

TOURISM INDUSTRY BILL 1991

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A BILL

intituled

An Act to provide for the licensing and regulation of tourism enterprises and for matters incidental thereto or connected therewith.

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BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART 1

PRELIMINARY

1. This Act may be cited as the Tourism Industry Act 1991 and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint.

Short title
and
commence-
ment.

2. (1) In this Act, unless the context otherwise requires—

Inter-
prelation.

"authorised officer" means an officer authorised by the Minister under section 40;

"Commissioner" means the Commissioner of Tourism appointed under section 4;

"company" has the meaning assigned thereto by the Companies Act 1965;

Act 125.

"excursion vehicle" means a vehicle used exclusively for the conveyance of tourists and in consideration of a payment which has no fare stages;

"inbound tour" means a tour to or of Malaysia or any place within Malaysia;

"licence" means a licence granted under this Act;

"licensed tour operator" means a person licensed under subsection 7(1) to carry on or operate a tour operating business;

"licensed tourism enterprise" means any tourism enterprise which is licensed under subsection 7(1);

"licensed tourist guide" means a person licensed under subsection 24(1) to act as a tourist guide;

"licensed travel agent" means a person licensed under subsection 7(1) to carry on or operate a travel agency business;

"Malaysia Tourism Promotion Board" means the Malaysia Tourism Promotion Board established under section 3 of the Malaysia Tourism Promotion Board Act 1991;

Act

"Minister" means the Minister charged with the responsibility for tourism;

"outbound tour" means a tour to or of any place outside Malaysia;

"person" includes a body of persons, corporate or unincorporate;

"prescribed", where no mode is mentioned, means prescribed by this Act or any regulations made under this Act;

"tour" includes sightseeing, excursions, shopping, visits to places of interest or entertainment, and other activities normally undertaken by a tourist;

"tour operating business" means any business of providing all or any of the following services:

- (a) arranging for sale or commission any transportation, accommodation, tour services or any other incidental services for tourists within or outside Malaysia;
- (b) organizing or conducting for sale or commission inbound or outbound tours;

- (c) providing conveyances for hire to tourists;
- (d) any other services incidental to any of the services enumerated above;

"tourism enterprise" means—

- (a) any tour operating business;
- (b) any travel agency business;
- (c) any business of providing tourist accommodation premises;
- (d) any business of providing tourist restaurants;
or
- (e) any business of providing tourism training institutions;

"tourism training institution" means—

- (a) an institution, centre or school that provides training or courses in respect of tourism services and management, including hotel and catering services; and
- (b) has been designated by the Minister under section 3 as a tourism training institution;

"tourist" means any person, whether he is a Malaysian national or otherwise, visiting any place in Malaysia for any of the following purposes, namely—

- (a) pleasure, recreation or holiday;
- (b) culture;
- (c) religion;
- (d) visiting friends or relatives;
- (e) sports;
- (f) business;
- (g) meetings, conferences, seminars or conventions;
- (h) studies or research;
- (i) shopping; or
- (j) any other purpose which is not related to an occupation that is remunerated from the place visited;

"tourist accommodation premises" means—

- (a) any building, including hostels, hotels, inns, boarding-houses, rest-houses and lodging-houses;
- (b) any place made available for the purposes as a campsite; or
- (c) any caravan or motorhome,

held out by the proprietor, owner or manager, either wholly or partly, as offering lodging or sleeping accommodation, and may include the provision of food and drink, to any tourist for hire or reward of any kind whatsoever, and has been designated by the Minister under section 3 as a tourist accommodation premises;

"tourist guide" means a person who renders service to tourists or any other persons by guiding them on tours for remuneration;

"tourist restaurant" means any premises or part thereof—

- (a) that has been licensed under any written law to provide or sell food or drinks for human consumption; and
- (b) has been designated by the Minister under section 3 as a tourist restauram;

"travel agency business" means any business of providing all or any of the following sendces:

- (a) selling, arranging or making available for commission, tickets entitling a person to travel on any ponveyance either by land, sea or air;
- (b) selling, arranging or making available for commission, accommodation places within Malaysia or outside Malaysia;
- (c) any other services incidental to any of the services enumerated above;

"Secretary General" means the Secretary General of the Ministry charged with the responsibility for tourism.

(2) Any reference in this Act to "this Act" shall, unless otherwise expressly stated, be deemed to include a reference to any regulation, order, notification or other subsidiary legislation made under this Act.

3. The Minister may, by notification in the *Gazette*, designate any accommodation premises, training institution or restaurant as a tourist accommodation premises, tourism training institution or tourist restaurant respectively for the purposes of this Act.

Power of Minister to designate tourist accommodation premises, tourism training institutions and tourist restaurants.

4. (1) The Secretary General shall be appointed as the Commissioner of Tourism who shall be responsible for the general supervision of all matters relating to tourism under this Act.

The Commissioner of Tourism.

(2) The Commissioner may, in writing, delegate the exercise of any or all of the powers and functions conferred upon him by this Act to any public officer as he deems fit.

PART II

LICENSING OF TOURISM ENTERPRISES

5. (1) No person shall carry on or operate, or hold himself out as carrying on or operating—

- (a) a tourist accommodation premises;
- (b) a tourism training institution; or
- (c) a tourist restaurant,

Tourism enterprises to be licensed.

unless that person holds a valid licence granted under this Part.

(2) No person shall carry on or operate, or hold himself out as carrying on or operating—

- (a) a tour operating business; or
- (b) a travel agency business,

unless it is a company and holds a valid licence granted under this Part.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both, and in the case of a continuing offence, shall in addition, be liable to a daily fine not exceeding five thousand ringgit for each day the offence continues to be committed.

Act 4311961

(4) For the avoidance of doubt, the provisions of the Education Act 1961 shall not apply in relation to a person carrying on or operating a tourism training institution.

Submission
of
application
for licence
to the
Commissioner.

6. (1) An application for the grant of a licence under this Part shall be made in writing to the Commissioner in such form as may be determined.

(2) Every application under subsection (1) shall be accompanied by such documents or information as may be prescribed and the Commissioner may, at any time after receiving the application and before it is determined, verbally or in writing, require the applicant to provide such additional documents or information as may be considered necessary by the Commissioner for the purposes of determining the suitability of the applicant for the licence.

(3) The requirements under subsection (2) may differ as between different applicants, or different classes, categories or descriptions of applicants.

(4) Where any additional document or information required under subsection (2) is not provided by the applicant within the time specified in the requirement or any extension thereof granted by the Commissioner, the application shall be deemed to be withdrawn and shall not be further proceeded with, without prejudice to a fresh application being made by the applicant.

7. (1) The Commissioner shall, on an application having been duly made in accordance with section 6 and after being provided with all such documents and information as he may require, consider the application, and where he is satisfied of the suitability of the applicant, and upon payment of the prescribed fees, grant the licence with or without conditions, or refuse to grant a licence.

Grant of
or refusal
to grant
licence.

(2) Every licence granted under subsection (1) shall set out the duration of the licence as may be prescribed and the licence number.

(3) Any person who has been granted a licence under subsection (1) may apply for supplementary licences for branch offices or premises for carrying on or operating the same type of tourism enterprise for which he was licensed.

(4) Where the Commissioner refuses to grant a licence, he shall immediately notify the applicant in writing of his refusal.

8. (1) The Commissioner may revoke a licence granted under section 7 if he is satisfied that—

Revocation
of licence.

- (a) the licensed tourism enterprise has failed to comply with any obligation imposed upon it by or under this Act;
- (b) the licensed tourism enterprise has contravened any condition imposed under the licence, any provision of this Act or any other written law, regardless that there has been no prosecution for an offence in respect of such contravention;
- (c) the licensed tourism enterprise has, either in connection with the application for the licence or at any time after the grant of the licence, provided the Commissioner with false, misleading or inaccurate information, document or declaration made by or on behalf

of the licensed tourism enterprise or by or on behalf of any person who is or is to be a director, controller or manager of the licensed tourism enterprise;

- (d) the licensed tourism enterprise is carrying on its business in a manner which is prejudicial to the interest of the public, the tourism industry or to the national economy;
- (e) the licensed tourism enterprise has not transacted any business in respect of which it is licensed for any continuous period of six months or has ceased to carry on any of the businesses or operations for which it is licensed;
- (f) the Licensed tourism enterprise has insufficient assets to meet its liabilities;
- (g) a winding up order has been made against the licensed tourism enterprise or a resolution for its voluntary winding-up has been passed;
- (h) the licensed tourism enterprise or any of its officers holding a managerial or executive position has been convicted of any offence involving dishonesty, fraud or moral turpitude; or
- (i) the licensed tourism enterprise or its director, manager or controller has been convicted of any offence under this Act.

(2) Before revoking a licence, the Commissioner shall give the licensed tourism enterprise a notice in writing of his intention to do so and require the licensed tourism enterprise to show cause within a period specified in the notice as to why the licence should not be revoked.

(3) Where the Commissioner decides to revoke the licence, he shall immediately inform the tourism enterprise concerned of his decision by a notice in writing.

- (4) The revocation of a licence shall take effect—
- (a) where there is no appeal against such revocation, on the expiration of fourteen days from the date on which the notice of revocation is served on the licensed tourism enterprise; or
 - (b) where there is an appeal against such revocation, when the revocation is confirmed by the Minister.

(5) Where an appeal has been made against the revocation of a licence, the licensed tourism enterprise whose licence has been so revoked shall not transact any new business until the appeal has been disposed of and the revocation has been set aside by the Minister.

(6) Any person who contravenes subsection (5) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(7) Where the revocation of a licence has taken effect, the Commissioner shall, as soon as practicable, cause such revocation to be advertised in a least one national daily Bahasa Malaysia and English newspaper for at least three consecutive days.

(8) Any delay or failure in advertising such notice of revocation shall not in any manner affect the validity of the revocation.

9. (1) Any person who is aggrieved by—

Appeal,

- (a) the refusal of the Commissioner to license any tourism enterprise under section 7 or to renew any such licence; or
- (b) the revocation of any licence under section 8,

may appeal in writing to the Minister within fourteen days from the date on which the notice of refusal or revocation is served on that person.

(2) The decision of the Minister under this section shall be final and conclusive.

Surrender
of licence.

10. (1) A licensed tourism enterprise may surrender its licence by forwarding it, and any supplementary licence, to the Commissioner with a written notice of its surrender.

(2) The surrender shall take effect on the date the Commissioner receives the licences and the notice under subsection (1), or where a later date is specified in the notice, on that date.

(3) The licensed tourism enterprise shall, not later than fourteen days after the date referred to in subsection (2), cause such surrender to be advertised in at least one national daily Bahasa Malaysia and English newspaper for at least three consecutive days.

Effect of
revocation,
surrender or
expiry of
licence.

11. (1) Where the revocation of a licence under section 8 or its surrender under section 10 has taken effect, or where the licence has expired, the licensed tourism enterprise shall immediately cease to carry on or operate any business in respect of which the licence was granted:

Provided that the Minister may, on the recommendation of the Commissioner, authorise the licensed tourism enterprise in writing to carry on such business for such duration as the Minister may specify in the authorisation for the purpose of winding up its affairs.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both, and in the case of a continuing offence, shall, in addition, be liable to a daily fine not exceeding five thousand ringgit for each day the offence continues to be committed.

(3) Where a licence has been revoked under section 8, any supplementary licence thereto shall be deemed to be revoked.

(4) Notwithstanding subsection (1), a licensed tourism enterprise whose licence has expired shall be entitled to carry on its business as if its licence had not expired upon proof being submitted to the Commissioner that the licensed tourism enterprise has applied for a renewal of licence.

12. (1) Where the revocation of a licence under section 8 has taken effect, or where the licence has expired and no application for its renewal has been submitted within the period specified, the licensed tourism enterprise shall within fourteen days return the said licence, including any supplementary licence, to the Commissioner. Return of licence.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both, and in the case of a continuing offence, shall, in addition, be liable to a daily fine not exceeding five thousand ringgit for each day the offence continues to be committed, and the court shall retain the licence and any supplementary licence and forward them to the Commissioner,

13. Except with the written consent of the Commissioner, no person, not being a licensed tourism enterprise, shall assume or use the words "tourism", "tour", "travel", "tourist agency", "travel agent" or "tour operator", as the case may be, or any derivative of these words in any language, or any other words in any language capable of being construed as indicating the carrying on or operation of such business, in relation to the business or any part of the business carried on by such person, or make any representation to such effect in any bill head, letter, paper, notice, advertisement or in any other manner whatsoever. Restriction on use of word "tour", etc.

PART III

REQUIREMENTS AND DUTIES ON LICENSED
TOURISM ENTERPRISES

Requirement
to display
licence.

14. A licensed tourism enterprise shall at all times display its licence in a conspicuous place at its principal place of business and at every branch where the licensed tourism enterprise carries on or operates its business.

Duty to
submit
information
and
particulars
relating to
business
operations.

15. (1) Without prejudice to subsection (2), a licensed tourism enterprise shall submit to the Commissioner such information and particulars including financial statements, audited balance sheets and profit and loss account relating to its entire business operations as may from time to time be required by the Commissioner within such time as he may determine.

(2) Upon request by the Commissioner, a licensed tour operator or travel agent shall submit the following to the Commissioner:

- (a) itineraries for both inbound and outbound tours;
- (b) confidential and other tariffs;
- (c) details of business activities carried out by them including the charges for and the terms and conditions of such activities;
- (d) details of any contract entered by them with any other local or overseas tourism enterprise;
- (e) names and particulars of licensed tourist guides employed by them either on full-time or part-time basis; and
- (f) registration numbers and particulars of excursion vehicles to be used for any tour.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding two years or to both, and in the case of a continuing offence, shall,

in addition, be liable to a daily fine not exceeding two thousand ringgit for each day the offence continues to be committed.

16. (1) The Commissioner shall have the right to determine and impose from time to time the proportion of inbound and outbound tours to be undertaken by a licensed tour operator and may, with the approval of the Minister, grant to all outbound tour operators a grace period to be specified by the Commissioner from time to time to undertake the prescribed proportion of inbound tours.

Inbound and
outbound
tours and
other
business
activities.

(2) The Commissioner may disallow any of the business activities of any licensed tour operator.

17. (1) Every licensed tourism enterprise shall, prior to the making of any amendment or alteration to any of its constituent documents, or prior to any change in its director or chief executive officer, furnish the Commissioner particulars in writing of any such proposed amendment, alteration or change.

Notification
of change of
information.

(2) Every licensed tourism enterprise shall immediately notify the Commissioner of any amendment or alteration to any information or document which has been furnished to the Commissioner in connection with the licence.

18. A licensed tourism enterprise shall not publish, whether in a newspaper, brochure or otherwise, any advertisement or information relating to or in connection with the business of a tourism enterprise without including—

Requirements
as to
advertisement

- (a) the licence number;
- (b) the business name under which it carries on business and the address at which such business is carried on; and
- (c) any other particulars relating to any services offered as the Commissioner deems necessary.

Employment
of licensed
tourist
guides.

19. (1) No licensed tourism enterprise shall employ, or obtain for a tourist or any other person the services of, a tourist guide who is not licensed under this Act or whose licence has been suspended or revoked.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Use of
excursion
vehicles.

20. (1) No licensed tourism enterprise shall use or allow to be used any vehicle for the transportation of tourists on tours except excursion vehicles which has been duly licensed by the appropriate authorities for such purposes.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

PART IV

LICENSING OF TOURIST GUIDES

Persons
providing
services
as tourist
guides to
be licensed.

21. (1) No person shall act, or hold himself out, as a tourist guide unless he is licensed under this Part.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding seven thousand ringgit or to imprisonment for a term not exceeding two years or to both, and in the case of a continuing offence, shall, in addition, be liable to a daily fine not exceeding five hundred ringgit for each day the offence continues to be committed.

Register.

22. The Commissioner shall cause to be kept and maintained a register of licensed tourist guides.

23. (1) Any application for a licence under this Part shall be made in writing to the Commissioner in such form as may be determined and it shall contain, or be accompanied by, such information and documents as may be prescribed.

Application for licence and qualification of applicants.

(2) No person shall apply to be licensed under this Part unless—

- (a) he has undergone a course or courses of training and passed the tests of proficiency conducted by the Commissioner or any body authorised in writing by the Commissioner to conduct a course of training and tests of proficiency for tourist guides;
- (b) he has completed any other course recognised by the Commissioner as being equivalent to a course referred to in paragraph (a) or
- (c) it appears to the Commissioner, with due regard to the character, qualifications and experience of such person, that he is competent to be a tourist guide.

24. (1) Upon receiving an application under subsection 23(1), the Commissioner shall consider the application and may, where he is satisfied of the suitability of the applicant and upon payment of the prescribed fee, grant a licence with or without conditions.

Grant of licence.

(2) The Commissioner shall enter the name of every person who has been granted a licence under subsection (1) in the register and issue to that person an authorisation card in such form as may be prescribed.

(3) The Commissioner may refuse to grant a licence to any person without assigning any reason thereof.

(4) Where the Commissioner refuses to grant a licence, he shall immediately notify the applicant in writing of his refusal.

- Validity of licence. 25. A licence granted by the Commissioner under this Part shall, unless sooner revoked, be valid for a period of twelve months from the date the licence was granted.
- Authorisation card. 26. (1) An authorisation card issued to a licensed tourist guide under subsection 24 (2)—
- (a) shall be worn conspicuously whenever the licensed tourist guide is on duty, conducting any tour or when he is attending any course as required under section 27;
 - (b) shall not be worn by any person other than the person to whom it was issued.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding one year or to both.
- Duties imposed upon licensed tourist guides. 27. (1) A licensed tourist guide shall attend further courses of training and pass further tests of proficiency for tourist guides as may be required by the Commissioner.
- (2) A standard form of dress as may be prescribed shall be worn by every licensed tourist guide while on duty or conducting tours.
- (3) A licensed tourist guide shall comply with a standard code of ethics as may be prescribed.
- Suspension or revocation of licence. 28. (1) If any licensed tourist guide—
- (a) has made any misrepresentation or has failed to disclose any fact at the time of applying for a licence, and such misrepresentation or non-disclosure would have influenced the Commissioner to license him in pursuance of section 24;
 - (b) has failed to attend or successfully complete such further courses of training or pass such further tests of proficiency as may be required;

- (c) has failed to wear the authorisation card or has allowed any other person to wear the authorisation card in contravention of section 26;
- (d) has acted in contravention of the provisions of this Act;
- (e) has contravened any of the conditions of his licence imposed under subsection 24(1) or the code of ethics referred to in subsection 27(3);
- (f) is, in the opinion of the Commissioner, incapable by reason of illness or otherwise of acting as a tourist guide;
- (g) has not performed the functions of a tourist guide for a continuous period of six months; or
- (h) has been convicted of any offence involving dishonesty, fraud or moral turpitude,

the Commissioner may suspend the licence granted under section 24 and withdraw the authorisation card for such period as may be determined or revoke the licence and remove the name of the licensed tourist guide from the register or, where the licence has expired, refuse to renew the licence:

Provided that the Commissioner may not suspend, revoke or refuse to renew the licence of the licensed tourist guide in any of the circumstances mentioned in paragraphs (a) to (g) without first giving the tourist guide concerned an opportunity to be heard.

(2) Where the Commissioner suspends, revokes or refuses to renew a licence, he shall immediately notify the tourist guide concerned in writing of his decision.

29. (1) Any licensed tourist guide whose licence has been suspended pursuant to section 28 shall not during the period of suspension act as a tourist guide.

Effect of suspension or revocation of licence.

(2) Any licensed tourist guide whose licence has been revoked shall immediately cease to act as a tourist guide in any circumstances.

(3) Every licensed tourist guide whose licence has not been renewed or has been revoked pursuant to section 28 shall return the licence and the authorisation card to the Commissioner, subject to section 30, not later than fourteen days from the date on which the notice of refusal to renew or revocation is served on him.

(4) Any person who contravenes this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding seven thousand ringgit or to imprisonment for a term not exceeding two years or to both, and in the case of a continuing offence, shall, in addition, be liable to a daily fine not exceeding five hundred ringgit for each day the offence continues to be committed.

Right to
appeal.

30. (1) Any licensed tourist guide who is aggrieved—
- (a) by the refusal of the Commissioner to renew his licence; or
 - (b) by the suspension or revocation of his licence under section 28,

may appeal in writing to the Minister within fourteen days from the date on which the notice of refusal to renew, suspension or revocation is served on him.

- (2) The decision of the Minister shall be final and conclusive.

(3) Where the Minister confirms the decision of the Commissioner, the licensed tourist guide shall, within seven days from the date of the confirmation, return the licence and the authorisation card to the Commissioner.

(4) Any person who contravenes subsection (3) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding one year or to both, and the court shall retain the licence and the authorisation card and forward them to the Commissioner.

31. A licensed tourist guide may surrender his licence by forwarding his licence and his authorisation card to the Commissioner with a written notice of its surrender and the surrender shall take effect on the date the Commissioner receives the licence and authorisation card.

Surrender of licence and authorisation card.

PART V

GENERAL

32. (1) Every licensed tourism enterprise or licensed tourist guide shall submit an application to the Commissioner in such form as may be determined for the renewal of his licence at least thirty, but not more than sixty, days before the date of expiry of the licence and such application shall be accompanied with such documents and information as may be required by the Commissioner.

Renewal of licence.

(2) The prescribed fee shall be payable upon approval of the application.

(3) If any licensed tourism enterprise or licensed tourist guide has no intention of renewing his licence, the licensed tourism enterprise or licensed tourist guide shall advertise his intention at least thirty days before the expiry of the licence in at least one national daily Bahasa Malaysia and English newspaper for at least three consecutive days.

(4) Without prejudice to any other grounds, the Commissioner may refuse to renew a licence where the requirements of subsection (1) is not complied with.

33. (1) Where a licensed tourism enterprise has lost its licence, it shall immediately notify the Commissioner in writing of the loss.

Lost licences.

(2) Where a licensed tourist guide has lost his licence or his authorisation card, he shall immediately notify the Commissioner in writing of the loss.

(3) Such licensed tourism enterprise or licensed tourist guide shall submit an application for a replacement licence or authorisation card, as the case may be, accompanied by all such information and documents as may be required by the Commissioner together with the prescribed fees that may be imposed.

Power of
Minister to
make
regulations.

34. (1) The Minister may make such regulations as he may consider expedient for the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for any of the following purposes or matters:

- (a) the prescription of documents and information to accompany any application for a licence;
- (b) the duration and conditions of licence, and the manner and procedure for its renewal;
- (c) the fees to be paid for any licence and any other fees which are required to be prescribed under this Act;
- (d) the procedures of entry into and inspection of premises;
- (e) the keeping of proper books, accounts and records by the licensed tourism enterprise and the form and mode of the same;
- (f) regulating the establishment and management of tourism training institutions, including the prescription of course content and training programmes, books or materials to be used, the standards to which the institutions shall conform, the qualification of the instructors, the examinations to be conducted and the certificates or such other qualifications to be awarded;
- (g) the offences which may be compounded and the procedure for compounding such offences;
- (h) the forms of any register, notice or order required to be kept, issued or made under this Act and the procedures for the service of such notices or orders;

- (i) the conduct of or the carrying on of any business or service relating to tourism enterprises or tourist guides and the standards of performance to be maintained by them; and
- (j) any other matter which is required by this Act to be prescribed.

35. (1) Except for the purposes of this Act, no person who has access to any record, book, register, correspondence, information, document or other material whatsoever obtained pursuant to the provisions of this Act shall disclose such record, book, register, correspondence, information, document or other material to any other person. Obligation of secrecy.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding two years or to both.

36. Any person who makes, orally or in writing, signs or furnishes any declaration, return, certificate or other document or information required by this Act which is untrue, inaccurate or misleading in any particular shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both. Inaccurate declaration, etc.

37. Any person who fails to comply with or contravenes any provision of this Act for which no specific penalty is expressly provided shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and in the case of a continuing offence, shall, in addition, be liable to a daily fine not exceeding five hundred ringgit for each day the offence continues to be committed. General penalty.

Liability of
directors,
etc.

38. (1) Where an offence under this Act has been committed by a company, any person who at the time of the commission of the offence was a director, secretary, manager or other officer of the company or who was purporting to act in any such capacity, shall be deemed to be guilty of that offence and shall be punished accordingly unless he proves that the offence was committed without his consent or connivance and that he exercised such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his function in that capacity and to all the circumstances.

(2) Any person who would have been guilty of an offence if anything had been done or omitted to be done by him personally shall be guilty of the offence and shall be liable to the same penalty if such thing had been done or omitted to be done by his officer, agent or servant in the course of his business unless he proves that the offence was committed without his knowledge or consent and that he took all reasonable precautions to prevent the doing or omission to do such thing.

(3) Nothing in subsection (2) shall relieve any such officer, agent or servant from any liability for an offence.

Power to
compound
offences.

39. (1) The Commissioner may compound any offence under this Act which is prescribed to be a compoundable offence by requiring a person reasonably suspected of committing the offence to pay a sum of money not exceeding fifty per cent of the amount of the maximum fine to which that person should have been liable if he had been convicted of the offence.

(2) An offer under subsection (1) may be made at any time after the offence has been committed but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified, or during such extended period as may be granted by the Commissioner, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (1), no prosecution shall thereafter be instituted in respect of the offence against the person to whom the offer to compound was made.

40. (1) The Minister may authorise in writing any public officer or officer of the Malaysia Tourism Promotion Board to exercise the powers of enforcement under this Act. Authorised officer.

(2) Any such officer shall be deemed to be a public servant within the meaning of the Penal Code. *F.M.S.*
Cap. 45.

(3) In exercising any of the powers of enforcement under this Act, an authorised officer shall on demand produce to the person against whom he is acting the authority issued to him by the Minister.

41. In any case relating to the commission of an offence under this Act, any authorised officer making an investigation may exercise all or any of the special powers in relation to police investigation in seizable cases given by the Criminal Procedure Code. Power to investigate.

F.M.S.
Cap. 6.

42. (1) An authorised officer making an investigation under this Act may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined. Power to examine witnesses.

(2) Such person shall be bound to answer all questions relating to such case put to him by such officer:

Provided that such person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty of forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions.

(4) An authorised officer examining a person under subsection (1) shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any correction he may wish.

Admissi-
bilty of
statement.

43. Notwithstanding the provisions of any written law to the contrary, where a person is charged with an offence under this Act, any statement, whether the statement amounts to a confession or not or whether it is oral or in writing, made at any time, whether before or after the person is charged and whether in the course of investigation under this Act or not and whether or not wholly or partly in answer to questions, by the person to, or in the hearing of, the authorised officer and whether or not interpreted to him by an authorised officer or any other person concerned or not in the case, shall be admissible at his trial in evidence and, if the person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit:

Provided that—

- (a) no such statement shall be admissible or used as aforesaid—
 - (i) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against such person proceeding from a person in authority and sufficient in the opinion of the court to give the person charged grounds which would appear to him reasonable for supposing that by making it he would gain any advantage

or avoid any evil of a temporal nature in reference to the proceedings against him; or

- (ii) in the case of a statement made by the person after his arrest, unless the court is satisfied that he was cautioned in the following words or words to the like effect:

"It is my duty to warn you that you are not obliged to say anything or to answer any question but anything you say, whether in answer to a question or not, may be given in evidence."; and

- (b) a statement made by any person before there is time to caution him shall not be rendered inadmissible in evidence merely by reason of his not having been cautioned if he is cautioned as soon as possible.

44. (1) Whenever it appears to any Magistrate upon written information on oath and after any enquiry which he may think necessary that there is reasonable cause to believe that in any premises or place there is being committed an offence against this Act, the Magistrate may issue a warrant authorising any authorised officer, by day or night and with or without assistance, to enter the premises or place and search for and seize or take copies of all books, accounts, or other documents which contain or are suspected to contain information as to any offence so suspected to have been committed or any other things relating to the offence.

Search with
warrant.

- (2) Any such officer may if it is necessary so to do—
- (a) break open any outer or inner door of the premises or place, and enter thereinto;
- (b) forcibly, enter the premises or place and every part thereof;
- (c) remove by force any obstruction to enter, search, seizure and removal as he is empowered to effect;

- (d) detain every person found in the premises or place until the premises or place has been searched; and
- (e) where the premises or place is used for carrying on or operating a tourism enterprise without a licence, seal the premises or place.

Search
without
warrant.

45. Whenever it appears to any authorised officer that there is reasonable cause to believe that in any premises or place there is concealed or deposited any books, accounts or other documents which are suspected to contain information as to the commission of an offence under this Act or any other thing relating to the offence and if he has reasonable grounds for believing that by reason of the delay in obtaining a search warrant the books, accounts, other documents or things are likely to be removed, the officer may exercise in, upon and in respect of the premises or place all the powers mentioned in section 44 in as full and ample a manner as if he were authorised so to do by a warrant issued under that section.

List of
things
seized.

46. (1) The authorised officer seizing any books, accounts, documents or other things under this Act shall prepare a list of the books, accounts, documents or other things seized and forthwith deliver a copy signed by him to the occupier or his agents or servants present in the premises or place of seizure.

(2) The list referred to in subsection (1) shall not be treated as a statement, admission or confession made by the occupier or his agents or servants in the course of the investigation and shall be admissible in evidence.

Additional
powers.

47. Any authorised officer shall, for purposes of the execution of this Act, have power to do all or any of the following:

- (a) to require the production of records, accounts and documents kept by a licensed tourism enterprise or licensed tourist guide and to inspect, examine and copy any of them;

- (b) to require the production of any identification document from any person in relation in any case or offence under this Act;
- (c) to make such inquiry as may be necessary to ascertain whether the provisions of this Act are complied with.

48. Any person who—

- (a) assaults, obstructs, hinders or delays the authorised officer in effecting any entrance which he is entitled to effect under this Act, or in the execution of any duty imposed or power conferred by this Act;
- (b) breaks any seal that has been affixed by an authorised officer on any premises or place;
- (c) fails to comply with any lawful demand of an authorised officer in the execution of his duty under this Act; or
- (d) refuses or neglects to give any information which may reasonably be required of him and which he has it in his power to give,

Obstruction
of search
etc.

shall be guilty of an offence.

49. Every authorised officer shall have the authority to appear in court and conduct any prosecution in respect of any offence against this Act.

Conduct of
prosecution.

EXPLANATORY STATEMENT

This Bill seeks to introduce new laws for the licensing and regulation of persons carrying on or operating tourism enterprises and of persons who provide services as tourist guides.

2. Part I of the Bill contains preliminary matters.

Clause 1 contains the short title and provides that the proposed Act come into force on the date appointed by the Minister by notification in the *Gazette*. *Clause 2* defines certain words and expressions used in the Bill. *Clause 3* empowers the Minister to designate such accommodation premises, training institutions and

restaurants as tourist accommodation premises, tourism training institution and tourist restaurant respectively. *Clause 4* deals with the appointment of the Commissioner of Tourism who shall be responsible for the general supervision of the Act and also enables the Commissioner to delegate the exercise of certain of his powers and functions under the proposed Act to a public officer.

3. Part II of the Bill deals with the licensing of tourism enterprises.

Clause 5 seeks to prohibit any person from carrying on or operating a tour operating business, a travel agency business, a tourism accommodation premises, a tourist restaurant or a tourism training institution unless that person is licensed under the proposed Act. *Clause 6* deals with applications for licence to carry on the tourism enterprises while *clause 7* empowers the Commissioner to grant or refuse to grant a licence. *Clause 8* seeks to empower the Commissioner to revoke any licence on the grounds set out in *subclause (1)*. *Clause 9* enables the licensed tourism enterprise whose licence has been revoked to appeal to the Minister. *Clause 10* provides for the surrender of licences. *Clause 11* sets out the effect of revocation, surrender or expiry of a licence while *clause 12* seeks to require any licensed tourism enterprise to return the licence once it has been revoked or has expired. *Clause 13* seeks to restrict the use of certain words in respect of tourism enterprises.

4. Part III of the Bill deals with the requirement and duties imposed upon licensed tourism enterprises.

Clause 14 seeks to require every licensed tourism enterprise to display its licence. *Clauses 15, 16 and 17* seeks to require every licensed tourism enterprise to submit information and particulars relating to its business operations, inbound and outbound tours and other business activities and to notify the Commissioner of any change in information that may occur. *Clause 18* contains certain requirement as to advertisement. *Clauses 19 and 20* seek to prohibit the employment or use of unlicensed tourist guides or vehicles which have not been licensed as excursion vehicles.

5. Part IV of the Bill deals with the licensing of tourist guides.

Clause 21 seeks to require any person who provides service as a tourist guide to be licensed. Every licensed tourist guide shall have his name entered into a register kept by the Commissioner in accordance with *clause 22* while *clause 23* provides for the application for licence and qualification of the applicants. *Clauses 24 and 25* deal with the granting of the licence by the Commissioner and its validity. *Clause 26* provides for the issuance of an authorisation card for every tourist guide who is licensed under the proposed Act. *Clause 27* sets out several requirements imposed upon the licensed tourist guide. *Clauses 28, 29 and 30* deal with

the suspension and revocation of the licence, the consequences of such revocation and the right to appeal against such revocation. *Clause 31* provides for the surrender of the licence and the authorisation card.

6. Part V deals with general matters.

Clauses 32 and 33 contain provisions relating to the renewal and replacement of licence or authorisation card. *Clause 34* empowers the Minister to make regulations. *Clause 35* seeks to prohibit any person from disclosing any information that he may have obtained pursuant to the provisions of the proposed Act. *Clause 36* deals with an offence as a result of submitting inaccurate, false or misleading declaration, documents and information. *Clause 37* provides for a general penalty to be imposed where no express penalty is specified. *Clause 38* seeks to make the director or manager of a body corporate also guilty of an offence committed by the body corporate unless it is proved that the offence is committed without his knowledge. *Clause 39* empowers the Commissioner to compound offences. *Clause 40* seeks to empower the Minister to authorise any public officer or officer of the Malaysia Tourism Promotion Board to exercise the powers of enforcement under the proposed Act. *Clauses 41, 42, 43 and 44* seek to provide the authorised officers with powers of investigation, examination of witnesses and search. *Clause 45* provides for the admissibility of statement. *Clause 46* sets out that a list of things seized under the proposed Act has to be prepared by the authorised officer and delivered to the occupier, or his agents or servants, of the premises or place where the seizure was conducted. *Clause 47* provides for additional powers of the authorised officers while *clause 48* seeks to allow the authorised officer to effect their duty without hindrance or obstruction from any person by making it an offence for any person to assault, obstruct, hinder or delay the authorised officer in the execution of his duty. The said provision also provides that any person who breaks any seal that has been affixed by any authorised officer or fails to comply with any lawful demand of the authorised officer commits an offence. *Clause 49* empowers any authorised officer to appear in court and conduct any prosecution in respect of any offence against the proposed Act.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

[PN. (U²) 1606.]

MALAYSIA

Warta Kerajaan

SERI PADUKA BAGINDA

DITERBITKAN DENGAN KUASA

HIS MAJESTTTS GOYERNMENT GAZETTE

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RANG UNDANG-UNDANG

Rang Undang-undang yang berikut telah dibentangkan dalam Parlimen adalah diterbitkan untuk makluman umum:

The following Bills introduced into Parliament are published for general information:

Akta Lembaga Penggalakan Pelancongan Malaysia 1991 —
(Dibentangkan dan dibaca bagi kali pertama dalam Dewan Rakyat pada 5hb Disember 1991).

Malaysia Tourism Promotion Board Act 1991—*(Presented and read afirst time in the Dewan Rakyat on 5th December 1991).*

Akta Pembatalan Pengecualian Daripada Bayaran Duti-Duti Setem 1991—*(Dibentangkan dan dibaca bagi kali pertama dalam Dewan Rakyat pada Whb Disember 1991).*

Revocation of Exemption From Payment of Stamp Duties Act 1991—*(Presented and readafirst time in the Dewan Rakyat on WthDecember 1991),*

Akta Profesion Undang-Undang (Pindaan) 1991 —
(Dibentangkan dan dibaca bagi kali pertama dalam Dewan Rakyatpada Whb Disember 1991).

Legal Profession (Amendment) Act 1991 —*(Presented and read afirst time in the Dewan Rakyat on Wth December 1991).*