

THE TOURISM AUTHORITY (AMENDMENT) BILL
(No. II of 2008)

Explanatory Memorandum

The object of this Bill is to amend the Tourism Authority Act 2006 in order to –

- (a) make better provisions regulating the operation of tourist enterprises, pleasure crafts, and in particular to enable the Tourism Authority to issue provisional closing orders, provisional pleasure craft licences and enforcement notices;
- (b) streamline certain provisions of the Act to facilitate its implementation; and
- (c) give to the Minister the power to make regulations to implement a points system for the suspension of a skipper's licence.

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21 March 2008

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ARRANGEMENT OF CLAUSES

Clause

- 1. Short title
- 2. Interpretation
- 3. Section 2 of principal Act amended
- 4. Section 4 of principal Act amended
- 5. Section 8 of principal Act amended
- 6. Section 26 of principal Act amended

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15. Section 57 of principal Act amended
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24. Section 73 of principal Act amended
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29. Section 96 of principal Act amended
30. Section 102 of principal Act amended
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32. Section 108 of principal Act amended
33. Section 116 of principal Act amended
34. New section 116A added to principal Act
35. Section 121 of principal Act amended
36. Section 122 of principal Act amended
37. Section 125 of principal Act amended
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40. New section 127A added to principal Act
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A BILL

To amend the Tourism Authority Act 2006

ENACTED by the Parliament of Mauritius, as follows -

1. Short title

This Act may be cited as the Tourism Authority (Amendment) Act 2008.

2. Interpretation

In this Act –

"principal Act" means the Tourism Authority Act 2006.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended by inserting the following definitions in their appropriate alphabetical order –

“private club” means a commercial establishment which –

- (a) provides entertainment, including the provision of music and space for dancing on its premises;
- (b) optionally serves food, alcoholic and non-alcoholic drinks; and
- (c) grants access to its premises –
 - (i) upon payment of a membership fee; or
 - (ii) in its own discretion to a non-member.

“pub” means an establishment which –

- (a) is open to the public;
- (b) serves alcoholic drinks, snack food or light meals for consumption on the premises; and
- (c) plays live or recorded music.

4. Section 4 of principal Act amended

Section 4(2) of the principal Act is amended by inserting immediately after paragraph (d), the following paragraph –

- (da) a representative of the Ministry responsible for the subject of local government;

5. Section 8 of principal Act amended

Section 8(2) of the principal Act is amended by deleting the figure “4” and replacing it by the figure “5”.

6. Section 26 of principal Act amended

Section 26 of the principal Act is amended –

- (a) by repealing subsection (5) and replacing it by the following subsection –

(5) The Authority may, in relation to a first application and after such an inspection as may be carried out under subsection (4), issue a letter of intent to the applicant upon payment of the prescribed fee setting out the conditions upon which a tourist enterprise licence shall be issued.

- (b) in subsection (6), by deleting the words “The Authority shall” and replacing them by the words “Subject to subsection (6A), the Authority shall, in relation to a first application”;

- (c) by inserting immediately after subsection (6), the following subsection –

(6A) Where a tourist enterprise licence has not been renewed and has lapsed under section 29(3) and the applicant applies for another tourist enterprise licence in respect of the same commercial activity, the Authority may issue a tourist enterprise licence to the applicant subject to –

- (a) the payment of double the prescribed fee; and
- (b) such terms and conditions as the Authority may impose.

7. Section 27 of principal Act amended

Section 27 of the principal Act is amended by inserting immediately after paragraph (c), the following paragraph –

- (d) is not a fit and proper person to hold the licence.

8. Section 31 of principal Act amended

Section 31 of the principal Act is amended –

- (a) in subsection (1), by inserting immediately after the words “carries on a tourist enterprise”, the words “from a place other than fixed premises”;
- (b) in subsection (3), by inserting immediately after the words “at the office of the Authority”, the words “or to such police station or National Coast Guard station as the authorised officer may specify”;
- (c) in subsection (4), by deleting the word “pay”.

9. New section 31A added to principal Act

31A. Display of tourist enterprise licence

(1) Any person who runs or carries on a tourist enterprise in fixed premises shall display a copy of his tourist enterprise licence at a conspicuous place in his premises.

(2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 25,000 rupees and to imprisonment for a term not exceeding one year.

10. Section 32 of principal Act amended

Section 32(1) of the principal Act is repealed and replaced by the following subsection –

(1) (a) Where the Authority considers that the revocation of a tourist enterprise licence is not warranted, it may suspend the licence for such period as it may determine.

(b) Where the Authority suspends a licence under paragraph (a), it may in addition, direct the licensee to take such corrective measures within such time limit as it may determine.

11. Section 37 of principal Act amended

Section 37 of the principal Act is amended by repealing subsection (1) and replacing it by the following subsection –

(1) The Director or any authorised officer duly designated by the Director for that purpose, may make a provisional closing order in respect of –

- (a) any tourist enterprise where he is satisfied that any of the grounds by virtue of which a tourist enterprise licence may be revoked under section 30, is present;
- (b) any premises where he has reasonable grounds to believe that it is being used to run a tourist enterprise –
 - (i) in contravention of this Act or regulations made under it; or
 - (ii) in such manner as to constitute a danger to public health, public order or public safety.

12. Section 42 of principal Act amended

Section 42 of the principal Act is amended in subsection (1) –

- (a) in paragraph (a), by repealing subparagraph (ii);
- (b) in paragraph (b)(ii), by deleting the words “or a pleasure craft manufactured in Mauritius by or on behalf of the owner, as the case may be,”.

13. Section 45 of principal Act amended

Section 45 of the principal Act is amended in subsection (2)(b), by inserting immediately after the words “of such examination” the words “to the Authority”.

14. Section 50 of principal Act amended

Section 50 of the principal Act is amended in subsection (1)(c), by inserting immediately after the words “pleasure craft licence”, the words “together with the registration book”

15. Section 57 of principal Act amended

Section 57 of the principal Act is amended in subsection (1)(a), by inserting immediately after the words “pleasure craft licence”, the words “or a provisional pleasure craft licence issued under section 65A”.

16. Section 58 of principal Act amended

Section 58 of the principal Act is amended in subsection (1), by deleting the figure “7” and replacing it by the figure “15”.

17. Section 59 of principal Act amended

Section 59 of the principal Act is amended –

- (a) in subsection (1) –
 - (i) by deleting the words “section 60” and replacing them by the words “section 60 and subsection (3)”; and
 - (ii) by deleting the words “section 57(5)(b)” and replacing them by the words “section 57(6)”; and
- (b) by adding immediately after subsection (2), the following subsection –

(3) Where a pleasure craft licence has not been renewed and has lapsed under section 64(3) and the applicant applies for another pleasure craft licence in respect of the same pleasure craft, the Authority may grant the application and issue a pleasure craft licence to the applicant -

- (a) where it is in presence of a favourable survey report, or counter examination report, as the case may be;
- (b) upon payment of double the prescribed fee by the applicant; and
- (c) on such terms and conditions as the Authority may impose.

18. Section 61 of principal Act amended

Section 61(2) of the principal Act is amended by deleting paragraph (b) and replacing it by the following paragraph –

- (b) the licensee or the skipper of the pleasure craft has been convicted of an offence under this Act or regulations made under it;

19. Section 62 of principal Act amended

Section 62(1) of the principal Act is repealed and replaced by the following subsection –

- (1) (a) Where the Authority considers that the revocation of a pleasure craft licence is not warranted, it may suspend the licence for such period as it may determine.

(b) Where the Authority suspends a licence under paragraph (a), it may in addition, direct the licensee to take such corrective measures within such time limit as it may determine.

20. New section 65A added to principal Act

The principal Act is amended by inserting immediately after section 65, the following new section –

65A. Issue of provisional pleasure craft licence

(1) Subject to subsection (3), the Authority may, in respect of a pleasure craft in respect of which there is no licence, issue a provisional pleasure craft licence where the pleasure craft –

- (a) must be transferred from one place to another to undergo a survey or reparation;
- (b) must be transferred to another place following clearance from Customs;
- (c) must be subject to testing by a manufacturer or a potential buyer.

(2) A provisional pleasure craft licence under subsection (1) may be issued upon payment of the prescribed fee and on such terms and conditions as the Authority may deem fit to impose.

(3) The Authority may, in respect of a pleasure craft licensed in a foreign country, with the approval of the Minister, issue a provisional pleasure craft licence –

- (a) upon payment of the prescribed fee; and
- (b) subject to such terms and conditions as the Minister may impose.

21. Section 68 of principal Act amended

Section 68 of the principal Act is amended in subsection (3) by inserting immediately after the words “at the office of the Authority”, the words “or to such police station or National Coast Guard station as the authorised officer may specify.”

22. Section 70 of principal Act amended

Section 70 of the principal Act is amended in subsection (1) by inserting immediately after the words “a place of safety”, the words “specified by the authorised officer”.

23. Section 72 of principal Act repealed and replaced

Section 72 of the principal Act is repealed and replaced by the following section –

(1) No person shall work as a canvasser unless he holds a canvasser permit.

(2) Subject to subsection (3), every licensee may in respect of –

(a) a pleasure craft;

(b) such tourist establishment or activity as may be prescribed,

apply for a canvasser permit in his own name, or for any of his employees he wishes to appoint as a canvasser.

(3) An application under subsection (2) shall be made in respect of the region where the applicant wishes to carry on his commercial activities.

(4) For the purposes of subsection (3), the Minister shall, after consultation with the Authority, prescribe the limits of the regions where canvassing may be carried on.

(5) On receipt of an application under subsection (2), the Authority may require the applicant to furnish such information which may be reasonably necessary in order to enable the Authority to –

(a) determine whether the applicant or the person appointed as canvasser by him, as the case may be, is a fit and proper person to hold a canvasser permit under this Part; and

(b) properly consider the application.

(6) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year.

24. Section 73 of principal Act amended

Section 73 is amended –

- (a) in subsection (1), by deleting the words “The Authority may” and replacing them by the words “Subject to subsection (4), the Authority may”;
- (b) by adding immediately after subsection (2), the following subsections –

(3) No canvasser permit shall be granted to an applicant for a region where he already holds a canvasser permit for that region.

(4) Where a canvasser permit has not been renewed and has lapsed under section 75(3) and the applicant applies for another canvasser permit in his own name, or in that of any of his employees he wishes to appoint as a canvasser, as the case may be, the Authority may grant the application and issue a canvasser permit –

- (a) where it is satisfied that the applicant or the person appointed as canvasser by him as the case may be, is a fit and proper person to act as a canvasser; and
- (b) subject to –
 - (i) the payment of double the prescribed fee;
 - (ii) such terms and conditions as the Authority may determine.

25. Section 75 of principal Act amended

Section 75 of the principal Act is amended –

- (a) in subsection (1), by deleting the words “one month” and replacing them the words by “3 months”; and
- (b) in subsection (2), by deleting the words “3 months” and replacing them by the words “30 days”.

26. Section 83 of principal Act amended

Section 83 of the principal Act is amended by repealing subsection (3) and replacing it by the following subsection –

- (3) The Panel shall -
 - (a) conduct competency tests as it considers appropriate, to assess whether any applicant for a skipper's licence has the necessary knowledge and is competent to operate a pleasure craft; and
 - (b) perform such duties as may be directed by the Board.

27. Section 85 of principal Act amended

Section 85 of the principal Act is amended in subsection (1) –

- (a) by deleting paragraph (c) and replacing it by the following paragraph –
 - (c) the licensee has acted or is acting in such a way as to tarnish the good reputation of Mauritius as a tourist destination;
- (b) in paragraph (d), by deleting the full stop and replacing it by a semi-column;
- (c) by inserting immediately after paragraph (d), the following paragraph –
 - (e) the licensee has been convicted of an offence under this Act or regulations made under it.

28. Section 86 of principal Act amended

Section 86 of the principal Act is amended by deleting the figure "60" wherever it appears and replacing it by the figure "65".

29. Section 96 of principal Act amended

Section 96 of the principal Act is amended in subsection (2) by adding immediately after the words "exceeding 25,000 rupees", the words "and to imprisonment for a term not exceeding one year".

30. Section 102 of principal Act amended

- (a) in paragraph (c), by deleting the full-stop and replacing it by ";or"; and

(b) by adding immediately after paragraph (c), the following paragraph –

(d) for rescue or assistance to persons in danger at sea.

31. Sections 103 and 104 of principal Act repealed

Sections 103 and 104 of the principal Act are repealed.

32. Section 108 of principal Act amended

Section 108 of the principal Act is amended –

(a) in subsection (1), by deleting the word “Where” and replacing it by the words “Subject to subsection (3), where”;

(b) by adding immediately after subsection (2), the following subsections –

(3) Where the owner of a wreck is known, the Director may serve, or cause to be served, on him a removal notice –

(a) stating the opinion of the Director;

(b) requesting him to remove the wreck within such period as may be determined by the Director.

(4) Any person who fails to comply with a removal notice shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year.

33. Section 116 of principal Act amended

Section 116 of the principal Act is amended –

(a) by repealing subsection (2) and replacing it by the following subsection –

(2) Where, in the opinion of the Authority, an advertisement or promotion is misleading, the Authority may direct any person responsible for the dissemination of such advertisement or promotion, as the case may be, to withdraw or modify it and, the person to whom the direction is given shall comply with it.

(b) by repealing subsection (4) and replacing it by the following subsection –

(4) Any person who contravenes this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

34. New section 116A added to principal Act

The principal Act is amended by inserting immediately after section 116, the following new section –

116A. Enforcement notice

(1) Where the Director is of the opinion that a person is contravening or is likely to contravene this Act or any regulations made under it, he may serve an enforcement notice on the person.

(2) An enforcement notice shall –

- (a) state the opinion of the Director;
- (b) specify the matter constituting the contravention, or the matter making it likely that the contravention will arise, as the case may be;
- (c) specify the measures that must be taken to remedy the contravention, or to remedy or eliminate the matter making it that the contravention will arise, as the case may be; and
- (d) specify a period within which those measures must be implemented.

(3) No person shall be prosecuted for a contravention in respect of which an enforcement notice has been issued as long as the notice is in force.

(4) Any person who fails to comply with an enforcement notice shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 2 years.

35. Section 121 of principal Act amended

Section 121 of the principal Act is amended in subsection (1) by inserting immediately after the words “a duplicate licence”, the words “or canvasser permit, as the case may be”.

36. Section 122 of principal Act amended

Section 122 of the principal Act is amended in subsection (1), by inserting immediately after the word “licensee”, the words “or canvasser permit holder, as the case may be”.

37. Section 125 of principal Act amended

Section 125 of the principal Act is amended in paragraph (b), by inserting immediately after the words “pleasure craft licence”, the words “or a provisional skipper’s licence”.

38. New section 125A added to principal Act

The principal Act is amended by inserting immediately after section 125, the following new section –

125A. Tampering with pleasure craft

Any person who –

- (a) gets on a pleasure craft or an exempt pleasure craft;
- (b) tampers with any part of the mechanism of a pleasure craft or an exempt pleasure craft; or
- (c) interferes with or damages a pleasure craft or an exempt pleasure craft,

without lawful authority or reasonable cause, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year.

39. New section 125B added to principal Act

The principal Act is amended by adding immediately after the new section 125A, the following section –

125B. Touting

- (1) No person shall –
 - (a) make any loud noise or sound by any instrument in order to attract the attention of the public or potential consumers;
 - (b) by troublesome or frequent demands, or by persistent following -

- (i) hold out the pleasure craft or an exempt pleasure craft for hire to the public, or attempt to induce any person to become a passenger in the pleasure craft or an exempt pleasure craft;
- (ii) solicit customers or potential customers in relation to a tourist enterprise,

in such a manner as to constitute a nuisance.

(2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20,000 rupees and to imprisonment for a term not exceeding 3 months.

40. New section 127A added to principal Act

127A. Points systems for suspension of skipper's licence

- (1) The Minister may make regulations –
 - (a) establishing a system of recording points against a skipper convicted of an offence under this Act or regulations made under it;
 - (b) specifying the minimum number of points to be accumulated by the skipper before his licence may be suspended for such period not exceeding one month.

(2) Where the points accumulated by a licensee under subsection (1) reach 50 percent of the minimum number of points at which the Authority may suspend the skipper's licence under this section, the Authority shall give written notice thereof to the licensee.

(3) Where a court, in the exercise of its powers under section 107, suspends the skipper's licence of a person convicted of an offence in connection with the operation of a pleasure craft or an exempt pleasure craft, points shall not be recorded against the person in respect of that offence.

(4) Where the holder of a skipper's licence commits on a single occasion more than one offence under this Act or regulations made under it, points shall be recorded against him only for the offence having the largest number of points.

(5) No points shall be accumulated by any licensee in respect of any act or omission for which his licence has been suspended under section 85.

41. Section 129 of principal Act amended

Section 129(2) of the principal Act is amended by repealing paragraph (l) and replacing it by the following paragraph –

- (l) the designation and regulation of mooring places and embarkation points;

42. First Schedule to principal Act repealed and replaced

The First Schedule to the principal Act is repealed and replaced by the Schedule to this Act.

43. Consequential amendment

- (1) The Local Government Act 2003 is amended –

- (a) in section 41, subsection (2)(m), by deleting the words “Tourism Act 2002” and replacing them by “Tourism Authority Act 2006”;

- (b) in the Eighth Schedule, Part I –

- (i) by deleting the words “Health club, sports centre and/or wellness centre (including gym centre), excluding those on hotel premises in leisure and entertainment centres approved by the Ministry of Tourism” and replacing them by the words “Health club, sports centre and/or wellness centre (including gym centre), excluding those on hotel premises regulated under the Tourism Authority Act 2006”;

- (ii) by deleting the words “Nightclub except nightclub located in leisure and entertainment centre approved by Ministry of Tourism”; and

- (iii) by deleting the words “Private Club” and replacing them by the words “Private Club, except a private club regulated under the Tourism Authority Act 2006”.

- (2) The Regulatory Authorities Appeal Tribunal Act 2005 is amended –

- (a) in section 2, in the definition of “Regulatory Authorities Acts”, in paragraph (b), by deleting the words “Tourism Act 2006” and replacing them by the words “Tourism Authority Act 2006”;

- (b) in the Second Schedule, by inserting in the appropriate alphabetical order, the words "Tourism Authority".

44. Transitional provisions

Notwithstanding the amendments referred to in section 41, any licence or authorisation issued in respect of a nightclub or a private club under the Local Government Act 2003, or regulations made under it, which has not expired prior to the coming into operation of this Act shall remain valid, under the same terms and conditions, until its expiry.

45. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

SCHEDULE
(section 42)

FIRST SCHEDULE
(section 2)

Tourist enterprise

Part A - Establishment

Sub-Part I - Tourist accommodation

Guesthouse

Hotel

Tourist residence

**Sub-Part II – Places where food, beverages
and entertainment are provided**

Nightclub

Private club

Pub

Restaurant (including liquor and other alcoholic beverages) with entertainment

Restaurant (excluding liquor and other alcoholic beverages) with entertainment

Restaurant (including liquor and other alcoholic beverages) without entertainment

Restaurant (excluding liquor and other alcoholic beverages) without
entertainment

Table d'Hôte

Part B – Activity

Dolphin and whale watching

Eco-tourism activities (nature-based tourism activities or adventure-related
tourism activities, or both)

Hawking on beaches facing hotels

Hawking in tourist sites

Operating helmet diving centre

Karting

Operating aquarium displaying fish or marine animals for public viewing

Operating beauty parlour, including hairdressing, within hotel premises

Operating boat house

Operating cable car

Operating ferry boat

Operating golf course

Operating health and fitness centre within hotel premises

Operating pleasure craft for commercial purpose, other than by a pleasure craft licensee

Operating rental agency for bicycle

Operating rental agency for bus, including minibus

Operating rental agency for car

Operating rental agency for jet ski

Operating rental agency for kite surf

Operating rental agency for motorcycle

Operating rental agency for paraglide

Operating rental agency for quad

Operating rental agency for windsurf

Operating scuba diving centre

Operating spa within hotel premises

Operating travel agency

Providing non-motorised water sports such as pedaloos, canoes, kayaks and laser

Providing tour operator service

Working as tourist guide, including tourist guide employed by a tour operator