

CHAPTER 409**MALTA TRAVEL AND TOURISM SERVICES ACT**

To make provision for the promotion of tourism, for the regulation of tourism services and operations, for the establishment of an authority with powers to that effect and for matters connected therewith or ancillary thereto.

1st September, 1999;
11th October, 2000;
23rd February, 2001;
1st January, 2002;
31st May, 2002;
9th July, 2002;
14 March, 2003

ACT XII of 1999, as amended by Acts XXVI of 2000 and VI of 2001, Legal Notices 512 of 2004 and 426 of 2007; and Act XXIII of 2009.

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PART I

PRELIMINARY

Short title.

1. The short title of this Act is Malta Travel and Tourism Services Act.

Interpretation.
Amended by:
XXIII. 2009.85.

2. In this Act, unless the context otherwise requires -

"accommodation" means a room or rooms furnished and equipped to provide living accommodation to a person;

"advertisement" means the making of a representation in any form in connection with a trade or business in order to promote the supply of goods or services, including the making of any such representation, any word, letter, model, sign, placard, board, notice, brochure or device, whether illuminated or not, in the nature of and employed wholly or in part for the purposes of advertisement, announcement or direction, and any boarding or similar structure used or adapted for use for the display of advertisements; and "advertise" shall be construed accordingly;

"agency of Government" means a body corporate established by law or a company in which the Government or such a body corporate, or a combination thereof, has a controlling interest or which is a subsidiary of such a company;

"appointed day", in relation to articles 50, 51 and 52 means the day on which the said articles will come into force;

"the Authority" means the Malta Tourism Authority established by article 3 and includes any person acting on its behalf under powers delegated by the Authority under this Act;

"the Board" means the Tourism Appeals Board established under article 13;

"catering establishment" means any building, premises or other establishment, including kiosks, howsoever described, purveying for reward food and, or, beverages including wines and spirits, for consumption;

"destination management company" means any person whose principal line of business, whether as principal or agent, is the creation, planning and operation of high level motivational and specialised programmes for tourists and other persons, whether singly or in groups, and which programmes include the provision of all or any of the following services: accommodation in a hotel or other suitable establishment; travel; conference facilities; excursions; guides; interpreters; technical support; entertainment and all other matters normally connected with motivational programmes, congresses, meetings and conference and incentive travel. The term "destination management company" does not include a hotel keeper, guest house keeper, keeper of holiday premises, a person who provides accommodation to tourists in a house, a tourist guide, a person who provides transport services by land, sea or air, an incoming tourism agent, a travel agent or an organised excursion operator;

"the Directorates" means the Enforcement Directorate and such other executive directorates as are established under article 12;

"enforcement notice" has the meaning assigned to it by article 41;

"financial year" means the period of twelve months ending on 31 December of any year:

Provided that the first financial year of the Authority shall commence on the coming into force of this Act and end on the 31 December of the following year;

"guest" means a person who is provided with accommodation at a hotel, guest house, hostel, holiday premises, lodging house or house used for the provision of accommodation to tourists or who has such accommodation placed at his disposal in any such place;

"guest house" means any building, howsoever described, but not being a hotel, in which accommodation, ancillary services and amenities are provided for the public by a common management; and "guest house keeper" shall be construed accordingly;

"holiday premises" means any building, howsoever described, but not being a hotel, guest house, hostel or the ordinary residence of the owner or tenant thereof, as the case may be, in which accommodation, ancillary services, including self-catering services, and amenities are provided for tourists; and includes any number of such buildings which are grouped together; and "keeper of holiday premises" shall be construed accordingly;

"hostel" means any building, howsoever described, but not being a hotel or a guest house, in which accommodation, ancillary services and amenities of a basic standard are provided for the public by a common management; and "hostel keeper" shall be construed accordingly;

"hotel" means any building, howsoever described, in which accommodation, ancillary services and amenities are provided for the public by a common management and includes any number of such buildings which are grouped together; and "hotel keeper" shall be construed accordingly;

"house" means any building, howsoever described, not being a hotel, guest house, hostel, holiday premises or lodging house, used or intended to be used, whether wholly or in part, for habitation;

"incoming tourism agent" means any person who, whether as principal or agent, arranges for, advises on or undertakes to provide to tourists and other persons, whether singly or in groups, travel arrangements in respect of incoming travel, including accommodation in a hotel, guest house, hostel, holiday premises or house used for the provision of accommodation to tourists; travel; organised excursions and all other matters normally or by custom connected with the tourism industry, but does not include a hotel keeper, guest house keeper, hostel keeper, keeper of holiday premises, a person who provides accommodation to tourists in a house, a tourist guide, a person who provides transport services, a travel agency, a destination management company or an organised

excursion operator and "incoming tourism agency" shall be construed accordingly;

"licence" means a licence issued hereunder by the Authority;

"Member State" means a member state of the European Economic Area;

"Minister" means the Minister responsible for tourism;

"operator", in relation to a tourism operation other than a tourist guide, means a person, other than an owner, who is entitled to operate it in his own right under a title derived directly or indirectly from an owner;

"organised excursion" means any organised excursion or tour for five or more tourists or other persons to one or more places in or around Malta or transport but excludes any service intended solely to provide transport; and "organised excursion operator" shall be construed accordingly;

"owner", in relation to a tourism operation other than a tourist guide, means a person who in his own right or as agent for another person is entitled to receive the rent in respect thereof where it is granted on lease or, where it is not let, would be so entitled if it were let:

Provided that where the tourism operation is subject to usufruct the expression "owner" shall include the bare owner;

"public officer" has the meaning assigned to it by article 124 of the Constitution;

"requirement" means any obligation, prohibition, condition or limit provided for in the laws or regulations, or in the administrative provisions, or administrative practices of the Authority;

"tourism operation" means a hotel, guest house, hostel, holiday premises, house used for the provision of accommodation to tourists, catering establishment, travel agency, destination management company, incoming tourist agency, organised excursion operator, tourist guide, and other tourism services, whether licensed or not:

Provided that for the purposes of article 48(2), the term "tourism operations" shall not include a house used for the provision of accommodation to tourists when the house constitutes the permanent residence of the person who provides such accommodation;

"tourist" means any person who travels to a place other than that of his usual environment for less than twelve months and who stays at least one night in the place visited;

"tourist guide" means a person who guides visitors in the language of their choice and interprets the cultural and natural heritage of Malta and/or specific area or areas, and who possesses a specific relevant qualification and licence issued and/or recognised by the Authority;

"travel agent" means any person who, whether as principal or agent, arranges for, advises on or undertakes to provide to tourists and other persons, whether singly or in groups, travel arrangements in respect of outgoing travel, including accommodation in a hotel, guest house, hostel, holiday premises or house used for the provision of accommodation to tourists; travel by air, land or sea; organised excursions and all other matters normally or by custom connected with the tourism industry; but does not include a hotel keeper, guest house keeper, keeper of holiday premises, a person who provides accommodation to tourists in a house, a tourist guide, a supplier of transport services, an incoming tourism agency, a destination management company or an organised excursion operator and "travel agency" shall be construed accordingly;

"travel package" means the pre-arranged combination of no fewer than two of the following when sold or offered for sale at an inclusive price and when the service covers a period of more than twenty-four hours or includes overnight accommodation:

- (a) transport;
- (b) accommodation;
- (c) other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package, and shall include such pre-arranged combinations even when various components thereof are billed separately;

"traveller" means any person who contracts with a licensed tourism operation for the provision of any travel or travel related services of any and every kind by such licensed tourism operation.

PART II

ADMINISTRATION

Title I - The Malta Tourism Authority

3. (1) There is hereby established an authority, to be known as the Malta Tourism Authority, which shall consist of eleven voting members and of the chief executive who shall *ex officio* be a non-voting member.

Establishment of the Malta Tourism Authority.

(2) The voting members of the Authority shall be:

- (a) six persons appointed by the Minister from among persons with knowledge of and experience in matters relating to travel and tourism; one of whom shall have knowledge and experience relating to Gozo; and
- (b) one person appointed by the Minister on the recommendation of the association recognised by the Minister as being representative of the hotel sector; and
- (c) one person appointed by the Minister on the recommendation of the association recognised by the Minister as being representative of the tourism and travel agents sector; and

- (d) one person appointed by the Minister on the recommendation of the national airline; and
- (e) two persons appointed by the Minister on the recommendation of such other associations recognised by the Minister as representing other sectors providing travel and tourism services.

(3) The chairperson of the Authority shall be so appointed by the Minister from among the persons appointed by him in terms of subarticle (2)(a). The Chief Executive shall be appointed by the Authority which, for the purposes only of such appointment, shall be deemed to consist only of the voting members.

(4) A person shall not be qualified to be appointed as, or to remain, a member of the Authority if he is a member of the House of Representatives.

(5) The members of the Authority shall hold office for a period not exceeding three years. Any member may, before the expiration of his term of office, resign by letter addressed to the Minister:

Provided that:

- (a) the members of the Authority may be removed from office by the Minister prior to the expiry of their term of office where, in the opinion of the Minister, they have been guilty of misconduct or where they are, in the opinion of the Minister, unable to perform the duties of their office;
- (b) a person who has been appointed by the Minister on the recommendation of any other person shall cease to hold office where the person making the recommendation declares to the Minister that he is withdrawing his recommendation with respect to that person.

(6) A person who has ceased to be a member of the Authority shall, if he is otherwise qualified, be eligible for re-appointment.

(7) Subject to the foregoing provisions of this article, the First Schedule to this Act shall apply to and regulate the proceedings of the Authority.

Powers and legal personality of the Authority.

4. (1) The Authority shall be a body corporate having a distinct legal personality and capable, subject only to the provisions of this Act, of suing and being sued, of entering into any contract, of acquiring, holding and disposing of property of any kind both movable and immovable, and by or under any title, and of doing any other thing or entering into any transaction whatsoever.

(2) The representation of the Authority shall vest in the Chairperson:

Provided that the Authority may appoint any one or more of its members, or any one or more of its officers, to appear in its name and on its behalf in any judicial proceedings or in any act, contract, instrument or other document whatsoever:

Provided further that where any of the powers of the

Authority are delegated in terms of subarticle (3), the representation of the Authority shall also vest in the executive or executives so delegated to the extent necessary for the proper exercise of their powers.

(3) The Authority may delegate any of its executive powers to any one or more of its executives under such conditions as it may deem appropriate:

Provided that the Authority's powers in connection with standards and control may only be delegated to the Enforcement Directorate.

5. (1) The functions of the Authority shall be:

Functions of the Authority.

- (a) to promote and advance Malta as a tourist destination;
- (b) to advise Government on tourism operations and to issue licences under this Act;
- (c) to monitor, classify and control the licensing of and standards provided in or by tourism operations;
- (d) to contribute towards the improvement of the level of human resources in the tourism industry;
- (e) to advise Government on the planning and development of the tourism industry as well as on the infrastructure supporting the tourism industry; and
- (f) generally to assist and advise Government on any matter relating to or affecting tourism, and to undertake and organise such activities and projects as it may consider appropriate in connection with the performance of its functions.

(2) In the performance of its functions the Authority shall adopt and follow the policies and plans of the Government and otherwise act in conformity with the provisions of this Act and any other applicable law; and the Authority may make such investments, as the Minister may approve, and as are calculated to assist in the promotion and advancement of Malta as a tourist destination.

(3) The Minister may, from time to time, as he may deem appropriate, give in writing and publish such directives as regards the policies and plans of the Government to be adopted and followed by the Authority, and the Authority shall, as soon as practicable, adopt and follow all such directives.

6. (1) The Authority shall appoint such officers and employees as it may from time to time deem necessary to carry out its functions under this Act.

Appointment of officers.

(2) The Authority shall also appoint one of its officers to act as secretary of the Authority.

(3) Without prejudice to subarticle (1), the Authority may, with the approval of the Minister, offer to any public officer performing duties in the department of tourism permanent employment with the Authority with the benefits contemplated in subarticle (4).

Cap. 93.
Cap. 58.

(4) Every public officer who accepts permanent employment with the Authority offered to him pursuant to subarticle (3) shall, for all purposes other than those of the Pensions Ordinance and of the Widows' and Orphans' Pensions Act, cease to be in the service of the Government and shall enter into service with the Authority with effect from the date of his acceptance of the offer, or such later date agreed between him and the Authority; and for the purposes of the said Ordinance and of the said Act service with the Authority shall be deemed to be service with the Government within the meaning thereof:

Cap. 93.

Provided that for the purposes of the said Pensions Ordinance the pensionable emoluments of such officer on retirement shall be deemed to be the pensionable emoluments payable to an officer in government service in a grade and at an incremental level corresponding to the post and incremental level at which the officer retires from the Authority.

- (5) (a) For the purposes of the proviso to subarticle (4), posts and salary grades with the Authority shall be classified in the most nearly corresponding grades and incremental levels in the service under the Government of Malta by reference to job description, skills, responsibilities and other analogous factors.
- (b) The classification referred to in paragraph (a) shall be carried out by a board composed of a chairman appointed by the Ministry responsible for Finance and two other members, one appointed by the Ministry responsible centrally for personnel policies in the public service and one appointed by the Authority. The classification shall be subject to the final approval of the Minister responsible for finance.
- (c) Such classification shall take place within three months of any adjustment of salaries of employees in government service and, or, of employees of the Authority.
- (d) No post shall be classified in a grade higher than that of grade 3 in the service of the government or such other grade that the Minister responsible for Finance may from time to time in the Gazette determine.
- (e) No person may, following a classification as aforesaid, be entitled to rights under the said Pensions Ordinance less favourable than those to which he would have been entitled prior to such classification.
- Cap. 93.

(6) The Authority shall in January of each year pay to the Government the difference between the cost of pensions and gratuities payable at the time of retirement from the Authority and the cost of the pension or gratuity, as the case may be, computed at the time of termination of the service of the officer with the Government to take up employment with the Authority.

7. (1) The Authority shall be endowed with an initial capital of five hundred and eighty-two thousand and three hundred and forty-three euro and thirty-five cents (582,343.35) which shall be paid by the Government out of the Consolidated Fund, without further appropriation other than this Act, by warrant under the hand of the Minister responsible for finance authorising the Accountant General to make the payment.

Financial provisions.
Amended by:
L.N. 426 of 2007.

(2) Thereafter the Authority shall be paid out of the Consolidated Fund such sums as the House of Representatives may approve.

(3) Without prejudice to the provisions of article 47 the Minister may, on the recommendation of the Authority, make regulations prescribing the contributions payable to the Authority by tourism operations and by such other persons as may be declared by the Minister to be direct beneficiaries of the tourism industry.

(4) The Authority shall cause to be prepared in each financial year, and shall not later than four weeks prior to the end of such year adopt, estimates of the income and expenditure of the Authority for the next following financial year:

Provided that, in respect of the first financial year, the Authority shall prepare and adopt estimates not later than twelve weeks after the coming into force of this Act.

(5) The estimates shall be made in such form and shall contain such information and such comparisons with previous estimates as the Minister may direct.

(6) A copy of the estimates of the Authority shall, upon their adoption by the Authority, be sent forthwith to the Minister.

(7) The Minister shall, at the earliest opportunity and not later than eight weeks after he has received a copy of the estimates of the Authority, or, if at any time the House of Representatives is not in session, within eight weeks from the beginning of the next following session, cause such estimates to be laid before the House together with a motion that the House approve the said estimates. One sitting day shall be allotted for the debate in the House on such motion; and both the motion and the approval of the estimates by the House may be with or without amendment to the estimates.

(8) No expenditure shall be incurred by the Authority that has not been approved by the House of Representatives:

Provided that:

- (a) until the expiration of six months from the beginning of a financial year or until the approval of the estimates for that year, the Authority may make or incur expenditure for carrying out its functions under this Act not exceeding in the aggregate one half of the amount approved for the preceding financial year;
- (b) expenditure approved in respect of a head or sub-head of the estimates may, with the approval of the Minister, be incurred in respect of another head or sub-head of the estimates;

- (c) if in respect of any financial year it is found that the amount approved by the House is not sufficient, or if a need has arisen for expenditure for a purpose not provided for in the estimates, the Authority may adopt supplementary estimates for approval by the House and, pending such approval, but subject to its being given, the Authority may in special circumstances and with the approval of the Minister, incur the relative expenditure; and the provisions of this Act applicable to the estimates shall, as near as practicable, apply to the supplementary estimates:

Provided further that in respect of the first financial year of the Authority, this subarticle shall apply as if the total expenditure that may be made or incurred by the Authority until the approval of the estimates for that year by the House may not exceed one half of the amount shown in such estimates.

(9) All estimates and supplementary estimates approved by the House shall, as soon as practicable, be published in the Gazette.

Accounts and
audit.

8. (1) The Authority shall cause to be kept proper books of account and other records in respect of its operation and shall cause to be prepared a statement of accounts in respect of each financial year.

(2) The accounts of the Authority shall be audited by an auditor or auditors to be appointed by it:

Provided that the Minister responsible for finance may require the books and other records of the Authority to be audited or examined by the Auditor General who shall for this purpose have power to carry out such physical checking and other verifications, and may require such information, as he may deem necessary.

(3) After the end of each financial year, at the same time as a copy of the estimates of the Authority is forwarded to the Minister in accordance with article 9, the Authority shall cause a copy of the statement of accounts duly audited to be transmitted to the Minister together with a copy of any report made by the auditor or auditors on that statement or on the accounts of the Authority.

(4) The Minister shall cause a copy of every such statement and report to be laid before the House of Representatives together with the motion laid before the House under the said article 9.

Annual report.

9. (1) The Authority shall, not later than twelve weeks after the end of each financial year, make and transmit to the Minister a report of its activities during that year, containing such information relating to the functions and to the proceedings of the Authority as the Minister may from time to time require together with the audited accounts as provided in article 8.

(2) The Minister shall cause a copy of every such report to be laid on the Table of the House of Representatives within two weeks, or, if at any time the House of Representatives is not in session, within two weeks from the beginning of the next following session.

10. Except with the approval of the Minister, the Authority shall not enter into any contract for the supply of goods or materials or for the execution of work or for the rendering of services, to or for the benefit of the Authority, which is estimated by the Authority to involve an expenditure exceeding two hundred and thirty-two thousand and nine hundred and thirty-seven euro and thirty-four cents (232,937.34), or such other amount as the Minister may from time to time prescribe, except after notice of the intention of the Authority to enter into such contract has been published and competitive tenders have been issued.

Contracts of supply or works.
Amended by:
L.N. 426 of 2007.

11. The Authority shall be exempt from any liability for the payment of any tax on income or duty on documents.

Exemption from tax.

Title II - The Directorates

12. (1) There shall be an executive directorate, to be known as the Enforcement Directorate, which shall be composed of -

Authority may delegate executive functions to directorates.

- (a) one person, appointed by the Authority, who shall act as chairperson; and
- (b) two persons, appointed by the Minister, on the recommendation of the Authority, one of whom shall be a person holding a warrant to practise as an advocate or a warrant to practise as a legal procurator who has been practising for not less than five years.

(2) There shall also be the executive directorates as listed in the Second Schedule to this Act, which shall be composed as described therein. The Minister may, after consulting the Authority, by order in the Gazette, abolish any one or more of the said directorates, vary their composition and establish such other executive directorates as he may from time to time deem appropriate. Each directorate so established shall be composed of a chairperson and such other members as the Minister may determine, all of whom shall be appointed by him:

Provided that the Minister shall appoint such members from among persons with knowledge and experience in the field of operation of the directorate concerned, one of whom shall have knowledge and experience relating to Gozo:

Provided further that a majority of such members shall be appointed from among operators in the tourism sector.

(3) The Authority may delegate to such directorates and require them to perform such of its functions with respect, among other matters, to marketing and promotion, human resource development, product planning and development, tourism support services, standards, and to other matters as it may from time to time deem appropriate; and any such delegation of its functions may be made subject to such conditions as the Authority may deem appropriate and may, at any time, be withdrawn, wholly or in part, by the Authority.

(4) The decisions of the directorates, including any licences issued and classifications made by them, shall be deemed to be, and shall have the same force and effect as, decisions of the Authority,

except in respect of matters which the Authority expressly reserves to itself or requires to be referred to it for determination.

(5) (a) The chief executive may attend all meetings of the directorates other than the Enforcement Directorate.

(b) The executive director of a directorate may attend all meetings of that directorate.

(6) The members of the Enforcement Directorate and of the executive directorates, established by or under subarticle (2), shall hold office for a period not exceeding three years and shall, if otherwise qualified, be eligible for re-appointment.

(7) Subject to the foregoing provisions of this article and to any rules that may be made by the Authority, the directorates may regulate their own procedures.

(8) Any order made under the provisions of this article may be amended, substituted or revoked by a subsequent order made in the same manner.

Title III - The Tourism Appeals Board

Appointment of the
Tourism Appeals
Board.

13. (1) There shall be a board, to be known as the Tourism Appeals Board, consisting of an advocate who has been practising for not less than seven years, who shall preside, and another two persons versed in travel and tourism, each of whom shall be appointed by the Prime Minister.

(2) The Prime Minister may also appoint panels of members and in such case the composition of the Board for any one or more appeals to be heard by it shall be the responsibility of the secretary who shall, as far as is practicable, determine the composition on the basis of rotation.

(3) A person shall not be qualified to be appointed as, or to remain, a member of the Board if he:

(a) is a member of the House of Representatives; or

(b) is a public officer.

(4) A member of the Board shall be disqualified from hearing an appeal in such circumstances as would disqualify a judge in a civil suit; and in any such case the member shall be substituted by another person appointed for the purpose by the Prime Minister.

(5) The members of the Board shall hold office for a period of three years, and shall be eligible for re-appointment.

(6) A member of the Board may be removed from office by the Prime Minister on the grounds of gross negligence, conflict of interest, incompetence, or acts or omissions unbecoming a member of the Board.

Functions and
procedure of
Tourism Appeals
Board.
Amended by:
VI. 2001.32.

14. (1) The Board shall have jurisdiction -

(a) to hear and determine all appeals made by any person aggrieved by any decision of the Authority not to grant or renew, or to revoke, or to suspend a licence; or to impose conditions, limitations or exclusions therein or

therefor; and

- (b) to hear and determine all appeals made by any person aggrieved by any decision of the Authority on any matter concerning the classification or reclassification of tourism operations and the enforcement of control:

Provided that the jurisdiction of the Board shall be limited to ensuring that the policy of the Government and the provisions of this Act or any other applicable law have been properly implemented or applied and that the discretion vested in the Authority has not been used in an unreasonable manner.

(2) The decisions of the Board shall be final except with respect to points of law decided by the Board from which an appeal shall lie to the Court of Appeal (Inferior Jurisdiction).

(3) The decisions of the Board shall be binding if they are supported by the opinion of two of its members, and the dissenting member, if any, may express his opinion separately; and all decisions of the Board shall be delivered in public and shall be published as soon as practicable after the sitting at which they are given.

(4) Advance notice of not less than fourteen days shall be given of the meetings of the Board in such manner as the Board may deem appropriate or as may be prescribed under article 47. The Board shall hold a first hearing of the appeal within one month of the day of filing of the appeal.

(5) The Board may appoint experts and may require any department of Government or agency of the Government to provide the Board with such information or advice as the Board may deem necessary for the proper execution of its functions.

(6) The Board shall have an independent administrative secretariat consisting of a secretary to the Board and such other officers or employees as may be necessary for a prompt and efficient determination of the matters within its jurisdiction. The secretariat shall be chosen and appointed by the Board.

(7) Without prejudice to the provisions of subarticle (6), the administrative and technical support required by the Board for the performance of its functions shall be provided by the Authority.

(8) Subject to the above, appeals to the Board and the conduct of the business of the Board shall be made in accordance with the rules contained in the Third Schedule to this Act; and in the absence of such rules on any matter, the Board may regulate its own procedure.

(9) Appeals to the Court of Appeal (Inferior Jurisdiction) from decisions of the Board as provided in subarticle (2) shall be made within fifteen days from the day the decision is delivered and such appeals shall be regulated by Rules of Court made under article 29 of the Code of Organization and Civil Procedure.

(10) The Minister responsible for justice may by regulations under this subarticle establish the fees payable in the registry of the court in relation to the filing of judicial acts in connection with

appeals to the Court of Appeal (Inferior Jurisdiction) under this article:

Cap. 12. Provided that until such fees are so established by the Minister, the fees contained in Schedule A to the Code of Organization and Civil Procedure shall apply.

Title IV - General Provisions

Members of the Authority, etc., to be deemed public officers for certain purposes.
Cap. 9.

15. For the purposes of the Criminal Code and of any provision of a penal nature in any other law, the members of the Authority and of any committee, board, commission or other body established by this Act, and every officer or employee thereof, shall be deemed to be and be treated as public officers.

Publication of names of members of the Authority, etc.

16. The names of all the members of the Authority, and of any committee, board, commission or other body established by this Act, including the panels from which the Board is constituted, and any other change in such membership, shall be published in the Gazette.

Disclosure of interest in contract.
Substituted by: XXIII. 2009.86.

17. (1) Any member of the Authority or of any committee, commission or other body established by this Act who is in any way, directly or indirectly interested in any particular matter considered or to be considered by the Authority or by such other body shall declare the nature of his interest either at the meeting at which the matter is first considered or, if he was not at the date of that meeting so interested in the matter, at the next meeting after he shall have become so interested.

(2) Without prejudice to the provisions of subarticle (1), where at a meeting of the Authority or by such other body any of the following matters arises, namely -

- (a) an arrangement to which the Authority is a party or a proposed such arrangement, or
- (b) a contract or other agreement with the Authority or a proposed such contract or other agreement, or
- (c) the assessment of any application for the issue or renewal of a licence or other authorisation and any decision relating thereto, or
- (d) any decision of the Authority taken after reviewing the methods of operation of a licensee, or (e) any other particular matter in which any member of the Authority or such other body is in any way, directly or indirectly interested,

then, any member of the Authority present at the meeting who otherwise than in his or her capacity as such a member has a material interest in the matter, shall -

- (i) at the meeting, disclose to the Authority the fact of such interest and the nature thereof,
- (ii) absent himself or herself from the meeting or that part of the meeting during which the matter is being discussed,
- (iii) take no part in any deliberation of the Authority

relating to the matter, and

(iv) not vote on a decision relating to the matter.

(3) Where a material interest is disclosed pursuant to subarticle (2), the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the member by whom the disclosure is made shall not be counted in the quorum for the meeting.

(4) A member of the Authority who, otherwise than in his or her capacity as such a member has a material interest in -

- (a) an arrangement or proposed arrangement to which subarticle (2)(a) applies; or
- (b) a contract or other agreement or a proposed contract or other agreement to which subarticle (2)(b) applies; or
- (c) the assessment of any application for the issue or renewal of a licence or other authorisation and any decision relating thereto; or
- (d) any decision of the Authority taken after reviewing the methods of operation of a licensee; or
- (e) any other particular matter in which any member of the Authority or by such other body is in any way, directly or indirectly, interested,

shall neither influence nor seek to influence any decision to be made by the Authority in relation thereto.

(5) Where at a meeting of the Authority a question arises as to whether or not a course of conduct, if pursued by a member of the Authority, would constitute a failure by him or her to comply with the requirements of subarticles (2) and (3), the question may, subject to subarticle (6), be determined by the chairperson of the meeting, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

(6) Where at a meeting of the Authority, the chairperson of the meeting is the member in respect of whom a question to which subarticle (5) applies falls to be determined, then the other members of the Authority attending the meeting shall choose one of their number to be chairperson of the meeting for the purpose of determining the question concerned.

(7) Where the Minister is satisfied that a member of the Authority has acted contrary to any of the provisions of this article, the Minister may, if he or she thinks fit, remove that member from office and, where a person is removed from office pursuant to this subarticle, he or she shall thenceforth be disqualified for membership of the Authority.

(8) The term 'material interest' in this article shall include, but not be limited to, being in the same type of business as the applicant, or licensee, as the case may be.

PART III

ACCOMMODATION AND CATERING ESTABLISHMENTS

Licence to keep hotel, guest house, hostel, holiday premises, catering establishment or house used for the provision of accommodation to tourists.

*Amended by:
XXIII. 2009.87.*

18. (1) No person shall run or operate a hotel, guest house, hostel, holiday premises or catering establishment unless he shall have previously obtained and is in possession of a licence.

(2) No person shall provide accommodation in a house to tourists unless he shall have previously obtained and is in possession of a licence:

Provided that this subarticle shall not apply to the provision of such accommodation to *bona fide* relatives or friends when such accommodation is provided without any payment.

(3) It shall not be lawful for any person to give on lease to a tourist or to allow a tourist to occupy under any title, a house in Malta, or to transfer to any tourist any right of lease, or other title to occupation, of any such house, and for any tourist to take on lease or under any title to occupy a house in Malta, or to acquire any right of lease or other title to occupation of any such house, unless there is in respect of any such house a valid licence issued by the Authority authorising such lease, transfer or occupation.

(4) Unless provided in the licence or unless earlier revoked under any of the provisions of this Act, every licence shall remain valid until the thirty-first day of December next following the date of issue and may, thereafter, be renewed from year to year or for such further period or periods as may be specified:

Provided that the renewal of the licence shall only be subject to the continued fulfilment of the relevant applicable requirements current at the time.

(5) Notwithstanding the provisions of subarticle (4), a licence may in special circumstances be granted on a temporary basis for a period not exceeding ninety days which period may, on good cause being shown, be extended for a further period or periods not exceeding ninety days in the aggregate.

(6) Any licence which has been revoked or which has not been renewed shall be returned to the Authority.

(7) A licence may be granted or renewed as subject to such requirements, conditions, limitation and exclusions as the Authority may consider necessary, appropriate and proportionate in accordance with this Act.

(8) In the event that a hotel keeper contracts or otherwise undertakes to provide accommodation and other services, if any, in his hotel and dishonours the contract or undertaking, then, without prejudice to any other right or remedy available to the person with whom the hotel keeper contracted or to whom the undertaking was made and without prejudice to any defence available to the hotel keeper, the hotel keeper shall cause the tourist or tourists to whom, or in respect of whom, the accommodation and other services, if any, had to be provided, with accommodation and similar services, if any, in another hotel of the same or of a higher category and

situated as near as possible to his hotel, and the hotel keeper shall be responsible for and shall pay any difference between the price for the accommodation and other services, if any, which were to be provided in the hotel keeper's hotel and the price charged in such other hotel:

Provided that where a tourist is accommodated in a hotel of a lower category than that in which the accommodation had to be provided either because he so chooses or because the hotel keeper cannot find him an alternative hotel as provided in this subarticle, the hotel keeper shall, saving any other remedies which may be available to the tourist or to the person who contracted with the hotel keeper, immediately pay to the person with whom he contracted, any difference between the price for the accommodation and other services, if any, which were to be provided in the hotel keeper's hotel and the price charged in the hotel of the lower category.

19. (1) A licence shall not be granted or renewed for the purposes of article 18 unless -

- (a) the person applying therefor is of good character and is fit and proper to be granted a licence in relation to a hotel, guest house, hostel, holiday premises or catering establishment or to provide accommodation to tourists in a house, as the case may be; provided that if the applicant is a body corporate or a person other than the person who will operate or in fact operates the hotel, guest house, hostel, holiday premises or catering establishment or who will provide accommodation in a house, the attributes in this paragraph shall at all times have to be satisfied by the person who will be responsible for such operation or provision of accommodation or who in fact effects such operation or provides such accommodation.

The person who will be responsible for such operation or provision of accommodation or who in fact effects such operation or provides such accommodation possesses the skills and competencies necessary to operate a business of a hotel, guest house, hostel, holiday premises or catering establishment or to provide accommodation to tourists in a house, as the case may be, proven to the satisfaction of the Authority by means of either a relevant formal qualification from a recognised training institution or at least two years experience in the management of a similar business activity;

- (b) the premises in respect of which the application is made are suitable and adequate for use as a hotel, guest house, hostel, holiday premises, catering establishment or house for the provision of accommodation to tourists, as the case may be;
- (c) the use of the premises as a hotel, guest house, hostel, holiday premises, catering establishment or house for

Conditions under which licence is granted.

Amended by:
XXIII. 2009.88.

the provision of accommodation to tourists is desirable in accordance with government policy at the time of the consideration of the application for the grant of the licence.

(2) A hotel, guest house, hostel, holiday premises, catering establishment or house used for the accommodation of tourists shall not use a name which in the opinion of the Authority is undesirable, unsuitable or misleading.

Transfer of licence.
Amended by:
XXIII. 2009.89.

20. A licence to keep or operate a hotel, guest house, hostel, holiday premises, catering establishment or house used for the accommodation to tourists may, with the consent in writing of the Authority previously obtained, be transferred to any person who fulfils the requirements mentioned in article 19(1)(a).

Classification.

21. (1) A licensed hotel, guest house, hostel, holiday premises or catering establishment shall be given such classification or reclassification as, in accordance with such regulations as may be in force from time to time, reflects the standard and level of service provided by such hotel, guest house, hostel, holiday premises or catering establishment:

Provided that the Authority shall not be obliged to reclassify a hotel, guest house, hostel, holiday premises or catering establishment before the lapse of one year from its last classification.

(2) Where it appears to the Authority, after such inquiry as it may deem fit, that a hotel, guest house, hostel, holiday premises or catering establishment is not being kept or managed up to the standard required by a hotel, guest house, hostel, holiday premises or catering establishment of the category in which it is then classified in accordance with the regulations in force at that time, the Authority may reclassify the hotel, guest house, hostel, holiday premises or catering establishment into a lower category. Any such re-classification shall be notified to the holder of the relative licence and shall have effect as from the date on which it is so notified.

(3) Where, in accordance with the provisions of article 14, an appeal is entered against a classification made by the Authority under subarticle (1), such classification shall not become effective until the appeal is finally determined.

(4) Any certificate of classification which has been revoked or substituted shall be returned to the Authority.

Advertisement and representation.

22. No person shall advertise or represent a hotel, guest house, hostel, holiday premises or catering establishment as belonging to a category higher than that to which it actually belongs according to its classification, or as offering particular amenities or services which it does not in fact provide at the time of such advertisement or representation.

Joint licence and classification.

23. Where a hotel, guest house or holiday premises comprises one or more catering establishments all of which are under the same management, they may be given one licence and one

classification:

Provided that the Authority may give the catering establishment or establishments comprised in such hotel, guest house or holiday premises a different classification or different classifications if the level of service provided so warrant or require.

24. Every hotel keeper, guest house keeper, hostel keeper, and keeper of holiday premises shall keep a register in the prescribed form wherein he shall cause every guest to write his name together with such other particulars as may be prescribed. Register of guests.

25. Every hotel, guest house, hostel or holiday premises shall present such register for inspection whenever so requested by any police officer not below the rank of inspector or by any member of the Authority or any person authorised in writing for the purpose by the chairperson of the Authority. Register to be kept open for inspection by police, etc.

26. Nothing in this Part of this Act shall apply or be deemed to apply in any way to any monastery, convent, boarding school (not being a school providing tuition in a foreign language or languages to tourists), college or charitable institution. Applicability.

PART IV

INCOMING TOURISM AGENCIES, TRAVEL AGENCIES AND DESTINATION MANAGEMENT COMPANIES

27. (1) No person shall carry on, or hold himself out as carrying on, the business of an incoming tourism agent, a travel agent or of a destination management company unless he shall have previously obtained and is in possession of a licence. Licence to operate as incoming tourism agency, travel agency or destination management company.

(2) Unless earlier revoked under any of the provisions of this Act, every such licence shall remain valid until the thirty-first day of December next following the date of issue and may, thereafter, be renewed from year to year or for such further period or periods as may be specified:

Provided that the renewal of the licence shall only be subject to the continued fulfilment of the relevant applicable requirements current at the time.

(3) A licence which has been revoked or which has not been renewed shall be returned to the Authority.

(4) A licence may be granted or renewed as subject to such requirements, conditions, limitations and exclusions as the Authority may consider necessary, appropriate and proportionate in accordance with this Act.

28. A licence shall not be granted or renewed for the purposes of article 27 unless - Conditions under which licence is granted.

(a) the person applying therefor is of good character standing and is fit and proper to be granted and operate a licence in relation to the business of an incoming tourism agent or a travel agent or of a destination management company, as the case may be: Amended by: XXIII. 2009.91.

Provided that if the applicant is a body corporate -

- (i) the requirements mentioned in the preceding paragraph shall apply to that person designated to be responsible for the management of the business activity being licensed;
- (ii) the person applying therefor possesses the skills and competencies necessary to operate a business of an incoming tourism agent, or of a travel agent or of a destination management company as the case may be, proven to the satisfaction of the Authority by means of either a relevant formal qualification from a recognised training institution or at least two years experience in the management of a similar business activity:

Provided further that where the applicant is a body corporate, the requirements mentioned in the preceding paragraph shall apply to that person designated to be responsible for the management of the business activity being licensed;

- (b) the person applying therefor has suitable premises and means at his disposal for the proper and efficient running of the business of an incoming tourism agency, a travel agency or of a destination management company as the case may be; and
- (c) the person applying therefor shows to the satisfaction of the Authority that he shall at all times have adequate insurance in accordance with the requirements of article 31.

Name of tourism agent, travel agent or destination management company.

29. An incoming tourism agent, a travel agent or a destination management company shall not provide any service under a name which in the opinion of the Authority is undesirable, unsuitable or misleading.

Transfer of licence.
Amended by:
XXIII. 2009.92.

30. (1) A licence to carry on the business of an incoming tourism agency, or a travel agency or of a destination management company may, with the consent in writing of the Authority previously obtained, be transferred to any person who fulfils the requirements of article 28.

(2) An incoming tourism agent and a travel agent and a destination management company shall exhibit his or its licence in a prominent place in his or its place of business. If an incoming tourism agent or a travel agent or a destination management company operates from more than one place of business his or its licence shall be exhibited in his or its principal place of business and a copy or copies of his or its licence, issued and certified as such by the Minister on payment of the prescribed fee, shall likewise be exhibited in all his or its places of business other than his or its principal place of business.

31. (1) Every tourism operation requiring a licence under this Act, except a licence to act as a tourist guide unless specifically prescribed in regulations made under this Act, shall satisfy the Authority that it has at all times in its favour a policy of third party liability insurance and, in addition, or if required by the Authority, a policy of professional indemnity insurance, which policy or policies shall indemnify it, and any person employed by it, or otherwise acting for it, to such amount, in such manner and in respect of such matters as the Authority may establish.

Insurance and
insolvency fund.
Amended by:
XXIII. 2009.93.

(2)* Every tourism operation requiring a licence under this Act shall, with effect from a date to be specified by the Authority, contribute to an insolvency fund which the Authority may establish in such manner and for such amounts and under such conditions, and shall be managed by such persons, as may from time to time be determined by the Authority; the fund will provide compensation to any traveller, licensed tourism operation or tourist for undisputed debts or for unavoidable but necessary expenses arising from the insolvency of a licensed tourism operation.

(3)* The Authority shall ensure that contributions required to be paid by licensed tourism operations and the conditions, exclusions and limitations of the insolvency fund referred to in subarticle (2) shall be published annually and be reasonably linked to the size and degree of risk being accepted by the fund from each licensed tourism operation; any compensation offered by the fund shall be published within six months of the insolvency of the licensed tourism operation.

PART V

ORGANISED EXCURSIONS

32. (1) No person shall carry on, or hold himself out as carrying on, the business of an organised excursion operator unless he shall have previously obtained and is in possession of a licence.

Licence to carry on
business of
organised
excursion operator.
Amended by:
XXIII. 2009.94.

(2) Unless earlier revoked under any of the provisions of this Act, every such licence shall remain valid until the thirty-first day of December next following the date of issue and may, thereafter, be renewed from year to year or for such further period or periods as may be specified:

Provided that the renewal of the licence shall only be subject to the continued fulfilment of the relevant applicable requirements current at the time.

(3) A licence which has been revoked or which has not been renewed shall be returned to the Authority.

(4) A licence may be granted or renewed as subject to such requirements, conditions, limitations and exclusions as the Authority may consider necessary, appropriate and proportionate in accordance with this Act.

*this subarticle is not yet in force.

Conditions under which licence is granted.

Amended by: XXIII. 2009.95.

33. A licence shall not be granted or renewed for the purposes of article 32 unless -

- (a) (i) the person applying thereof is of good character standing and is fit and proper to be granted and operate a licence in relation to the business of an organised excursion operator:

Provided that if the applicant is a body corporate, the requirements mentioned in the preceding paragraph shall apply to that person designated to be responsible for the management of the business activity being licensed;

- (ii) the person applying thereof possesses the skills and competencies necessary to operate a business of an organized excursion operator, proven to the satisfaction of the Authority by means of either a relevant formal qualification from a recognised training institution or at least two years experience in the management of a similar business activity:

Provided that where the applicant is a body corporate, the requirements mentioned in the preceding paragraph shall apply to that person designated to be responsible for the management of the business activity being licensed;

- (b) the person applying therefor has suitable means at his disposal for the proper and efficient organisation of organised excursions.

Provision of services by excursion operator.

34. An organised excursion operator shall not provide any service -

- (a) under a name which in the opinion of the Authority is undesirable, unsuitable or misleading, and
(b) unless the services of a tourist guide are provided for any such excursion.

Transfer of licence.
Amended by: XXIII. 2009.96.

35. (1) A licence to carry on the business of an organised excursion operator may, with the consent in writing of the Authority previously obtained, be transferred to any person who fulfils the requirements of article 33.

(2) An organised excursion operator shall exhibit his licence in a prominent place in his place of business. If an organised excursion operator operates from more than one place of business his licence shall be exhibited in his principal place of business and a copy or copies of his licence, issued and certified as such by the Authority on payment of the prescribed fee, shall likewise be exhibited in all his places of business other than his principal place of business.

PART VI

TOURIST GUIDES

36. (1) No person shall act, hold himself out as acting as a tourist guide or use the title of a "tourist guide" unless he is in possession of a licence in accordance with this Act and regulations made under it.

Licence to act as tourist guide.
Amended by:
XXIII. 2009.97.

(2) A licence may be granted and renewed for such periods and as subject to such requirements, conditions, limitations and exclusions as the Authority may consider necessary, appropriate and proportionate in accordance with this Act and regulations made under it.

(3) A licence which has been revoked or which has not been renewed shall be returned to the Authority.

37. A licence shall not be granted for the purposes of article 36 unless:

Conditions under which licence is granted.
Substituted by:
XXIII. 2009.98.

- (a) the person applying thereof is of good character and is fit and proper to act as a tourist guide; and
- (b) the person applying therefor possesses the relevant qualification/s to act as tourist guide; or
- (c) demonstrates that he has the practical and theoretical competencies and experience deemed and recognized to be equivalent to the qualifications referred to in paragraph (b) by the Authority in terms of this Act and regulations made under it.

38. A tourist guide shall provide his services under his personal name.

Name of tourist guide.

39. (1) A licence to act as a tourist guide shall not be transferable or assignable.

Transfer of licence.

(2) A tourist guide shall produce his licence for inspection on the demand of any member of the Authority or of any person authorised in writing for the purpose by the Authority or by the chief executive of the Authority or of any person who shall have requested his services or to whom his services shall have been offered.

PART VII

ENFORCEMENT OF CONTROL

40. The Authority shall monitor and review all tourism operations to ensure that tourism operations are carried out only in accordance with the provisions of this Act and in compliance with the decisions lawfully taken under this Act; and for the purposes of such monitoring and review the Chairperson of the Enforcement Directorate or any person authorised by him to that effect shall have the right at all reasonable times to enter and inspect any tourism operation, other than a tourist guide.

Monitoring of tourism operations.

41. (1) If it appears to the Authority that any tourism

Serving of notice.

operation is being carried on without the licence required in that behalf under this Act, or that any conditions subject to which a licence was granted in respect of any tourism operation are not being complied with or that a licensed tourism operation is being run in violation of any of the provisions of this Act or of any regulations made hereunder, or that circumstances have arisen which justify the revocation of the licence, the Authority shall serve a notice on the owner of the tourism operation or, in the case of a tourist guide, on the tourist guide, requiring the tourism operation to be stopped forthwith or, in cases not involving an unlicensed tourism operation, that the tourism operation be stopped forthwith or that the irregularity be rectified.

(2) A copy of the notice given under subarticle (1) shall also be served on any operator of the tourism operation and on any employees in the tourism operation and a copy shall be fixed at a point of entry into each of the premises used for or in connection with the tourism operation.

(3) Except as otherwise provided in this article, a notice given under subarticle (1) (in this Act also referred to as an "enforcement notice") shall -

- (a) in respect of any requirement stopping or prohibiting the further carrying on of a tourism operation, take effect immediately upon service of the notice;
- (b) in respect of any other requirement, take effect immediately upon service of the notice or at the expiration of such period as shall be specified.

(4) Any person who feels himself aggrieved by any enforcement notice served on him may, within fifteen days from the service of the notice, appeal against it to the Board; and in any such appeal the Board -

- (a) if satisfied that a licence was in force under this Act for the tourism operation to which the enforcement notice relates or that no such licence was required in respect thereof, as the case may be, or that the conditions subject to which such licence was granted were complied with and that the tourism operation to which the enforcement notice relates was being run in accordance with the provisions of this Act and of any regulations made hereunder, shall quash the enforcement notice to which the appeal relates or such part thereof in respect of which the Board is satisfied as aforesaid;
- (b) in any other case, shall dismiss the appeal.

(5) An appeal shall suspend the effects of the notice against which the appeal is entered, except those that stop the carrying on of a tourism operation, until such time as the appeal is determined. The appeal, if upheld, shall cancel this notice.

(6) When an appeal is dismissed, the Board may direct that, in respect of any requirement, other than a requirement stopping or prohibiting the further carrying on of a tourism operation, the

enforcement notice shall not come into force until such date as the Board thinks fit.

42. (1) If any steps or other action, including any discontinuance, stoppage or similar requirement to be taken by an enforcement notice have not been taken within the time specified therein, or forthwith if so specified, the Authority may enter the tourism operation, other than a tourist guide, to which the enforcement notice relates and take such steps, including the closure of the tourism operation or other action as required by circumstances and may for such purpose request the assistance of the police which shall for such purpose exercise such powers as are vested in them for the prevention of offences and the enforcement of law and order.

Supplementary provisions as to enforcement.

(2) Notwithstanding the provisions of any other law, no precautionary warrant or other order shall be issued or made by any court restraining the Authority from the exercise of any of the powers conferred upon it by this article.

(3) All expenses reasonably incurred by the Authority to carry out an enforcement notice under this article shall be recoverable as a civil debt by the Authority from the person who is then the owner of the tourism operation or, in the case of a tourist guide, from the tourist guide, to which the enforcement notice relates, without prejudice to such right of recovery such person may have against any other person.

PART VIII

OFFENCES AND PENALTIES

43. (1) Any person who -

- (a) not being in possession of a licence, carries on any tourism operation or allows any tourism operation to be carried on from or in property of which he is the owner or a co-owner or from or in which he could have carried on such operation if he were in possession of a licence; or
- (b) being in possession of a licence fails to comply with any applicable provision of this Act or with any condition, restriction or other limitation to which the licence is subject; or
- (c) having been served with an enforcement notice or other order under article 41, fails to comply with any of the requirements of such notice within the time therein specified or forthwith as the case may be; or
- (d) hinders, obstructs, molests or interferes with, or attempts to hinder, obstruct, molest, or interfere with, any officer, employee or agent of the Authority, or any police officer, in the execution of his duties under the law, or fails to comply with any reasonable requirement demanded of him by any such officer, employee, agent or police officer as aforesaid or otherwise to assist him in the carrying out of the said

Offences and penalties.
Amended by:
L.N. 426 of 2007.

duties, or knowingly furnishes such officer or employee or agent or police officer with false information required for the purpose aforesaid; or

(e) knowingly makes a declaration for any of the purposes of this Act which is false, misleading or incorrect in any material respect; or

(f)* fails to comply with the provisions of article 31,

shall be guilty of an offence against this Act and shall be liable on conviction to a fine (*multa*) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) and not more than twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (23,293.73), and in the case of an offence under paragraph (b) of this subarticle, or in respect of an offence under paragraph (c) of this subarticle, if the offender persists in the offence for more than three months, also to imprisonment for a term of not less than three months and not more than three years.

(2) The court, besides awarding the punishment referred to in subarticle (1), shall order the offender to remove the causes of the offence and to undo anything which was done without a licence or to comply with the conditions imposed in the licence, as the case may be, within a time sufficient for the purpose, but in any case not exceeding three months from the date of the judgement, to be fixed by the court; and if the offender fails to comply with any order within the time so fixed, he shall be liable to a fine (*multa*) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) and not more than eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87), as the court may fix, for every day the default continues after the expiration of the said time.

Cap. 446. (3) The provisions of the Probation Act shall not apply in relation to the offences mentioned in subarticle (1).

Cap. 9. (4) Proceedings against any person for any offence as is mentioned in subarticle (1) shall be taken before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, as courts of criminal judicature in accordance with the provisions of the Criminal Code:

Provided that, notwithstanding the provisions of article 376(1)(b) of the Criminal Code, the court shall, at the request of the prosecution or of the accused, take down evidence given by the witnesses in the manner provided for in article 390(6) of the said Code or in any other law.

(5) In any prosecution against a person charged with running or operating a hotel, guest house, hostel, or holiday premises without a licence as is provided for in article 18(1), or charged with providing accommodation to tourists, other than *bona fide* friends or relatives who are provided with such accommodation without any payment, without a licence as provided for in article 18(2), it

*In force only as relating to the provisions of article 31(1).

shall be sufficient for the prosecution to prove that the accused had control of the premises to which the charge relates; that, upon inspection of the premises, a tourist or tourists were found thereon; that such premises had sleeping facilities; that personal effects of such tourist or tourists were found on such premises; and that the premises were not duly licensed, and it shall not be required to produce such tourist or tourists as witnesses or such personal effects as evidence, and the court shall deem such charge to be proved unless the accused proves that such tourist or tourists had been duly accommodated in licensed premises or that such tourist or tourists were *bona fide* friends or relatives as aforesaid.

(6) In any prosecution against a person charged with being an accomplice in any one or more of the offences listed in subarticle (5) it shall be sufficient for the prosecution to prove that the premises to which the charge relates were not duly licensed as is provided for in article 18(1) or (2), as the case may be; that, upon inspection of the premises, a tourist was found thereon; that such premises had sleeping facilities; that personal effects of such person were found on the premises; and that the accommodation in the premises was procured by or for such person through the intervention, however effected, of the accused, and the prosecution shall not be required to produce such tourist as a witness or such personal effects as evidence, and the court shall deem such charge to be proved unless the accused proves that prior to intervening in the procurement of the accommodation he made diligent enquiries as to the licensing of the premises or that, in the circumstances, he could not reasonably have been expected to know that the premises were not duly licensed.

44. In any proceeding or prosecution under this Act, a copy of any order, notice, decision or other document purporting to have been made under this Act and purporting to have been signed by the Chairperson of the Authority or by the Chief Executive of the Authority, shall be accepted as evidence of the order, notice, decision or other document and of the facts appearing therein, without further proof.

Certified copies of certain documents.

45. (1) Notwithstanding any other law providing for the trial and punishment of offences, where the Authority believes that a person has committed an offence against this Act, other than an offence under article 43(1)(c), the Authority may give notice in writing to such person describing the offence of which the person is accused, indicating the steps to be taken to remedy the offence and the fine which he is required to pay in respect of that offence:

Special procedure.
Amended by:
L.N. 426 of 2007.

Provided that the Authority may not require the payment of a fine higher than two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37).

(2) Where a notice under this article has been given, the person named in the notice may, within twenty-one days of the service of the notice, accept responsibility for the offence specified in the notice and within the same period, or such further period as the Authority may allow, remedy the offence and pay, or undertake in writing to pay, the fine indicated in the notice or such fine as the

Authority may accept in lieu, and in any such case -

- (a) the person named in the notice shall be deemed to have committed the offence and to have admitted his guilt in respect thereof, and the fine paid, or agreed to be paid, shall be the fine to which he became liable to pay;
- (b) if the offence is remedied and the fine is paid within the period, or further period as aforesaid, no further proceedings may be taken against the said person in respect of the same facts;
- (c) if the fine is not paid within the period, or further period as aforesaid, it shall be treated as if it were a fine (*multa*) ordered to be paid by the court which would have had jurisdiction to take cognisance of the offence, and proceedings may be taken accordingly as if it were an order of that court.

(3) Where the person to whom notice is given under subarticle (1) does not accept responsibility for the offence or, having accepted such responsibility, fails to remedy the offence within the time aforesaid, ordinary proceedings may be taken against him in accordance with the provisions of the Criminal Code, of this Act and of any other law applicable to the offence.

Cap. 9.

(4) Notwithstanding the provisions of the Criminal Code, the Attorney General shall always have a right of appeal to the Court of the Criminal Appeal from any judgement given in proceedings arising out of this Act or of any regulations, rules or orders made hereunder.

Cap. 9.

PART IX

SUPPLEMENTAL

Power to make regulations includes power of revocation, etc.
Cap. 249.

46. Without prejudice to the provisions of the Interpretation Act, any power conferred by this Act to issue licences, to give classifications or re-classifications, to make regulations, rules, orders, lists, schedules and any other instrument of like nature, includes the power from time to time to revoke, replace, amend, alter, add to or delete from any such instrument as aforesaid.

Power to make regulations.
Amended by:
XXVI. 2000.18;
L.N. 426 of 2007;
XXIII. 2009.99.

47. (1) The Minister may, on the recommendation of the Authority, make regulations to regulate or otherwise provide for any matter relating to tourism operations in order to give fuller effect to the provisions of this Act, and, in particular, he may by such regulations -

- (a) regulate standards, levels of service and amenities in tourism operations, as well as any other matter relating thereto, taking account of all relevant considerations, including tourism policy from time to time, classification, health and sanitation;
- (b) require that any category or class of persons working, whether employed or self-employed, in any tourism operation shall be in possession of such licences or shall be in possession of such certificates of

competence or qualifications as may be prescribed;

- (c) regulate time-share contracts and the promotion of and services provided in time-sharing resorts, including without prejudice to the generality of the foregoing the information that is to be given to prospective purchasers and the language in which such information is to be given, the form which such contract must be drawn up in, the establishment of such cooling-off periods during which and other circumstances in which the purchaser may withdraw from the contract, as well as the prohibition of any or such payments as may be determined before the premises to which the contract refers or the contracts are completed, as well as imposing an obligation for the repayment of such deposits as may be prescribed if the contract is rescinded or the purchaser withdraws therefrom.

Such regulations may provide that the time-sharing contract shall take such form as may be prescribed notwithstanding any provision of any other law to the contrary and that it shall be drawn up in such language or languages or be accompanied by a certified translation in such language or languages as may be prescribed.

Such regulations may also provide that in case of failure to abide by any of the provisions thereof as may be prescribed the contract may be null. Such regulations may also regulate credit facilities that may be granted with such contracts and the effect that a rescission or withdrawal from the contract may have on such credit agreements, and any other matter relating to the sale of time-share and time-share agreements;

- (d) regulate the provisions of travel package services;
- (e) prescribe the form of any notice, order or other document authorised or required by this Act to be made, served or given;
- (f) prescribe the manner in which a licence fee or other charge made under this Act is to be established, made, reviewed, collected, utilised or otherwise dealt with;
- (g) to the extent not otherwise provided, prescribe the procedure to be followed by any body established by this Act, and to amend, add or otherwise alter anything contained in the schedules to this Act;
- (h) prescribe the fees payable to the Authority for any service provided by it, or in respect of any matter for which it is considered that a fee should be payable;
- (i) establish codes of ethics and conduct for tourism operations: provided that, in making its recommendations to the Minister, the Authority shall consult and, so far as is advisable and possible, adopt

such recommendations as it shall receive from the associations recognised by the Minister as representative of the various sectors interested in tourism;

- (j) prescribe such insurance cover that must be held by licencees under this Act;
- (k) provide for any purpose for which regulations are authorised or required to be made otherwise than by the Authority.

(2) Any regulation made under this Act may provide for any matter relating to liability for the observance of such regulations, and the persons who may be liable, and for any matter relating to the enforcement of the said regulations, including, but not limited to, the imposition of a fine (*multa*) not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) in respect of any contravention of, or failure to comply with, the provisions of such regulations.

Provision of services by government agency.

48. (1) No service consisting in the supply of water, electricity, telephone, telex, facsimile or other service or utility shall be provided to any new tourism operation, other than a tourist guide, by any agency of government unless there is in respect of such tourism operation a certificate issued by the Authority stating that the tourism operation is approved and that all the conditions of the licence to be granted are, at the date of the certificate, satisfied. In this subarticle "new tourism operation" means any tourism operation which is commenced or is to commence after the date of the coming into force of this Act.

(2) Any service consisting in the supply of water or electricity provided by an agency of government to any tourism operation, other than a tourist guide, may be suspended or withdrawn if the tourism operation is unlicensed or, if it is licensed, if an enforcement notice is in effect in respect thereof.

Serving of notice.

49. (1) Where any notice or other instrument or document whatsoever is required or authorised to be served or given by or under this Act, it may be served or given in any of the following manners:

- (a) by delivering it to the person on whom it is to be served or to whom it is to be given; or
- (b) by leaving it at the usual or last known place of abode of that person or, if such person has furnished an address for service, at that address; or
- (c) by sending it by registered mail addressed to that person at the place of abode or the address for service aforesaid; or
- (d) in the case of a juridical person, by delivering it to an officer or servant thereof at the registered or principal office, or sending it by registered mail addressed to the body aforesaid at that office; or

- (e) in any case in which it is not reasonably possible to effect service in any of the foregoing manners whether on all or on any one or more of the persons on whom service is to be made or notice is to be given, by affixing the document to be served or given in a conspicuous place on the premises to which it relates and keeping it so affixed for a period of not less than seven working days and by publishing the contents thereof in the Gazette.

(2) Where the notice or other document is required or authorised to be served or given to any person as having an interest in a tourism operation, and the name of that person cannot be ascertained after reasonable inquiry, or is required or authorised to be served on an operator of a tourism operation, the notice shall be deemed to be duly served or given if it is served or given in any of the manners indicated in subarticle (1) and addressed to the person having an interest in the tourism operation by the description of "owner" or "operator", or "owners" or "operators", as the case may require.

50. (1) With effect from the appointed day all property which, immediately before the appointed day, was vested in or belonged to the National Tourism Organization shall, by virtue of this Act, be transferred to and shall vest in the Authority under the same title by which they were held by the National Tourism Organization immediately before that day.

Transfer of property.

(2) Such transfer shall extend to the whole of such property, movable and immovable, assets, powers, rights, both real and personal, privileges and causes of action held or enjoyed in connection therewith or appertaining thereto.

51. Subject to the provisions of this Act, all laws, rules, regulations, orders, judgements, documents, warrants and working arrangements, subsisting immediately before the appointed day, affecting any of the transferred property shall have full force and effect against or in favour of the Authority and shall be enforceable as fully and effectually as if, instead of the National Tourism Organization, the Authority had been named therein or been a party thereto, as the case may be.

Construction of existing laws, contracts, etc.

52. (1) Where anything has been commenced by or under the authority of the National Tourism Organization prior to the appointed day and such thing is in relation to any of the transferred property or any right or liability transferred by or under this Act, such thing may be carried on and completed by or under the authority of the Authority.

Transitory provisions.

(2) Where on the appointed day any legal proceeding is pending to which the National Tourism Organization is a party or is entitled to be a party, and such proceeding has reference to any of the transferred property or any right or liability transferred by or under this Act, the Authority shall be substituted in such proceeding for the National Tourism Organization or shall be entitled to be so substituted.

(3) The Minister may by order make such incidental, consequential and supplemental provision as may be necessary or expedient for the purpose of securing and giving full effect to the transfer of any property, right or liability to the Authority by or under this Act and may make such orders as may be necessary to make any powers and duties exercised by the National Tourism Organization, in relation to any of the transferred property, exercisable by the Authority.

Savings.
Cap. 190.
Cap. 197.
Cap. 240.
Cap. 264.
Cap. 310.

53. (1) The regulations made under the Tourist Guide Service Act, the Hotels and Catering Establishments Act, the Guest Houses and Holiday Furnished Premises Act, the Travel Agencies and Hotel Services Act, and the National Tourism Organization Act, repealed by this Act, as shown in the Fourth Schedule to this Act, shall, until other provision is made under or by virtue of this Act, continue in force and have effect as if made under this Act and, notwithstanding anything contained in those regulations and in the Acts abovementioned with regard to offences, penalties and criminal proceedings, the provisions of articles 43, 44 and 45 shall, *mutatis mutandis*, apply to those regulations.

(2) Any licence, permission or other authority granted under any enactment, or any provision thereof, repealed by this Act, and still in force immediately before such repeal, shall continue in force thereafter as if it were a licence, permission or authority granted under a corresponding provision of this Act, as the case may require; and any such licence, permission or authority as aforesaid shall be treated and dealt with accordingly.

SCHEDULES

FIRST SCHEDULE

[Article 3 (7)]

Provisions with respect to the proceedings of the Authority

1. The Authority may act notwithstanding any vacancy amongst its members, provided there is a quorum present at the meeting.

2. The quorum of the Authority shall consist of the Chairperson or acting chairperson, who, in the absence of the chairperson for any particular meeting, shall be appointed by the members present, and not less than five other voting members constituting the Authority at the time of the meeting.

3. The meetings of the Authority shall be called by the Chairperson either on his own initiative or at the request of any three members of the Authority, specifying the agenda; and the Authority shall also meet at such times as it may itself decide.

4. The Chairperson, or the acting chairperson, shall have an original vote, and where the votes are equally divided, a second or casting vote.

5. A member of the Authority who has a direct or indirect interest in any matter coming before the Authority for consideration shall, as soon as the relevant circumstances have come to his knowledge, disclose the nature of his interest. Such disclosure shall be recorded in the minutes of the meeting and the member -

- (a) shall not take part in any discussion or decision of the Authority with respect to that matter; and
- (b) shall be disregarded for the purpose of constituting a quorum for any such discussion or decision.

6. All acts done by any person in good faith as a member of the Authority shall be valid and effective as if he were a member even if some defect in his qualification for appointment is subsequently discovered.

7. Without prejudice to the provisions of article 44, any document purporting to be a document made or issued by the Authority and signed by the chairperson of the Authority or by the chief executive on its behalf shall be received in evidence and shall, until the contrary is proved, be deemed to be a document made or issued by the Authority.

8. Subject to the provisions of this Act, including this Schedule, the Authority may regulate its own procedure.

*Revoked by:
L.N. 512 of 2004.*

SECOND SCHEDULE

[Article 12(2)]

Executive Directorates

THIRD SCHEDULE

[Article 14(8)]

Proceedings before the Tourism Appeals Board and appeals therefrom

1. Any person who feels aggrieved by a decision of the Authority, as provided in article 14(1), may appeal to the Tourism Appeals Board, on payment of the prescribed fee, within fifteen days from the date the decision on which the appeal is entered is communicated to the person concerned.

2. The application shall state the grounds for the appeal and the request of the appellant, and a copy of it shall be communicated to the Authority, before the appeal is heard.

3. The appellant shall appear before the Board either in person or through an agent on the day and at the time fixed for the hearing, make his submissions and produce such evidence as the Board may allow:

Provided that the Board may postpone the hearing of the appeal if it is satisfied that the appellant was prevented from appearing before it owing to illness or absence from Malta or other similar reasonable cause.

4. The Board shall give the Authority an opportunity to make its submissions in justification of its decisions, and bring such evidence as the Board may consider necessary.

5. The Board shall have the power to summon witnesses and to administer the oath to any person appearing before it.

6. The Board shall have power to confirm, revoke or alter the decision appealed against and give such directions as it may deem appropriate.

7. The decisions of the Board shall be final and no appeal shall lie therefrom except on a question of law only.

8. If the appellant or the Authority, as the case may be, are dissatisfied with any point of law decided by the Board, they may appeal to the Court of Appeal by an application filed as provided in article 14(9).

9. All hearings of the Board shall be held in public and all decisions of the Board shall be given in public.

10. Subject to the foregoing provisions and to the provisions of this Act, the Board shall regulate its own procedure.

FOURTH SCHEDULE

*Amended by:
L.N. 124 of 2002.*

[Article 53(2)]

Regulations kept in force

Hotels and Catering Establishments Regulations, 1972. - in so far as they refer only to catering establishments	Legal Notice 67 of 1972 as subsequently amended by Legal Notices: 85 of 1978; 19 of 1986; 135 of 1990; and 100 of 1991
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