility standard required for different types of accommodations and the level of service but the prescription of the building specifications and utensils required is excessive without providing industry specifics that guarantee the expected standards. A copy of the list is hereto attached at Annex- 6

TOURISM LICENSING IN MAURITIUS

99. The brief survey on licensing in the tourism sector in Mauritius was carried out by the law firm of De Comarmond & Koenig, one of the largest and best law firms in Mauritius. The Firm is a Rexattorneys' sister law firm in the World Services Group and Lex Africa legal networks. The brief was based on a questionnaire furnished to them by us to which they answered. A copy of the questionnaire and Answers is hereto attached at Annex-7. The firm answered follow-up questions and clarifications as well as edited the content of the input covering Mauritius. The Firm also provided us with copies of the following laws:

(1) The Tourism Authority Act, 2006;
(2) Tourism Employees Welfare Fund Act, 2002;
(3) The Finance Audit Act, 1973;
(4) The Hotel and Restaurant Tax Act, 1986;
(5) The Food Act;
(6) The Dangerous Drugs Act, 2000;
(7) The Occupational Safety & Health Act, 2005;
(8) The Local Government Act, 2011;
The main law governing the tourism sector is the Tourism Authority Act, 2006. The Tourism Authority established by the act, regulates, supervises and monitors investments in the tourism sector. It issues licenses for carrying on or running a tourist enterprise.

Any person wishing to carry out a tourist enterprise must obtain a license valid for 12 months and is renewable yearly. The license is issued to the enterprise and not the activity. The Business Registration Act 2002, requires its activities to be registered. Even though there are requirements pertaining to the registration and licensing for pleasure crafts, the Act provides a set procedure for an Applicant to obtain the necessary licenses to operate in the Tourism sector. Further, a hotel investor will require the following other licenses:

1. a tourist enterprise license
2. a tourist agent license;
3. a general and a restaurant retailer license which would be valid for the hotel’s restaurant as well as the bar;
4. a separate license for a tourist Agent and tour operator license from its tourist enterprise license;
5. a factory inspectorate license;
6. Fitness center license if the hotel has one;
7. License from the Food and Drugs Authority for hotel if it will deal with food;
8. Room license;
9. Licensee for a borehole if the hotel wishes drill a borehole;
10. Environmental assessment license;

There are no restrictions to foreigners investing in any tourist business provided they obtain the necessary licenses and permits to reside and work in Mauritius. There are no different license fees for businesses owned by Mauritians from businesses owned by foreign investors.

For first time applicants, the Authority issues a letter of intent to the applicant upon payment of the prescribed fee setting out the conditions upon which a tourist enterprise license shall be issued. When all the conditions specified in the letter of intent are fulfilled, the Authority shall issue a tourist enterprise license.

The Tourism Authority (Tourist Enterprise License fees) Regulations, 2006 indicates the fees for issue and renewal of license for Tourist accommodation.
(guesthouse, hotel, tourist residence) and licensees for places where food, beverages and entertainment are provided (includes night club, private club, pub, restaurant with or without entertainment); activities all of which are competitive compared to the fees Tanzania charges. The schedule of fees is hereto attached at Annex-8.

TOURISM LICENSING IN KENYA

105. A brief survey on licensing in the tourism sector in Kenya was carried out by the law firm Hamilton, Harrison and Mathew (HH & M) of Nairobi Kenya. The Firm is one of the leading law firms and the oldest in Kenya and is a Rexattorneys’ sister law firm in the World Services Group network. The brief was based on a questionnaire furnished to them by us to which they answered. A copy of the questionnaire and answers is attached at Annex- 9. The Firm made reference to the following laws:

(1) The Kenya Tourism Development Corporation Act, Cap 382 of the laws of Kenya;
(2) The Tourist Industry Licensing Act, Cap 381 of the laws of Kenya;
(3) The Hotels and Restaurants Act, Cap 494 of the laws of Kenya;
(4) The Hotel Accommodation Tax Act Cap 478 of the laws of Kenya;
(5) The Environmental management and Coordination Act, No. 8 of 1999, (NEMA);
(6) The Local Government Act, Cap265 of the laws of Kenya;
(7) The Public Health Act, Cap 242 of the laws of Kenya;
(8) The Food and Drugs and Chemical Substances Act, Cap254 of the laws of Kenya;
(9) The Alcoholic Drinks Act 2010;
(10) The occupational Safety and Health Act, 2007;
(11) Environmental management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations, 2009.

106. There are many laws governing tourism sector in Kenya as is reflected above. We are advised by the Firm that a new Tourism Act No.28 of 2011 awaits commencement. The law consolidates the Kenya Tourism Development Corporation Act, the Tourist Industry Licensing Act, the Hotels and Restaurants Act, and the Hotel Accommodation Tax Act.

107. Any person wishing to carry out a tourist hotel investor must obtain a license valid for 12 months and is renewable on a yearly basis. The license is issued to the tourist company and not the activity. There is no separate process for registration of a hotel and a separate process for obtaining a license.
108. A Hotel requires no license but it is subject to tax under the Accommodation Tax Act. A hotel will need to obtain other licenses necessary for a hotel business to carry on business such as a:

(1) liquor license;
(2) restaurant license;
(3) license under the occupational safety and Health Act 2007;
(4) business permit,
(5) an effluent discharge license, if the hotel is not connected to a sewer;
(6) approval from the NEMA and an environmental Impact License. In addition, a hotelier is required to submit environmental audit report annually (if the investment involves a construction of a hotel);
(7) a certificate by medical officer of health;
(8) A license for the hotel premises;
(9) A permit under the Environmental management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulation, 2009 where the noise produced in the gym exceeds the maximum permissible noise levels

109. There are no restrictions on foreigners investing in Kenya; they have to obtain resident and work permits and no license fees that are for foreigners and citizens. There are no categories of tourism that are excluded in favor of citizens. The firm answered follow-up questions and clarifications and commented on the content of the input covering Kenya.

**ANALYSIS OF THE LICENSING REQUIREMENTS AND PROCEDURES IN TANZANIA**

110. Licensing is usually used to establish eligibility, prescribe standards of service and to exercise oversight in order to protect consumers, in this case, tourists. Licensing in Tanzania goes beyond those goals and focuses more on collecting information for purposes of charging fees and for taxation as well for proving categories for local and for foreigners and for determining who should invest in particular activities and who should pay what fee applicable to which group. Used for this purpose, licensing is one of the most expensive ways of collecting information as it costs time and money. The average tourism operator (includes a hotel investor) spends about 2,000 hours to comply with licensing and other requirements.
111. The above review shows unusually restrictive entry requirements, unusually
discriminative entry conditions (by citizenship, by qualification and by resource
means at disposal of applicant on application); unusually cumbersome
administrative procedures for starting business in the sector, for obtaining
licenses and registration of facilities and activities; unusually restrictive conditions
for renewing licenses; and unusually high number of documents required to
accompany applications; unusually un-sequenced document requirements for
license and registration applications; unusually duplicative documentation
requirement; and unusually duplicative processes of licensing and registration of
the same investor or activity.

112. Regulation in the tourism sector is characterized by something more profound
than in any other sector- distrust. Distrust of the investor and a need to ask for
documents that need not be requested. They reveal something-else- the
absence of any sector growth strategy. They reveal something else further-
that the private sector in the tourism sector did not participate in the preparation of the
regulations and that the sector suffers from political interference for competition
exclusion purposes on the basis of citizenship.

113. An example of duplication of documentation and request for documents that
should not be necessary for the purposes of the license application relates to the
requirement that a tourism operator has to submit copy of certificate of
incorporation, Memorandum and Articles of Association which is understandable
but in addition to those he has to give evidence that the business is licensed by
BRELA, which evidence is in the form of a certificate of incorporation or
certificate of registration for business names already listed! He also has to
submit a business plan! Why should the Ministry have to review business plans
of an investor in the sector is difficult to understand given that the Ministry does
not have the manpower and the capacity to review and pass judgment on
business plans.

REQUIRED DOCUMENTATION AND INFORMATION IN THE CASE OF A
COMPANY OWNED BY A TANZANIAN

114. Under current law, tour operators who are Tanzanians or companies wholly
owned by Tanzanians face specific conditions applicable to Tanzanians or
companies owned by Tanzanians. In the case of a company owned by a
Tanzanian the first proof to make to the Ministry is that the applicant is a
Tanzanian. Then, the applicant must have, at the time the application is
submitted, a fleet of 3 vehicles, roadworthy and registered in the name of the
company applying, comprehensively insured before a license is applied for and
granted! Crucially the company would not benefit from any incentives such as
import duty exemptions without the license and cannot claim the exemptions retroactively after a license is issued! In addition, the local operator must increase his fleet to 5 vehicles within 24 months or risk having his license revoked! The conditions do not allow for business growth but number of fleet growth.

115. Mauritius issues a letter of intent to grant a license to new investors which enables the applicant to meet conditions including business licenses before submitting the application for license. Tanzania should emulate Mauritius.

116. Closer to home, the Government could learn from the Bank of Tanzania which has statutory pre-submission meetings with applicant to help guide the applicant submit as complete a list of documents as possible and to answer questions or offer clarifications so as to make it as easy as possible for the applicant to comply. The Bank of Tanzania considers an application for establishing a bank and on the basis of the documentation and other requirements having been complied with, issues a banking license to the applicant and gives the applicant one year to get ready to operate. This allows the applicant, having obtained the license, to recruit, to purchase equipment in the name of the applicant and be ready to operate. Tanzania could use the Bank of Tanzania approach by issuing a license subject to the investor fulfilling the conditions attached to the license or the Mauritius approach by issuing a letter of intent if it would be acceptable by other institutions as the applicant imports equipment or vehicles in the name of the company and applies for a certificate of incentives from the Tanzania Investment Center.

117. The problem is that while the intention might be to make sure that locals involved must have the ability to provide good services, to have to have all of the vehicles bought ahead of the application for a license is not practical in both legal and business terms.

REQUIRED DOCUMENTATION AND INFORMATION IN THE CASE OF A COMPANY OWNED BY A NON-TANZANIAN

118. A non–Tanzanian has to meet higher entry requirements. An applicant must have before application; a company that has purchased in its name 10 new vehicles of the type approved for the tour business and provide proof that it has registered and is certified by the Tanzania Investment Center (TIC) but an application for a certificate of incentive would not be issued by the TIC unless the business has a license from the sector regulator. It should be noted that TIC does not register or certify businesses, so the requirement if followed literally would not be met under current law.
119. Further, a tour operator must provide additional information as listed in the 1st Schedule to the Regulations and listed in paragraph 114 above but such information requires that the applicant obtains not only the investment ahead of an application but also a postal address, telephone and fax numbers for an applicant using a business name registration!

120. For an applicant investing through a company, further information required includes full names of the proprietor or shareholders and their percentage of shares (the memorandum and Articles of Association of a company that is new and applying for a license will show the full names of the shareholders and the percentages of their shareholding). The requirement to reproduce full names of shareholders and their shareholding is duplicative.

121. The applicant would be required to provide number of employees both citizens and non-citizens, skilled and unskilled; names of non-citizen employees, their age, qualification and experience, position held and duration and what efforts have been made to employ a citizen. If the business includes transportation, then the applicant has to disclose the license number plates, types and make and carrying capacity, attach copies of vehicle license cards under the business name, current insurance comprehensive covers and vehicle inspection report; number of international tourists handled monthly during the previous year showing amount of forex earned monthly, tourist circuits operated, safari trip tariffs and other relevant standing charges which have been in use during the previous year, disclose number of tourist handled monthly during the previous year and areas/circuit operated during the previous year.

122. Also the applicant has to submit projections for the next year and must disclose names and addresses of branches of local banks in which the applicant holds an account, details of means and resources at disposal of the applicant, if the application is for renewal, the reasons for the application. First of all, applications for renewals are grounded by the fact that the licenses are valid only for 12 months, so there should be no other reason for an application for renewal of a license other than the fact that without renewal the licenses would have no validity beyond their period of validity and the investor would be in breach of the Act if he conducts business without a valid license.

123. Secondly, it is unusual for tourism investors to be required to disclose bank accounts in which they hold accounts as it is a requirement not demanded of investors in any other sector! Stranger is that the bank accounts in the name of
the company must be in place prior to the submission of the application for a license!

124. Most of the requirements in paragraphs 120, 121 and 122 (regarding existence of bank accounts held in local banks) above may make sense for an applicant seeking renewal of a license but unsuitable for new entrants.

125. The applicant has to confirm that he has not been convicted or adjudicated bankrupt and that the applicant has to maintain records, appropriate books of entry including books of account containing tourism transactions, documents providing details of country of origin of tourist names, address, and services arranged and passport details which must be made available to the Division of Tourism! This is most unusual when compared to other sectors of the economy and the requirement is in addition to the details required of companies under sections 151-169 under the Companies Act No. 12 of 2002!

TRAVEL AGENT SERVICES

ENTRY CONDITIONS

126. The travel agent business is only reserved to a fraction of Tanzanians who have enough money and level of education and training to meet the entry conditions. An applicant has to prove he is Tanzanian, be qualified and be registered by IATA, have in place 2 employees who possess the minimum requirement prescribed by IATA, show proof that he has suitable premises for carrying on the business and have a business plan. These requirements force an applicant to invest in the sector before applying for a license. These restrictions work to the benefit of the rich middle class local Tanzanians who are more likely to meet the conditions especially on appropriate office space and less on the target group of Tanzanians who deserve more jobs that could be created by a substantial increase of investment in the sector and an a substantial increase in tourist numbers. The majority of Tanzanians (black unemployed locals) for whom exclusion of foreigners in the restricted activities were meant to assist are not benefiting from the tourism sector as they should due to the restrictions.

127. Further, if the investor is using a firm then its registered share capital has to be not less than USD100,000. At today’s exchange rate the amount is in excess of Tsh150million which the investor must have upfront. Firms are business names registered under the Business Names Act R.E 2002. A firm has no registered share capital!
128. If the applicant is a company as the vehicle for the investment, then its entire authorized share capital must be fully issued and fully paid up and must be no less than USD200,000 if the shareholders are Tanzanians and it must be no less than USD500,000 if the shareholders are non-citizens. Translated to Tanzanian shillings the amounts for a company owned by Tanzanians and non-Tanzanians the issued and paid up share capital would be Tsh350 million and Tsh750 million respectively which an investor must have before applying for the license and before commencement of business. The tourism business is not a capital intensive business and such high demand for issued share capital means that a lot of money is paid up to the company and standing idle before it is needed because the company will not be able to utilize the money immediately. More disturbing the requirement for 100% equity investment denies a company from borrowing for part of its capital requirement. The requirement confuses authorized share capital from issued and paid up share capital from the business value of a company.

129. No other sector faces such restrictive entry requirements! The banking sector requires new bank and existing banks to maintain a minimum core capital but the manner in which this is fulfilled is different. A bank is given 12 months within which to be ready for operations after satisfying the Bank of Tanzania of the source of the new bank’s funding. In the tourism sector the investor must have the money upfront even if such large amounts are not immediately needed in the investment or not needed in full at all.

130. Any company wishing to reduce its issued and paid up share capital must seek the prior approval of the Director for Tourism. This is an unusual requirement. First it is not a requirement supported by the Act. Secondly, there seem to be no justification for the Director of Tourism to have to regulate issued capital reduction. Capital reduction is a partial winding-up of a company and the persons who should be protected by the law are creditors of the company. Neither the tourists nor the Director of Tourism is a creditor. Thirdly, the Director would be ill capacitated to regulate capital reduction because he has no mandate from the Act and the Regulations provide no safeguards or procedure for capital reduction. Fourthly, capital reduction is provided for in the Companies Act and should remain there.

131. The reduction of share capital of a company is regulated by sections 68-72 of the Companies Act No. 12 of 2002 and those are the provisions that are valid. The Regulation granting the power to the Director of Tourism has no legal force. Regulations have no power to amend the provisions of a principal legislation.
132. The fees charged for licenses for both local and non-locals are very high (See paragraphs 61 to 72 above). The fees and other charges constitute indirect taxation of the sector even before a business is operational! This does not encourage investment in any sector and in particular in the tourism sector.

NEGATIVE PUBLIC VIEW OF FOREIGN INVESTMENTS IN THE TOURISM SECTOR

133. The public perception of the role of foreign investments in the tourism sector in Tanzania is negative fueled by allegations that foreign investors steal money from Tanzania through retentions abroad (this is mirrored in the regulations requiring non-citizens to disclose their bank accounts with local banks and bank accounts abroad and all the requirements on records and books of account to be submitted to the Division of Tourism). In reality it is fueled by politics of exclusion (based on nationality) by some of the relatively well-off local investors who believe that if foreigners or other more successful competitors are excluded from the sector, they would be guaranteed business. A common argument for exclusion is that those sub-sectors, in respect of which exclusion of investors is sought, can easily be handled by locals misses the point that competition with foreign investors would improve the service for the tourism experience for tourists coming to Tanzania. Not that before the exclusions there were no locals in those excluded sub-sectors. There were. Just that if there is no foreign investor in the sub-sector a tourist would have less choice and will have to take the rich local Tanzanian’s services! It is not about job creation and not about improving the majority of poor Tanzanians. It is about providing a captive tourism services through exclusion of full range competition. The argument for exclusion misses the central point in promoting tourism which is the need for ensuring competitive tourism experience and competitive tourism growth.

134. In our view, there is continued confusion between encouraging foreign investors in excluded sub-sectors, the need to provide competitive experience for the tourists, the advantages of transfer of knowhow and management systems which happens when foreign investors are encouraged to invest in joint venture with local investors and Tanzanians benefiting from the sector. Nothing can be far from what is claimed. The approach so far has been to focus on few rich middle class Tanzanian investors at the expense of majority of Tanzanian who miss out on jobs that could have been created if investment conditions encouraged more investment in the tourism sector regardless of the nationality of the investors and
without upfront indirect taxation of the sector. It is not that Tanzania has reached any saturation point of investments in the tourism sector. Statistics show that Tanzania is at the very bottom of its tourism potential.

WHAT SHOULD BE DONE INCLUDE SHORT TERM AND LONG TERM ACTIONS.

135. What should be done briefly includes some short term and long term actions that should be carried out by the Government in partnership with the private sector to improve the tourism sector and make investing in the sector easy in order that Tanzania can begin to fully tap into its tourism potential. We start with short term followed by long term actions.

SHORT TERM ACTIONS

136. Short term actions include the following:

(1) The Government and the private sector in the tourism sector should carry out public awareness campaign to make the general public to know that Tanzania is ranked 2\textsuperscript{nd} in the world in terms of tourism attractions and what Tanzania should do to tap into that potential and the possibilities of increase in employment;

(2) Institutional reform is required. It is recommended that an autonomous Tourist Authority be established by collapsing the Licensing Board and the Tourism Division into one institution (a government agency) which would regulate the tourism sector. Currently there is the Director of Tourism managing registration of tourism facilities and activities; then TALA regulating licenses of tourist facilities and activities to which the Director of Tourism is the Secretary. The Ministry would focus on policy formulation;

(3) Develop a tourism growth strategy with annual growth targets and annual evaluation of performance. The recommendation is that tourism has to be promoted in a package touching on all that has to be improved in order to make the experience competitive;

(4) make one single license valid in the whole of the country and provide for the opening of new branches of hotels or other tourism investment to merely have to obtain the consent of the Director for Tourism that the facilities meet the required standards much like the BOT does with respect to banks opening branches elsewhere in Tanzania;
(5) License the entity and not the activity or facility. Under Tanzanian law activities or facilities have no legal identity and as such cannot make any payments;

(6) Collapse registration and license into one process subject to one license;

(7) Reduce fees gradually and recoup loss by an increase of corporation tax if applied to all sectors rather than the indirect taxation which is hindering growth (license fees should reflect true cost of regulation and should not be a substantive source of revenue);

(8) Provide for a public announcement of how much fees are collected each year in the tourism sector and how the amounts have been spent;

(9) Remove Local Government Authorities (LGA) from dealing with investors both local and foreign (it would be impossible to maintain a national market if LGA are allowed to tax, impose levy and issue permits or licenses. Might be better to increase corporate tax to include a portion for LGA;

(10) Amend the Tourism Act and its Regulations to make investment in the sector easier and more investor friendly at all levels;

(11) Carry out a public campaign for more understanding of the public on the positive role of private investment and in particular foreign investment in growing the tourism sector and the importance of fair competition for both local and foreigners;

(12) encourage integrated market development of the sector whereby a hotel owner may carry out related services or activities such as travel agency, tour operator, restaurant, bar, fitness center, cultural heritage, spa, curio shop provided that these are within the hotel area without having to apply for any additional license;

(13) Encourage, on a gradual basis, joint venture investments between foreigners and locals using incentives rather than compulsion;

(14) Provide more effective security and safety of tourists and tourist facilities;
(15) De-criminalize breach of provisions and to make it easier for the Director to penalize breach without having to file criminal proceedings and empower the authority to issue penalties for non-compliance so that the authority can provide effective oversight;

(16) remove arbitrary decision making power from the Act especially the power to order the Board to revoke a licenses and the power to add to the list of excluded activities and facilities without compensating existing investors who would be affected or without due process;

(17) Protect existing investments lawfully established in Tanzania before the Act entered into force with respect to the excluded activities or facilities;

(18) Establish an annual procedure for site inspections and the inspectors to bear the costs of such inspections;

(19) development levy should be levied on income after tax rather than on gross income and its use should focus solely to improving tourism infrastructure and activities listed in the tourism strategy and the annual plans and have annual evaluation of performance;

(20) remove duplicative processes and documentation requirements;

(21) in the short term allow international airlines to operate internally between agreed tourist sites in the north, Zanzibar, the southern circuit, east and western parts of Tanzania within an operational agreement between the airline with the Government, while encouraging the development of safe and adequate airline industry (this sounds crazy but it could change the face of tourism in Tanzania and boost tourism numbers); and

(22) removing discriminatory provisions from the law (allow an investor to invest in the entire process of the industry if he can and encourage joint venture investment where possible by providing incentives to do so which will allow integrated development of the sector; and
137. Long-term actions include the following:
   (1) develop a tourism total package action plan based on the strategy;
   (2) develop infrastructure which would include airports, marine transport and roads through private sector investment as well as Private sector public sector partnerships;
   (3) invest in skills and human capital development through investment in proper hotel schools for all levels of the industry requirement by encouraging world competitive private and public hotel schools (this being an ongoing goal is also found in short term actions); and
   (4) Periodic (every three years) evaluation of the investment conditions in the sector with a view to constantly improving the conditions.

CONCLUSION

138. The Act and the Regulations are part of the obstacles to the development of the tourism sector in Tanzania. Of the countries surveyed Kenya and Mauritius, there are no discriminative fees imposed based citizenship and non-citizenship. The impact of business unfriendly provisions of the Act and the Regulations is that Tanzania has experienced a slide in its competitiveness in comparison to the performance of other countries. The key test is whether or not the politicians can be persuaded to abandon populist policies over policies that are in the best interest of the tourism sector and Tanzania.

END