

ANTIGUA AND BARBUDA



TOURISM STANDARDS AND LICENSING BILL, 2017

2017, No.

TOURISM STANDARDS AND LICENSING BILL 2017

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

1. Short title
2. Definitions

PART II

DEVELOPMENT AND ENFORCEMENT OF STANDARDS

3. Power to develop standards
4. Objective of standards
5. Consultation
6. Relevant considerations
7. Publication of standards
8. Status and enforcement of standards
9. Quality Assurance Officers
10. Power of Entry
11. Non-compliance procedures

PART III

LICENSING OF PROVIDERS OF TOURISM SERVICES

12. Application for licence
13. Necessity for licence to offer tourism service
14. Terms of licence
15. Report
16. Display of licence
17. Variation of terms and conditions of licence
18. Failure to comply with conditions of licence
19. Cancellation of licence

20. Appeal of decision of the Authority
21. Register of tourism business

PART IV

CLASSIFICATION AND RATING OF TOURISM SERVICES

22. Power to classify tourist accommodation
23. Objectives of classification
24. Publication of classification
25. Rating of tourism services
26. Publication of ratings
27. Removal and review of classification or rating
28. Reinstatement of classification
29. Status of Board re-classification, rating etc.

PART V

MISCELLANEOUS

30. Offences
31. Rules and regulations
32. Delegation by the Director
33. Commencement

FIRST SCHEDULE

SECOND SCHEDULE

ANTIGUA AND BARBUDA

TOURISM STANDARDS AND LICENSING ACT 2017

AN ACT to provide for the creation of standards, licenses and scheduling for the tourism industry, and matters connected therewith

BE IT ENACTED by the Parliament of Antigua and Barbuda as follows

PART I

PRELIMINARY

1. Short Title

This Act may be cited as the TOURISM STANDARDS AND LICENSING ACT, 2017.

2. Definitions

In this Act, unless the context otherwise requires—

“apartment “ means any furnished premises in which

- (a) sleeping accommodation and self-catering facilities are provided in 3 or more self-contained units; and
- (b) a charge is made for the accommodation provided;

“Authority” means the Antigua and Barbuda Tourism Authority established by section 3 of the Antigua and Barbuda Tourism Authority Act, 2008;

“Chief Executive Officer” means the Chief Executive Officer of the Antigua and Barbuda Tourism Authority;

“guest house” means a premises which—

- (a) provides sleeping accommodation for 3 to 10 bedrooms;
- (b) imposes charges for the provision of accommodation and service; and
- (c) serve meals to residents;

“home accommodation” means a registered dwelling house or residence where temporary lodging or sleeping accommodation is provided to guests at a charge;

“hotel” means any building or group of buildings, whether contiguous with each other or not, and the grounds appurtenant thereto that operates as one business venture in which—

- (a) sleeping accommodation is provided in 10 or more bedrooms;
- (b) a charge is made for the accommodation provided; and
- (c) meals are served to residents and non-residents;

“Minister” means the Minister responsible for Tourism.

“Tourism Development Plan” means the tourism industry plan prepared by the Authority;

“standard” means a measure or level, established by the Minister under this Act and which must be attained and maintained by any provider of a tourism service to which the standard relates;

“tourist accommodation” includes apartments, hotels, resorts, motels, inns, boarding houses and guesthouses, villas or other premises or place where accommodation is provided to tourist for reward;

“tourism services” include all services listed in the First Schedule and services connected with all types of tourist accommodation, travel service, ground transportation of all types, tour guiding, vending, water sports and food and beverage.

“villas” means a house that—

- (a) has at least 3 bedrooms which are available for the accommodation of guest for reward at least 9 months in every year;
- (b) is managed by the owner, company or real estate agent; and
- (c) is duly licensed under this Act.

(2) This Act shall be given such large and liberal construction in order that its purposes may be attained.

PART II

DEVELOPMENT AND ENFORCEMENT OF STANDARDS

3. Power to develop standards

(1) Notwithstanding anything to the contrary contained in any enactment, for the purpose of enhancing and developing the tourism industry in Antigua and Barbuda, there shall be a programme of standards as contemplated by the tourism development plan which will be prepared by the Authority and published by Notice in the Official Gazette.

(2) The Minister may cause the Authority to develop and implement the programme of standards in such manner and within such time as the Minister determines.

4. Objectives of standards

The objectives of the programme of standards developed under section 3 are to—

- (a) serve as criteria by which any tourism service may be classified and rated;
- (b) provide a development mechanism for the tourism industry;
- (c) serve as a basis for the acquisition and application of accepted international tourism service and facility standards; and
- (d) strengthen the economic and human resource competitiveness of the tourism industry within the regional and international context.

5. Consultation

(1) The Authority shall, in the development of the programme of standards, consult the Bureau of Standards.

(2) Where the Bureau of Standards is consulted under subsection (1), it shall give such advice as is appropriate in the circumstances.

(3) For the purposes of this section, the Bureau of Standards means the Antigua and Barbuda Bureau of Standards established by section 3 of The Standards Act, 2017.

6. Relevant considerations

The Authority shall, in the development of standards, have regard to the objectives of such standards as are set out in section 4.

7. Publication of standards

The Authority shall cause all standards developed under section 3 to be published in the Official Gazette and in such manner that is likely to result in the widest dissemination locally, regionally and internationally.

8. Status and enforcement of standards

All standards developed under this Act shall, upon publication, in the Official Gazette be applied in relation to the tourism services in accordance with this Act.

9. Quality Assurance Unit

(1) The Minister may, for the purpose of maintenance and enforcement of standards, establish a unit within the Ministry of Tourism, to be known as the Quality Assurance Unit, hereinafter referred to as “the Unit”.

(2) The Unit shall consist of not more than seven persons, all of whom shall be appointed by the Minister; and

(3) The Unit shall be responsible for carrying out the functions required for the effective monitoring of the tourism services and tourist accommodation and to ensure compliance with the standards, classifications and ratings established under this Act and Regulations made thereunder.

(4) Without prejudice to the generality of the foregoing, the Unit shall—

- (a) carry out periodic inspections of tourist accommodation, vehicles and locations where tourism services are offered;
- (b) investigate complaints concerning standards within the tourism industry;
- (c) issue non-compliance notices to service providers within the tourism industry;
- (d) require remedial or corrective measures to be taken where non-compliance has been identified;
- (e) recommend, implement and administer approved programs and measures to ensure compliance with this Act and Regulations;
- (f) undertake and carry out surveys, monitoring investigations and collate data on compliance within the tourism industry;
- (g) prepare and submit compliance reports on licensees;
- (h) submit periodic written reports to the Minister and the Authority; and
- (i) publish in the Official Gazette and disseminate updated information relating to standards classification and ratings.

10. Power of Entry

(1) Subject to subsection (2), every quality assurance officer shall, before entering any tourist facility, produce to the person in charge of the tourist facility, a photo identification card issued by the Authority, authorizing that person to enter the facility on the Authority's behalf.

(2) A Quality Assurance Officer may at any reasonable time enter any tourist accommodation, facility, vehicle or other location where a tourism service is being offered, for the purpose of inspecting and ensuring that the facility is utilized in such a manner as to promote the public benefit and by ascertaining whether or not the standards established under this Act or any Regulations made thereunder are being complied with by a licensee.

11. Non-compliance procedures

(1) Where the Unit has determined that a person is offering a tourism service without a license, the Unit shall serve that person with a notice in writing specifying the breach and requiring that corrective action be taken within a time stipulated in the notice.

(2) Upon receipt of a report under section 9, the Head of the Unit shall refer the report to the Authority who shall consider the report and make recommendations to the Minister.

PART III

LICENSING OF PROVIDERS OF TOURISM SERVICES

12. Application for licence

(1) (a) Any person who desires to operate a tourism business specified in the First Schedule shall make an application to the Authority in such a manner and accompanied with such particulars and with such fee as may be prescribed by regulations; and

(b) shall furnish such additional particulars as the Authority may request in any particular case.

(2) The Authority shall—

(a) conduct inquiries and carry out such investigations as it considers proper; and

(b) take into consideration the reports made by the persons specified in subsection (2) of section 15 for tourism services specified in the First Schedule.

(3) (a) Any person who desires to operate a tourism service specified in the Second Schedule shall make an application to the Minister in such a manner and accompanied with such particulars and with such fee as may be prescribed by regulations; and

(b) shall furnish such additional particulars as the Minister may request in any particular case.

(4) The Minister, before issuing any licence specified in the Second Schedule, shall—

(a) conduct inquiries and carry out such investigations as it considers proper; and

(b) take into consideration the reports made by the persons specified in subsection (2) of section 15.

13. Necessity for licence to offer tourism service

(1) Subject to section 15, no person shall offer any tourism service specified in the First Schedule for reward or otherwise unless a license has been issued to him by the Authority.

(2) Subject to section 15, no person shall offer any tourism service specified in the Second Schedule for reward or otherwise unless a license has been issued to him by the Minister.

(3) Where a breach continues after the time stipulated in the Notice given under subsection (1) of section 11 expires, the person in breach commits an offence, under this section and is liable on summary conviction to a fine of five thousand dollars or imprisonment for a term not exceeding 12 months and his licence revoked.

14. Terms of licence

Subject to the provisions this Act, a license shall be valid from the date of issue for a period not exceeding 12 months, and shall be renewed before or at the end of every issued period.

15. Report

(1) The Authority shall, before making its recommendation to the Minister for granting or renewing a license under this Act, make inquiry, conduct such investigations and have regard to the reports made by any person specified in subsection (2), about the person applying to operate the tourism business and the premises which the business proposes to operate.

(2) The Authority shall request any applicant for a licence or renewal of a licence for a tourism service listed in the First Schedule, or the Minister shall request any applicant for a licence or renewal of a licence for a tourism service listed in the Second Schedule, to obtain a report from —

- (a) the Chief Environmental Officer;
- (b) the Commissioner of Police;
- (c) the Director of the Tourism Authority;
- (d) the Chief Public Health Officer; or
- (e) any such other public officer as the Authority or Minister considers desirable.

(3) A person referred to in paragraphs (a) to (d) of subsection (2) shall inspect-

- (a) the premises in respect of which an application for a licence or renewal of a licence is made; and
- (b) any plant or equipment proposed to be used for the purpose of a tourism service.

16. Display of licence

Every licensee shall exhibit the license or a certified copy thereof in a conspicuous place at his principal place of business and every place where he carries on his tourism business.

17. Variation of terms and conditions of licence

(1) The Authority may, upon application made by the licensee for the renewal of a licence specified in the First Schedule, or the Minister, may, upon application made by the licensee for the renewal of a licence specified in the Second Schedule, vary any term or condition of the licence, taking into consideration any changes in circumstance since the licence was issued as well as any representation made to it by the licensee and shall not vary such term or condition of its own motion without first giving to the licensee a reasonable opportunity to make representation.

(2) Any variation of a term or condition of a licence made by the Authority or the Minister under subsection (1), shall be endorsed on the licence together with the date when it was made and the date which it is to take effect.

18. Failure to comply with conditions of licence

(1) Where it appears to the Authority or the Minister, after such enquiry as it may consider fit to make, that a licensee has—

- (a) failed to comply with any term or condition of the licence;
- (b) operated the tourism service in contravention of this Act or any other law; or
- (c) failed to pay any fee payable in respect of the licence,

the Authority or the Minister may, by notice in writing require the licensee to remedy the default within such period, not being less than forty days after the service of the notice.

(2) If the licensee is in default, and fails within the time specified in the notice to remedy the default complained of by the Authority or the Minister, the Authority or the Minister may, by notice in writing, cancel the licence.

(3) A licensee who fails to comply within the time specified in the notice to discontinue the operation of the tourism business under subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term not exceeding twelve months.

19. Cancellation of licence

(1) The Minister may, on the recommendation of the Authority, cancel a licence specified in the First Schedule, if—

- (a) the licensee has ceased to operate a tourism service; or

- (b) the licensee continues to be in contravention of terms of the licence.
- (2) The Minister may cancel a licence specified in the Second Schedule, if—
 - (a) the licensee has ceased to operate a tourism service; or
 - (b) the licensee continues to be in contravention of terms of the licence.

20. Appeal of decision of the Authority

(1) A person aggrieved by the decision of the Authority may within 21 days of the receipt of the decision appeal to the Minister for review of such decision.

- (2) The Minister may—
- (a) confirm or allow the decision appealed against or may direct the Authority to reconsider its decision on the basis of new facts on changing circumstance;
 - (b) direct the Authority to cancel a term or condition it has imposed on a licence, and substitute such other term or condition as he may determine; or
 - (c) direct the Authority to restore a licence it has cancelled, or restore it on such terms and conditions as he may determine.

21. Register of tourism business

The Authority shall keep a register of all tourism businesses in respect of which licences have been granted under this Act.

PART IV

CLASSIFICATION AND RATING OF TOURISM SERVICES

22. Power to classify tourist accommodation

The Minister may cause the Authority to develop a system of classification with respect to tourist accommodation specified in the Second Schedule.

23. Objectives of classification

The objectives of the system of classification are -

- (a) to ensure that certain types of tourist accommodation maintain particular standards; and
- (b) to ensure that there is a price differential among different types of tourist accommodation.

24. Publication of classification

The Authority shall cause the results of the classification to be published in the Official Gazette and in such other manner as will result in the widest dissemination, locally, regionally and internationally.

25. Rating of Tourism services

The Minister shall cause the Authority to develop a system for the rating of the tourism services specified in the First Schedule and may cause the Authority to develop a system for the rating of the tourism services specified in the Second Schedule

26. Publication of ratings

The Authority shall cause the rating of the tourism services to be published in the Official Gazette and in such other manner as is likely to result in the widest dissemination, locally, regionally and internationally.

27. Removal and review of classification or rating

(1) The classification or rating assigned or given to a tourist accommodation or tourism services, as the case may be, may be removed by the Minister if he is satisfied that a false or misleading classification was used in advertising or otherwise in relation to a tourist accommodation or tourist service.

(2) Any removal of classification or rating by the Minister under subsection (1) shall be published by the Authority in the Official Gazette and in such other manner as will ensure the widest dissemination, locally, regionally and internationally.

(3) The Authority may, from time to time, cause the systems of classification and rating to be reviewed so as to ensure that all tourist accommodation and tourist services are properly classified or rated.

28. Reinstatement of classification or rating

(1) The Minister may reinstate a classification or rating if he is satisfied that the basis for the removal has been remedied.

(2) The Minister shall cause any reinstatement under subsection (1) to be published in the Official Gazette or in such other manner as will ensure the widest dissemination, locally, regionally and internationally.

29. Status of Corporation Re-classification, rating etc.

The publication of any classification, rating and related matters under this Part must be done under the aegis of the Authority which fact must be so indicated.

PART V

MISCELLANEOUS

30. Offences

(1) A person who offers a tourism service without a licence commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding 12 months, and to a further fine of one thousand dollars for each day on which the offence continues after a first conviction.

(2) A person who advertises or causes to be advertised any tourism accommodation which indicates a classification or rating not issued under this Act commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding 12 months, and a further fine of five hundred dollars for each day on which the offence continues after a first or subsequent conviction.

(3) Any person who fails to comply with any provision under this Act to which no express penalty is provided commits an offence and shall be liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for three months.

(4) Any person, who willfully obstructs an officer of the Authority in the performance of his duties under this Act commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term not exceeding 12 months.

(5) A person who operates a tourism business without a license commits an offence and is liable on conviction to a fine of five thousand dollars or to a term of imprisonment not exceeding twelve months.

31. Rules and Regulations

(1) The Minister may make rules and regulations generally in order to give effect to the provisions of this Act.

(2) A fine of five thousand dollars or a term of imprisonment, not exceeding 12 months, or both may be imposed for contravention of the rules and regulations made pursuant to subsection (1).

32. Delegation by the Director

(1) Where any duty is conferred on the Director of the Authority under this Act, the Director may delegate such duty to his deputy or, in the absence of his deputy, to an Officer, not below the mark of Assistant Director.

(2) Nothing contained in subsection (1), absolves the Director from his duty to ensure that any duty so delegated is properly and efficiently carried out.

33. Commencement

This Act shall come into force on such date as the Minister made by Notice published in the Official Gazette.

FIRST SCHEDULE

(Section 13)

TOURISM SERVICES

1. All types of accommodation offered wholly or mainly to tourists
2. Bus tours services
3. Taxi services (land and water) associated with hotels
4. Bus tour guide
5. Tour guide/Walking Tours
6. Watersports
7. Food and beverage services associated with hotels
8. Vehicle rentals services associated with hotels
9. Travel services associated with hotels
10. Horseback riding associated with hotels
11. Home accommodations
12. Any other tourism service that the Minister may deem necessary

SECOND SCHEDULE

(Section 20)

1. Hotels (including all-inclusive hotels)
2. Apartments
3. Apartment hotels
4. Motels
5. Resorts
6. Inns
7. Guesthouses
8. Boarding houses
9. Bed and breakfast
10. Villas
11. Time-Shares
12. Eco-lodges
13. Any other tourism-related service that the Minister may deem necessary.

Passed by the House of Representatives
on the day of 2017.

Passed by the Senate on the
day of 2017.

Speaker

President

Clerk to the House of Representative

Clerk to the Senate

EXPLANATORY MEMORANDUM

The Bill for The Tourism Standards and Licensing Act 2017 provides for development and regulation of Tourism services in Antigua and Barbuda.

This Act will enable the Ministry to assist service providers to deliver an acceptable standard of service that is equal to or better than international standards. In this regard, Tourism inspectors will be checking to ensure that industry practitioners are delivering the required level of service and that the plant and machinery that are utilized for the delivery of service is at an acceptable standard.

Whereas the Government of Antigua and Barbuda tends to provide generous incentives to investors, it is even more critical to collect the taxes that are due from the operations of these by these tourism enterprises. Therefore, this Act will improve the Inland Revenue's position in addressing any tax avoidance situations which may occur.

This Act seeks to further win the confidence of all stakeholders. For example, associations such as the Florida Caribbean Cruise Association (FCCA) and Tour Groups have been complaining about a number of critical negatives that emanate from service providers on the island. With this Act, the Ministry will be enabled to address such complaints in a speedy and effective manner.

This Act will support the Antigua and Barbuda Tourism and Business (Special Incentives) Act 2013 and it will do this by providing a mechanism to measure if the concessions given are in line with the operational project. An example of this is where a developer may be issued concessions to build a 20-room hotel in a given time and he decides to build a 10-room hotel. This will be discovered at the time of seeking a license to operate. The Act also lends support to other Acts by serving as a bridge between several Acts such as the Transport Board Act and The Small Craft Act. In this regard, The Ministry of Tourism will be working closely with these departments to ensure that proper regulated and safe equipment is being used to provide tourism services.

A key problem encountered by legitimate tourism service providers is the issue of unfair competition. The issue of illegal taxi operations, as well as other areas of the industry, will be regulated. This Act is in not envisioned to act as a barrier to entry into the tourism industry, however, it is designed to bring all areas of the product to an internationally accepted standard.

The Act will also seek to minimize the effects of internet-based services such as AirB&B and UBER type of services by making it mandatory to obtain licenses to operate scheduled tourism enterprises. This issue is critical not only to local tourism service providers but to Antigua and Barbuda as a whole.

Part I: Part I: This part of the Bill is concerned with the Short title and the Definitions of words within the Act.

Part II: This part of the Bill deals with the development and enforcement of standards for the tourist industry. This Act will seek to professionalize the tourism industry by requiring that certain enterprises will require certification. In this regard, The Hospitality Training Institute will be aligned to offer training courses and certification as needed. The intent of this Part quintessential to change the industry from an industry of last resort to an industry that is attractive to the most talented individuals.

Part III: This part of the Bill deals with the regulation and certification of tourism services. The creation of a licensing process will enable the Ministry to ascertain the number of rooms on the island as well as the number of saleable rooms. this information will eliminate the discordance between occupancy and real occupancy. Moreover, this information will better guide and enable information-driven decisions. The Act will be used as a tool for the Ministry to gather statistical information of the tourism services offered in this country. Such information will help to make informed decisions in the future and improve the necessary areas of the industry.

Part IV: This part of the Bill deals with the classification and rating of tourism services which is important because this will allow the Ministry to ensure that certain types of tourist accommodation maintain particular standards; and ensure that there is a price differential among different types of tourist accommodation.

Part V: This part of the Bill deals with the miscellaneous aspects of the Act such as clause 30 which deals with the offences and the different situations where a person may violate the provisions of this Act. Clause 31 gives with the Minister the power to make the rules and regulations necessary under the Act. Clause 32 covers the situation where the Director of the Authority may delegate any of his duties to a deputy in his absence and Clause 33 provides the method of commencement of this Act.

The First Schedule lists various types of tourism services which may be provided.

The Second Schedule lists the various types of tourist accommodation that can be provided within the tourism industry.