

LEGAL NOTICE NO. 199

THE TOURISM ACT

(No. 28 of 2011)

THE TOURISM FUND REGULATIONS, 2015

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SCHEDULE

THE TOURISM ACT

(No. 28 of 2011)

IN EXERCISE of powers conferred by section 122 of the Tourism Act, 2011, the Cabinet Secretary for East African Affairs, Commerce & Tourism makes the following Regulations—

THE TOURISM FUND REGULATIONS, 2015

PART I—PRELIMINARY

1. These Regulations may be cited as the Tourism Fund Regulations, 2015. Citation.
2. In these Regulations, unless the context otherwise requires— Interpretation.
- “Act” means Tourism Act, 2011; No. 28 of 2011.
- “agent” means such persons appointed under these Regulations including lawyers, debt collectors, financial institutions, or such other natural or artificial person as the Board may appoint from time to time;
- “applicant” means a person who has applied to the Revolving Fund to be considered for the loan from the Revolving Fund;
- “appointed date” means the 1st September, 2012 when the Tourism Act, 2011 came into operation;
- “beneficiary” means the recipient who has been awarded funds from the Revolving Fund;
- “Board” means the Board of Trustees established under section 67 of the Act;
- “Cabinet Secretary” means the Cabinet secretary for the time being responsible for matters relating to tourism;
- “college” means any tourism and hospitality college or institution established by the Board under the Act and these Regulations and any other recognized institution of higher education offering tourism and hospitality training in Kenya;
- “eligible person” means any person, who being a Kenyan citizen, has attained minimum entry requirements and has been admitted to a recognized institution of higher education to a full time course of at least one year's duration;
- “Fund” means the Tourism Fund established under section 66 of the Act;
- “levy” means the Tourism Levy imposed by the Cabinet Secretary under section 105 of the Act;
- “loanee” means an applicant who has successfully received a loan from the Fund;
- “Revolving Fund” means the Tourism Training Revolving Fund established under regulation 29 of these Regulations; and

“tourism activity or service” means any of the activities or services specified in the Ninth Schedule of the Act under class “A” and “B” enterprises.

PART II—TOURISM LEVY PROVISIONS

3. (1) If any money due in respect of levy is not received on or before the date prescribed by the Levy Order, such money shall be a civil debt recoverable summarily by the Board.

Payment of levy.

(2) If any person fails to pay any amount payable by him by way of the levy on or before the date prescribed by the Levy Order, such person shall be liable to an instant penalty of five thousand shillings and thereafter to an additional penalty of three per centum of the amount of the levy due, for each month or part thereof during which the amount due remains unpaid.

(3) Notwithstanding the provision of paragraph 2 above, any person who fails to comply with any provision of these Regulations commits an offence.

4. Levy payable in respect to a particular month shall be paid through bank deposit, banker’s cheque, electronic money transfer, mobile money transfer, real time gross system or such other modes as the Board may direct from time to time.

Mode of payment.

5. The Cabinet Secretary, in consultation with the Board, shall by a gazette notice issue a classification of tourism activities and services for purposes of levy payment.

Classification for levy payment.

6. (1) Every owner of a regulated tourism activity or service shall maintain or cause to be maintained a monthly record in Form No: TFR 1 specified in the Schedule and shall submit to the Board such Form in respect of the levy payable for that month.

Maintenance of records.

(2) A person who fails to submit true returns on time or at all commits an offence.

7. The original form of the record maintained under regulation 6 shall be submitted to the Board together with the levy payable for that month on or before the 10th of the following month in a mode that shall be determined by the Board from time to time.

Submission of the form

8. (1) Every owner of a regulated tourism activity or service shall keep a register in his premises and shall enter or cause to be entered in the register the name and address of every guest who patronizes the premises and such other particulars as may be prescribed.

Register and books to be kept by licensee and or owner of business

(2) Every owner of a regulated tourism activity or service shall enter or cause to be entered regularly in a book kept for the purpose all such particulars (other than particulars prescribed in respect of the register required by paragraph (1)) to be kept as may be prescribed.

(3) Any person who fails to comply with this Regulation, or who makes, causes or permits to be made in any register or book required by this section to be kept any entry which he knows or has reason to believe to be false, commits an offence.

9. (1) Any person authorized in writing by the Board for the purpose, may, at all reasonable times—

Power to enter and inspect Premises.

- (a) enter without warrant any premises on which he has reasonable ground for believing that a regulated tourism activity or service is being carried on, to see whether the Act and regulations and any other written law is being complied with, and —
 - (iii) examine and take copies of any register, book, account or document found on the premises relating to or appearing to relate to any regulated tourism activity or service;
 - (iii) take possession of any register, book, account or document found on those premises which he has reasonable grounds for suspecting to be or to contain evidence of an offence under the Act and regulations or any other written law;
- (b) require any person who appears to be carrying on or employed in any regulated tourism activity or service on those premises to render such explanation and give such information relating to that business as he may reasonably require in the performance of his duties;
- (c) require any person who appears to be carrying on any business of a regulated tourism activity or service on those premises by notice in writing to that person produce to him, at a particular time and place, all or any of the registers, books, accounts and documents relating or appearing to relate to that business.

(2) Any person who—

- (a) resists, hinders or obstructs any person acting in pursuant of paragraph (1); or
- (b) fails to comply fully and truthfully with a requirement made of him under the said paragraph,

commits an offence.

10. (1) For the purpose of obtaining full information in respect of the levy liability of any person or class of persons or any other purposes, the Board or an authorized officer may require —

Production of books, records and information

- (a) the production for examination, at such time and place as he may specify, any records, books of account, statements, or other documents which the Board may consider necessary for such purposes;
- (b) the production forthwith, for retention for such period as may be reasonable for the examination thereof, of any records, books of account and other documents which the Board may specify;
- (c) any person to attend, at such time and place as may be specified, for the purpose of being examined respecting

any matter or transaction appearing to be relevant to the levy liability of any person:

Provided that where the person required to produce any records, books of account, statements of assets and liabilities or other documents for examination under this section is a bank or financial institution—

- (i) the records, books of account, statements of assets and liabilities or other documents shall not, in the course of the examination be removed from the premises of the bank or financial institution or other premises at which they are produced;
- (ii) the Board or an authorized officer carrying out the examination may make copies of such records, books of account, statements of assets and liabilities or other documents for purposes of any report relating to the examination; and
- (iii) all information obtained in the course of the examination shall be treated as confidential and used solely for the purposes of the Act and these Regulations.

(2) Any person who, without reasonable excuse, fails to comply with any requirement made under paragraph (1), commits an offence.

11. (1) Any person authorized in writing by the Board may, at all reasonable times, enter without warrant any premises upon which any person carries on business, or in which he has reasonable grounds to believe that a person is carrying on business of a regulated tourism activity or service and liable to pay Tourism Levy, in order to ascertain whether this Act and regulations there under are being complied with and on entry he may –

Powers of inspection

- (a) require the production of, and may examine, make and take copies of, any record, book, account or other document kept on the premises relating, or appearing to relate to the business of a regulated tourism activity or service subject to tourism levy;
- (b) take possession of and remove any record, book, account or other document which he has reasonable ground for suspecting to be, or to contain, evidence of the commission of any offence under the Act and regulations;
- (c) require the occupier of the premises or any person employed therein to answer questions relating to any record, book, account or other document, or to any entry therein, and to render such explanations, and give such information, in respect of the business concerned as the person may require for the exercise of his functions under the Act and regulations;
- (d) require any safe, container, envelope or other receptacle in the establishment to be opened;

- (e) stay at the premise during working hours of the business to establish the average performance of the business.
- (2) Any person who –
 - (a) resists, hinders or obstructs, or attempts to resist, hinder or obstruct, an authorized officer acting under this section; or
 - (b) fails to comply fully with any requirement made under this section; or
 - (c) makes any statement in response to any such requirement, knowing it to be false or incomplete in any material particular, or not having reason to believe that it is true or complete in all material respects,

commits an offence.

12. Any licensee and or owner of business who employs any agent, clerk, servant or other person shall be answerable for the acts and omissions of the agent, clerk, servant or other person in so far as such acts or omissions concern the business of the licensee and or owner of business; and if the agent, clerk, servant or other person commits any act or makes any omission which is an offence under the Act and these Regulations, or which would be an offence if committed or made by such licensee and or owner of business, the licensee and or owner of business and his agent, clerk, servant or other person shall be jointly and severally liable of the offence.

Liability of licensee or owner of business for acts of agents and servants.

13. Where any sum by way of levy is due and payable by a regulated tourism activity or service, the Board may, instead of suing for the levy, recover it by distress, and for that purpose may by order under the hand of the Chief Executive Officer empower an authorized officer to exercise distress upon the goods and chattels of the regulated tourism activity or service and the officer may, at the cost of that person, employ such servants or agents as he may think necessary to assist him in the execution of the distress:

Power of distress.

Provided that –

- (a) where the full amount of levy due and payable is not recovered by distress the Board may recover the deficiency in any other manner provided by this Regulation; and
- (b) where the full amount of levy due and payable has been paid after the issue of an order under this section and before the execution of distress, any costs and expenses incurred by the Board before payment of the levy shall be deemed to be a debt due and payable to the Board by the person in respect of whom the order was issued and may be recovered by the Board as levy under this Act.

(2) For the purposes of executing distress under this section the authorized officer may, in addition to employing such servants or agents as he may consider necessary, require a police officer to be present while distress is being levied, and any police officer so required shall comply with the requirement.

(3) A distress levied under this section shall be kept for ten days, either at the premises at which distress was levied or at such other place as the authorized officer may consider appropriate, at the cost of the regulated tourism activity or service from whom the levy is recoverable.

(4) If the regulated tourism activity or service from whom levy is recoverable by distress does not pay the levy together with the costs of the distress within the period of ten days referred to in paragraph (3), the goods and chattels distrained upon shall be sold by public auction for payment of the levy and costs and the proceeds of the sale shall be applied first towards the cost of taking, keeping and selling the goods and chattels distrained upon and then towards the levy, and any remaining proceeds shall be paid to the regulated tourism activity or service from whom the goods were distrained.

14. Where it appears to the Board that any registered tourism activity or service is declaring rates substantially below the average market price for services rendered, the Board shall take an average of three other enterprises of similar classification with the enterprise in question and the average rate so determined as the market price for services shall be deemed to be the price for purposes of determining the levy payable by that enterprise.

Determination of levy payable.

15. (1) Every owner of any tourism activity or service shall notify the Board of its operations within thirty days of commencement of business and shall register or cause the registration of their businesses with the Board in accordance with these Regulations.

Requirement for registration.

(2) The registration of any tourism activity or service shall be in Form No: TFR 2 specified in the Schedule.

(3) In furtherance of paragraphs (1) and (2) above and for the purposes of tourism levy—

- (a) any Class "A" enterprise at which the minimum total charge for accommodation including the provision of breakfast or any other meal or service is Kshs. 250/- per person; or
- (b) any Class "B" enterprise at which the minimum gross receipts derived from all sales amount to Kshs. 250,000/- per month,

shall qualify to be registered.

(4) Every owner of any registered tourism activity or service having been determined to have truthfully remitted the tourism levy as prescribed by these Regulations shall be issued with a compliance certificate by the Board annually.

16. (1) Where a person has made an erroneous payment to the Fund, the person may apply to the Board for a refund of the same amount in Form No: TFR 3 specified in the Schedule.

Refund of tourism levy.

(2) An application for a refund shall be made within ninety days after the date when the erroneous amount was received by the Board.

(3) An application for a refund shall be accompanied by any records, documents and evidence required—

- (a) to prove the claim; and
- (b) to determine the amount of the money that was remitted to the Board and the amount to be refunded.

(4) If, in the opinion of the Board, an applicant has misrepresented a material fact, the applicant's application for a refund under this section shall be disallowed and no refund shall be made.

17. Any person who fails to pay any amount payable by him as levy on or before the prescribed date commits an offence and is liable to the penalties stated under regulation 3(2) in addition to such general penalties imposed under sections 112 and 114 of the Act.

General penalty.

18. (1) A licensee and or owner of business shall maintain records in a form acceptable to the Board showing all the information necessary to enable the Board to determine the amount of tourism levy required to be collected and remitted by the licensee and or owner of business.

Records.

(2) A licensee or an owner of business of regulated tourism activity or service shall keep the records referred to in paragraph (1)—

- (a) at his place of business or residence in Kenya or at any other place with the written approval of the Board; and
- (b) for the period of time specified by the Board, and if no such period is specified, for six years after the end of the calendar year in which the records are created.

19. (1) In any case where the Board is of the opinion that they should refrain from recovering levy from any licensee and or owner of business by reason of filing of receivership or bankruptcy claims, impossibility, or undue difficulty or expense of the recovery of the levy, the Board may refrain from recovering the levy in question and thereupon liability to the levy shall be deemed to be extinguished or abandoned.

Refrain from levy recovery.

(2) Where the Board has decided to refrain from recovery of the levy under paragraph (1), it shall report that decision in writing to the Cabinet Secretary within three months next following the decision for the information of the Cabinet Secretary.

PART III—APPOINTMENT OF AGENTS

20. The Board may by written notice addressed to any person identified as capable to serve as a tourism levy agent—

Appointment of agents .

- (a) appoint such person to be an agent of the Board for the purposes of the collection and recovery of the levy due from a regulated tourism activity or service; and
- (b) specify the amount of levy to be collected and recovered by such agent.

21. An agent shall remit the levy specified in his appointment notice out of any moneys which may, at any time following the date of the notice of his appointment, be held by him for, or due from him to the regulated tourism activity or service, or as levy collected from the regulated tourism activity or service.

Remittance of levy by agent.

22. Where a person appointed under regulation 20 claims to be, or to have become unable to comply with regulation 21 by reason of the lack of moneys held by or due from him, he shall, within seven days from the date when the moneys are due notify the Board accordingly in writing setting out fully the reasons for his inability so to comply and the Board may—

Inability to remit levy by agent

- (a) accept the notification; or
- (b) reject the notification in writing, and pursue all such legal remedies as may be available in law.

23. Unless and until a notification is given by an agent under regulation 22—

Sufficiency of funds.

- (a) sufficient money for the payment of the levy specified in his appointment notice shall be presumed to be held by him for, or due from him to, the Board; and
- (b) in any proceedings for the collection or recovery of that levy, he shall be estopped from asserting the lack of those moneys.

24. For the purposes of these Regulations, the Board may, by notice in writing, at any time require any person to furnish them within a reasonable time, not being more than thirty days from the date of service of the notice, with a return showing any moneys which may be held by that person for, or due from him to, regulated tourism activity or service from whom levy is due.

Notice to show monies held.

25. A person who has paid the levy under these Regulations shall, for all purposes, be deemed to have acted with the authority of the regulated tourism activity or service, and shall be indemnified in respect of that payment against all proceedings, civil or criminal, and all process, judicial or extrajudicial, notwithstanding any provisions to the contrary in any written law, contract or agreement.

Person paying levy.

26. Any person who, without lawful cause or excuse—

Failure to comply

- (a) fails to comply within thirty days, with a notice given by the Board under these Regulations; or
- (b) discharges any liability to a licensee and or owner of business in disregard of such notice,

commits an offence, and shall remain liable to pay to the Board the amount of any liability discharged.

27. Notwithstanding the provisions of regulation 20 a person who wishes to become registered as a tourism levy agent may apply to the Board in Form No: TFR 4 specified under the Schedule.

Registration as a tourism levy agent.

PART IV – ACCESSING TOURISM FUND RECORDS

28. Pursuant to section 74 of the Act, any person may access audited accounts and records of the Tourism Fund provided for under section 69(1) of the Act upon payment to the Board of a statutory fee of two thousand shillings.

Charges for accessing records.

PART V – TOURISM TRAINING REVOLVING FUND

29. There is established by the Board a Fund to be known as the Tourism Training Revolving Fund which shall be managed and administered by the Board.

Establishment and management of the Fund.

30. The object and purpose of the Revolving Fund shall be to provide funds to be used for granting loans to assist Kenyan students to pursue higher education and support capacity building efforts for the tourism industry.

Object of the Revolving Fund.

31. (1) There shall be credited to the Fund—

Revenue and expenditure of the Revolving Fund.

- (a) sums of money which may from time to time be voted by Board for that purpose;
- (b) sums which represent the repayment of the principal sum and interest of any loan granted by the Board;
- (c) income from any investment made by the Board from the Revolving Fund;
- (d) any sums of money borrowed by the Board with the consent of the Cabinet Secretary; and
- (e) any gifts, donations, grants and endowments made to the Revolving Fund.

(2) There shall be paid out of the Revolving Fund any expenditure approved by the Board and incurred in connection with the administration of the Revolving Fund.

32. The Revolving Fund shall have perpetual succession unless dissolved by an amendment of the section 69(1)(g) of the Act empowering the Board to establish the Revolving Fund.

Duration of Revolving Fund.

33. The functions of the Board in management and administration of the Revolving Fund shall be—

Functions of the Board

- (a) to formulate sound policies for regulating the management of the Revolving Fund;
- (b) to solicit for funds and other assistance to promote the functions of the Revolving Fund;
- (c) to set the criteria and conditions governing the granting of loans including the rate of interest and recovery of loans;
- (d) to receive any gifts, donations, grants or endowments made to the Revolving Fund, and to make legitimate disbursements therefrom;
- (e) to establish and maintain links with other persons, bodies or organizations within or outside Kenya, as the Board

may consider appropriate for the furtherance of the purposes for which the Revolving Fund is established;

- (f) to enter into contracts with institutions for the purpose of loans disbursement and recovery;
- (g) to grant loans out of the Revolving Fund either with or without security, as the Board may deem fit, to any eligible person to enable him, or assist any student, to meet the cost of higher education in tourism and hospitality industry;
- (h) to determine the maximum number of eligible persons or students to be granted loans in any one particular year;
- (i) to invest any surplus funds not currently required for the purpose of the Revolving Fund in any investment authorized by law for the investment of trust funds with power from time to time to vary or realize those investments;
- (j) to set up and expend such other funds as may from time to time be required;
- (k) to receive and consider all loan applications for eligible persons or students wishing to be considered for the award of higher education loans, and approve, withhold or reject such requests in accordance with the provisions of these regulations and such policies as it may issue from time to time;
- (l) to borrow such monies from such sources and in such amounts as may be approved by the Cabinet Secretary with the concurrence of the Treasury and to secure such loans in such manner as they deem fit;
- (m) to take out an insurance cover for risky loans arising from death, incapacity or inability to pay, as the Board deems fit;
- (n) to establish and award bursaries and scholarship which it may consider necessary for the promotion of the objectives and functions of the Revolving Fund;
- (o) to perform any other functions relating to the granting of students loans in accordance with the provisions of these regulations;
- (p) to determine the courses in tourism and hospitality sector to fund each financial year;
- (q) to promptly disburse funds directly to the training institutions in favour of successful applicants;
- (r) to recover borrowed loans from beneficiaries through their employers on check-off system or such other methods permitted by law;

- (s) to amend borrowing regulations from time to time in line with changing training policies;
- (t) to maintain proper accounting records for all monies held by the fund;
- (u) to confirm completion of repayment and issue clearance certificates to beneficiaries; and
- (v) to perform and exercise all other functions and power necessary for giving effect to the purpose for which the Revolving Fund is established.

34. The Board may appoint such committees as the Board deems appropriate for purposes of management of the Revolving Fund.

Committees.

35. (1) The Board may delegate to any of its Committee such of its powers and duties as it may deem necessary.

Delegation of power.

(2) Except with the written authority of the Board, no act of a Committee shall be binding on the Board.

(3) The Board may by a resolution either generally or in any particular case delegate to any member, officer, employee or agent of the Board the exercise of any of the powers or the performance of any of the functions or duties of the Board in respect of the Revolving Fund.

36. (1) Every student wishing to be considered for the grant of a higher education loan shall make an application to the Board in Form No: TFR 5 specified in the Schedule.

Loan application.

(2) Every student who has been awarded a higher education loan shall be issued with a Loanee Identification Personal Account Number by the Board.

(3) Any student who—

- (a) in filling a loan application form, knowingly makes any false statement, whether orally or in writing, relating to any matter affecting his request for a loan; or
- (b) being required under subparagraph (a) to answer any questions, furnish any information or particulars or produce any document or paper, neglects to do so without reasonable cause; or
- (c) is granted a loan based on false information, commits an offence and in the case of subparagraphs (a) and (b) be liable to a fine of not less than ten thousand shillings or to imprisonment for a term of not less than six months and in the case of paragraph (c) to a fine of not less than fifty thousand shillings or to imprisonment for a term of not less than three years.

37. (1) The Revolving Fund shall be available to the following categories of applicants—

Categories of loan applicants.

- (a) students pursuing the specified courses and seeking funding from the Revolving Fund for the first time; and
- (b) students seeking to improve skills and who are already in employment in the tourism and hospitality industry.

(2) Notwithstanding provisions of paragraph (1) above, the Board may establish such categories of applicants as it may deem fit from time to time.

38. The loans shall be available for purposes of training in specified examinable tourism and hospitality training programmes and which take more than one year to complete.

Loans to be available for specific training programmes.

39. (1) The Board may—

Conditions for grant of loans.

- (a) accept or reject any application for a loan;
- (b) grant a loan to any student and in so granting impose conditions, demand security and require repayment in instalments at such times and within such periods as the Board deems fit:

Provided that and subject to the provisions of this paragraph, the Board may upon the request by any student to whom a loan has been granted at any time vary—

- (i) the condition subject to which the loan was made;
- (ii) any security given in relation to the loan; or
- (iii) any of the terms of repayment of the loan.

(2) Where the Board has resolved to make a loan to any eligible student, the Board shall notify the applicant in writing, and require him within a specified period not exceeding six months to comply with any conditions and provide any security which the Board may have imposed or demanded.

(3) Where any applicant fails to comply with the requirement of the Board notified to him under paragraph (2) within the prescribed period, the application shall be deemed to have lapsed.

(4) Where in granting a higher education loan to any student the Board considers it prudent to request for a guarantor to guarantee any loan granted to a student, in case of any default by the loanee in the repayment of the loan any guarantor who has guaranteed any such loan, shall automatically and fully be liable to pay to the Board all or any loan together with interest accrued and outstanding owed to the Board by the loanee, as shall be notified to the guarantor by the Board.

(5) Where a guarantor who has been notified by the Board under paragraph (4) fails or refuses to repay such loan together with any interest accrued thereon, the guarantor shall be guilty of an offence and liable to criminal prosecution or civil proceedings or both in accordance with the provisions of this Act.

40. (1) The following criteria shall be used to determine eligibility for loans from the Revolving Fund—

Eligibility criteria

- (a) applicants must be Kenyan citizens;
- (b) applicants must be students holding admission letters to undertake eligible programmes in approved colleges;
- (c) applicants must demonstrate inability to independently finance their studies; and
- (d) such other criteria as the Board may establish.

(2) The Board may vary eligibility criteria from time to time as it deems fit.

41. (1) The Board shall determine the terms for grant of loans.

Terms of loans.

(2) Notwithstanding such terms as the Board may stipulate, the following minimum terms and conditions shall apply—

- (a) applicants shall commence their studies within the financial year when the loan was granted;
- (b) award of loans for the specified courses shall be restricted to costs related to tuition, examination, library, computer and research;
- (c) fees for accommodation and tuition on residential courses will be treated as one item (where applicable) for the purpose of funding;
- (d) applicants shall exercise utmost good faith and disclose all information in their knowledge for purposes of an application;
- (e) an applicant shall not qualify for an additional loan in the same financial year until the lapse of the financial year which the Board is presently funding; and
- (f) funding for all courses will be restricted to local training institutions approved by Tourism Regulatory Authority.

42. (1) Applications for higher education loans shall be vetted based on the following considerations—

Criteria for vetting applications.

- (a) submission of original letter of admission from a recognized training institution;
- (b) courses applied for must be relevant and be in the tourism and hospitality field;
- (c) demonstration of willingness to repay the loan immediately after completion of studies;
- (d) previous beneficiaries of academic loans should have completed repayment.

(2) The Board may determine such other selection and vetting criteria for applicants as it may deem fit.

43. (1) All outstanding loans and interests accrued thereon shall become due and payable not later than twelve months following grant of certificate or degree confirming completion of studies for

Loan recovery.

which the loan was taken or within such period as the Board may decide to recall the loan, whichever is earlier.

(2) If in the opinion of the Board there has been or is likely to be any breach of or failure to comply with any condition or term of repayment respecting a loan the Board may forthwith—

- (a) recover from the person from whom the loan was made or his personal representative as a civil debt under the Debts (Summary Recovery) Act the amount of the loan or the amount thereof then remaining unpaid together with interest thereon;
- (b) enforce or realize any security relating thereto.

Cap. 42.

(3) The Board may, in exercise of the powers conferred by paragraph (2), engage the services of private legal practitioners.

44. (1) A loanee shall be required, subject to and in accordance with the Act and these Regulations, within one year of completion of his studies or within such a period as the Board decides to recall its loan whichever is the earlier—

Obligations of loanees

- (a) to inform the Board of his contact address;
- (b) to begin repayment of his loan together with any interest accrued thereon;
- (c) if he is in formal employment, to authorize his employer to deduct the loan repayment and to remit it to the Board in such manner as the Board may direct.

(2) Any loanee who fails or neglects to satisfy the requirements of paragraph (1) within the stipulated time, in addition to any other action that the Board may take against him, commits an offence and is liable to a fine of not less than five thousand shillings in respect of each loan deduction that remains unpaid in accordance with provisions of paragraph (1), and such fine shall be payable to the Board.

45. (1) Every employer shall be required, subject to and in accordance with the Act and these Regulations—

Responsibilities of an employer.

- (a) upon the employment of any loanee, to inform the Board in writing within a period of three months of such employment;
- (b) upon confirmation by the Board that such a person so employed is a loanee, to deduct from the wages or remuneration of the loanee, the amount of any loan as instructed by the Board.

(2) The employer shall pay every deduction from the loanee's wages or remuneration in the prescribed manner to the Board within fifteen days after the end of each month.

46. (1) Where an employer fails to deduct or after deducting any loan repayment from a loanee does not pay such loan deductions

Penalty for delayed payment.

to the Board within the prescribed period, a sum equal to five percent of the total amount of the repayment shall be charged on the employer for each month or part of the month that the repayment remains unpaid.

(2) Where an employer fails, without reasonable excuse, to notify the Board that he has in his employment a loanee within the specified period that employer commits an offence and is liable to a fine of not less than three thousand shillings for each month or part of the month that he fails to notify the Board of such employment.

47. In making its deduction for loan recovery, the Board shall not require the deduction of more than one quarter of the loanee's basic monthly salary.

Loan deductions

48. Subject to the provisions of the Act and these regulations, where the Board is of the opinion that a loanee be exempt from repaying his loan by reason of—

Board's discretion to waive loans.

- (a) death;
- (b) considerations of hardship or equity;
- (c) impossibility or undue difficulty, or the expenses incurred in the recovery of the loan being in excess of the amount sought to be recovered,

the Board may waive such loans and thereupon the liability of the loan shall be extinguished or deemed to be abandoned.

49. The Board may work with government and private organizations for efficient coordination of the Revolving Fund, including—

Linkages and collaboration.

- (a) Higher Education Loans Board established under the Higher Education's Loans Board Act;
- (b) Kenya Revenue Authority established under the Kenya Revenue Authority Act;
- (c) Credit Reference Bureaus; or
- (d) such other organization as the Board may deem necessary from time to time.

Cap 213.

Cap. 469.

50. No matter or thing done by any member of the Board or any officer, employee or agent of the Board in respect of the Revolving Fund shall, if the matter or thing is done bona fide for the purpose of executing any provision of the Act and these Regulations, render the member, officer, employee or agent or any person acting on directions of the Board personally liable to any action, claim or demand whatsoever.

Protection from personal liability.

PART VI— MANAGEMENT OF TOURISM FUND

51. The Board shall exercise a fiduciary duty in management and administration of the Fund and in the best interests of intended beneficiaries and invest its excess funds to achieve the maximum rate of return, without incurring undue risks and while taking into account the factors that may affect the funding and ability of the Fund to meet its financial obligations.

Management of the Fund.

52. The following principles shall guide all aspects of governance, management and administration of the Fund— Guiding principles.

- (a) there shall be transparency, accountability, ethical and results-oriented management of the Fund;
- (b) monies from the Fund shall be used in a prudent and responsible way; and
- (c) financial management of the Fund shall be responsible, and fiscal reporting shall be clear.

PART VII—TOURISM FUND DISBURSEMENTS

53. Whenever applications for funding are made to the Board for any purpose under section 68 of the Act, the Board shall consider such application including all relevant factors surrounding each particular application and finance each case to such extent as it deems fit. Power to disburse funds.

54. (1) Any person, legal or natural, interested in obtaining funding from the Board may make application for financing of any matter for which the Fund is established as set out in section 68 of the Act. Application and disbursement process.

(2) Application for funding from the Fund shall be in Form No: TFR 6 of the Schedule and shall be submitted within ninety days before the 1st October of each calendar year.

(3) The Board may on its own motion prepare proposals for financing of any objects and purposes for which the Fund is established.

(4) On receipt of applications, the Board shall consider such applications within ninety days from the date of receipt of an application, and shall communicate its decision in writing to the applicant —

- (a) approving the application with or without conditions;
- (b) requesting for additional information in support of the application; or
- (c) rejecting the application.

(5) The Board may in granting funding from the Fund impose such conditions as it deems fit including submission of monitoring reports on use of funds from the Fund.

55. The Board shall formulate sound policies for the disbursement of funds from the Fund and may revise such policies from time to time as it deems fit. Disbursement policy.

PART VIII—ESTABLISHMENT OF OTHER TOURISM COLLEGES

56. (1) A College established by the Board under section 69(1)(b) of the Act shall be a body corporate with perpetual succession, and common seal and shall in their corporate names, be capable of— Established colleges to be body corporates.

- (a) suing and being sued;

- (b) taking, purchasing and disposing of movable and immovable property;
- (c) borrowing money;
- (d) entering into contracts; and
- (e) doing or performing all other things as are necessary for the proper discharge of their functions under the Act and these regulations, which may be lawfully performed by a body corporate.

57. Colleges established by the Board under section 69(1)(b) shall undertake tourism and hospitality training, capacity building for the tourism sector, and perform any other function related or incidental to the foregoing as may be directed by the Board in consultation with the Cabinet Secretary.

Object of colleges

58. (1) Colleges established under section 69(1)(b) of the Act shall be managed and controlled by an Academic Committee constituted by the Board.

Management.

(2) The Academic Committee of each College shall consist of—

- (a) a chairperson;
- (b) the Principal of the College, who shall be the secretary;
- (c) four other members, all of whom shall be persons who have knowledge or experience in matters relating to curriculum development or teaching in the tourism and hospitality industry.

(3) The members of any Academic Committee shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

59. (1) The Academic Committee shall—

Functions of the academic committees.

- (a) manage, control and administer the assets of the College in such manner as best promotes the purpose for which the College is established;
- (b) receive, on behalf of the College, donations, endowments, gifts, grants or other monies and make disbursements to the College;
- (c) approve the appointment criteria and the terms and conditions of service of staff of the College;
- (d) provide for the staff superannuation scheme and students welfare;
- (e) keep and maintain audited accounts of the funds made available to it and publish the accounts in the manner approved by the Board in consultation with Treasury; and
- (f) cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the College.

(2) In performance of its function under paragraph (1)(a), the Academic Committee shall not charge or dispose of immovable

property of the College except on approval of the Board and in accordance with the procedures laid down by the Government.

(3) The Academic Committee may, by resolution either generally or in a particular case, delegate to a sub-committee of the Academic Committee or to a member, officer, employee or agent of the Academic Committee, the exercise of any of the powers or, the performance of a function or a duty of the Academic Committee under these regulations.

(4) Members of the Academic Committee shall be paid allowances determined by the Board.

60. (1) The Academic Committee of each College established by the Board shall, in consultation with and approval of the Board have power to—

Powers of the Academic Committee.

- (a) establish, such campuses or centres for training and capacity building as are necessary and in furtherance of the objects for which such a college is established;
- (b) fix, demand and receive fees and other charges for services rendered;
- (c) regulate and supervise the discipline of students of the college;
- (d) enter into association with other institutions of learning, within or outside Kenya, as the college may consider necessary or appropriate and in furtherance of the objects for which the college is established;
- (e) make such regulations as may be necessary for regulating the affairs of the college; and
- (f) perform such other acts or things as the college may consider necessary, conducive or incidental to the objects for which the college is established.

61. Every Academic Committee shall prepare and or cause to be prepared budget estimates in respect of each financial year for approval of the Board.

Budget for colleges.

PART IX—REVOCATION, SAVINGS AND TRANSITION PROVISIONS

62. (1) The Hotels and Restaurants Regulations are revoked.

Revocation of LN. No. 205/1972

(2) Despite provisions of paragraph (1) —

- (a) any authorization, charge, fee or certificate under force at the commencement of these Regulations shall, until expiry, have effect as if issued or paid under these Regulations; and
- (b) any proceedings taken under the revoked Regulations or pending immediately before the commencement of these Regulations may be continued as if instituted under these Regulations.

Provided that criminal proceedings shall be regarded as pending if the person concerned had pleaded to the charge in question.

SCHEDULE

Form No: TFR 1

(r.6(1))

MONTHLY RECORD

Name of Tourism Activity/Service as per First Schedule of the Regulations

Gross receipts during the Month of20.....

ACCOUNT CODE	TF								
--------------	----	--	--	--	--	--	--	--	--

Date	Accommodation		Food		Drinks		Other Services		Gross Receipts		Levy Payable (2% of gross receipts)	
	KSh.	Cts.	KSh.	Cts.	KSh.	Cts.	KSh.	Cts.	KSh.	Cts.	KSh.	Cts.
1st												
2nd												
3rd												
4th												
5th												
6th												
7th												
8th												
9th												
10th												
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22nd												
23rd												
24th												
25th												
26th												
27th												
28th												
29th												
30th												
31st												
TOTAL												

I certify that the Tourism Levy payable to the Fund is KSh.....
for which a bank deposit/Banker's cheque/ Electronic Money
 Transfer/Real Time Gross system No..... dated.....is enclosed.

Date.....Manager/Owner.....

FORM NO: TFR 2

(r.15(2))

TOURISM ACTIVITY/SERVICE REGISTRATION FORM

(To be completed in duplicate by owners of Tourism Activity/Service Specified in the Ninth Schedule of the Tourism Act 2011 Laws of Kenya)

1. Name under which business is carried on.....
2. Registered Name.....
 Postal Address.....Code.....Town.....County.....
 Telephone Number(s).....
 Email.....
3. Certificate of registration/incorporation (Attach copy) No
4. Single Business Permit (attach Copy) No.....
 Kenya Revenue Authority PIN No (Attach copy Pin registration)
5. Locality (a) L.R. No.Plot No.
 (b) Street/Road.....Town.....
6. State whether: Sole Proprietor, Partnership or Limited liability Company.
7. Full name(s) of Proprietor, Partners or Directors:
 - (i)
 - (ii)
 - (iii)
 - (iv).....
8. When did you start the business?

9. Class of Tourism Activity/Service (As Captured in the Ninth Schedule of the Tourism Act 2011)
- State Specific Activity or Service?

- If you offer accommodation, how many rooms do you have.....
- How many Singles.....Doubles.....Suites..... No of Beds.....
- Charges per night, Single KSh. Double KSh.....Suite KSh.....
- Do you serve Food, Drinks or Both?.....
8. Do you offer Other Services, if so which?

.....

 I certify that the particulars given above are correct.

Name.....Owner/Directors/Authorised Persons

Signature.....

Date.....

FORM NO: TFR 3

(r.16(1))

CLAIM FOR REFUND OF TOURISM LEVY

For Official Use only

Claim No.....

Date Received.....

Part 1: Instructions

Please read the notes below before completing this form

- (i) You are required to attach copies of any relevant documentation to the claim.
- (ii) Claims for amounts of one hundred thousand shillings or more (KSh. 100,000.00+) must be accompanied by an Auditor's certificate.
- (iii) The declaration under Part 5 must be signed by a person of sufficient rank not below the Company Director Level. Levy/Tax Agents, Accountant and Auditors are not eligible to sign the declaration.

Part 2: Claimant's details

- (i) Name of Claimant/Registered Name of Business
- (ii) TF establishment account code.....
- (iii) Kenya Revenue Authority PIN.....
- (iv) Postal Address.....
- (v) Telephone Number(s).....
- (vi) Email Address.....

Part 3: Claim details

- (i) Claim Period: *From (Day,Month &Year)to.....
 (If it applies to remittance of Levy, copy of TFR 1 form(s) pertaining to the period must be attached)
- (ii) Reason(s) Leading to claim (Select/Tick below)

A.	Amount Paid in Error	
B.	Other*	

(For "Other" reasons, please give details below)

.....

.....

.....

.....

(iii) Amounts Claimed

1. In words
2. In figures: KSh.

Part 4: Bank Details

Account Name	
Account Number	
Bank Name	
Bank Branch	
City/Town	
Swift Code	

Part 5: Declaration

I certify that the levy refund claimed above is properly refundable as stated in this document and is in conformity with the law.

Name

ID No

Company

Designation

Signature Date

Part 6: FOR OFFICIAL USE ONLY

Amount Approved

- (a) In words
 - (b) In figures: KSh.....
- Examined by:SignatureDate
- Examined by:SignatureDate
- Reviewed by :Signature Date
- Recommended by :SignatureDate
- Approved by:SignatureDate

FORM NO: TFR 4

(r. 27)

APPLICATION FOR REGISTRATION AS A TOURISM LEVY AGENT

- (1) Name of Applicant
- (2) Kenya Revenue Authority PIN
- (3) Registered/Physical Address.....
- (4) Street/Road
- (5) Telephone NoEmail Address.....

For Professionals:

- (6) Profession:
- (7) Professional Body:
- (8) Registration No:

Non Professionals:

Relevant Qualification

(Attach a brief two page Curriculum Vitae summarizing your work experience, academic and professional qualification if any)

Tax Compliance Certificate

Serial NumberDate of Issue

I hereby declare that the above particulars are true and correct

Name

SignatureDate

Note: Applicants should note that, for persons practicing as firms or other legal entities, the certificate of registration shall be issued in the individual names of the proprietors

FORM NO: TFR 5

(r. 36(1))

TRAINING LOAN APPLICATION FORM

Please ensure that you read and understand the instructions provided on this application form before you commence the loan application process.

NOTE TO APPLICANTS

Please read the attached administrative procedures and relative criteria applicable to the disbursement of Loan Funds. All aspects of the procedures must be followed and the relative criteria must be carefully noted.

In order to ensure processing of your Training Loan application and minimize delay in approval, all sections of the Loan Application Form must be properly completed

Each applicant should submit:

- (a) Evidence of employment, if applicable

- (b) A copy of a letter of Acceptance/Admission/Registration from the training Institution, or if already attending a course of training, a copy of the last academic report is required.
- (c) Academic qualifications gained to date
- (d) An official cost sheet from Training Institution
- (e) A course outline
- (f) Proof of income, if applicable
- (g) Signed Affidavits for two Sureties
- (h) Health certificate from Registered Medical Practitioner
- (i) Evidence of Kenyan citizenship (copy of identity card/Passport).
- (j) Copy of Tax PIN of both applicant and the two sureties.
- (k) Three (3) certified passport size photograph.

PERSONAL INFORMATION

Name.....

Address.....Code.....Town.....County.....

TelephoneMobile Phone No.....

Date of Birth.....Country of Birth

Age.....ID No.....Pin No

Gender.....Marital Status

Alternative Contact Person &Address.....

.....

.....

.....

EMPLOYMENT INFORMATION (If Applicable)

Current Employer.....

Address.....Code.....Town.....

County.....Telephone No.....

E-Mail.....

Present Post.....Date Appointed

Salary Per Annum.....Salary Scale.....

Staff No.....

EDUCATIONAL INFORMATION

Academic/ Professional Qualification	Examining Body	Date Received	Previous Training Course (quote title)	From	To	Award Earned (Diploma etc.)

STUDENT INFORMATION

Course of Study.....

Name of College/Institution.....

Address of College/Institution.....

Qualification Sought.....

Date of Commencement of Studies.....

Expected Date of Completion.....

Description of the Programme of Studies.....

.....

.....

.....

FINANCIAL INFORMATION

Annual Estimates of the Programme of Study

(a) Tuition Fees KSh.

(b) Accommodation KSh.

(c) Meals KSh.

(d) Books Supplies/Equipment KSh.

(e) Transportation KSh.

Total Amount of Loan Requested KSh.

Personal Resources For Meeting These Costs: KSh.....

PROPOSED METHOD OF REPAYMENT

Employer Authorized.....
 Monthly Deductions from Salary.....
 Bank Draft/Cheque to Tourism Fund.....
 Purpose of Loan.....

OTHER LOANS NEGOTIATED FOR TRAINING PURPOSES:

Lending Institution/Organization: Amount (KSh.)

BANK DETAILS (For subsistence)

Bank Name		Branch	
Account Name		Account Number	

DECLARATION BY THE APPLICANTS:

1. Immediately on securing job, I undertake to inform Tourism Fund my employment details.
2. I undertake to meet any contingent expenses to continue the course of study.
3. To the best of my knowledge and belief, the foregoing information is true and correct. I also wish to state that I will abide by the decision of the Tourism Fund Board of trustee.

Yours faithfully,

Name:.....

Signature of Applicant.....Date:.....

FOR OFFICIAL USE ONLY

Commencement Date of Repayment.....

Proposed Period of Repayment:

From.....To.....

Monthly Installment.....

AFFIDAVIT FOR SURETY

Name of Borrower (in full).....

Name of Surety (in full).....

Address of Surety.....Code.....Town.....Tel.No.....

PIN.....Nationality.....

ID No.....Age.....
 Employed by
 Tel. No.....
 Employment Dates (s).....Employment No.....
 Are you currently indebted to the Training Loan Fund? Yes No
 Amount due (KSh.).....Rate of Repayment.....
 If so, state Name of borrower.....
 NB: (a) The Board cannot accept, as sureties, persons who are currently indebted to the Training Loan Fund
 (b) By the terms and conditions under which the borrower received the loan, I guarantee to repay the amount in full or any part there of which may become due and payable as a result of his/her failure to honour his/her obligation.

Signature of Surety *Date*

AFFIDAVIT FOR SURETY

Name of Borrower (in full).....
 Name of Surety (in full).....
 Address of Surety.....Code.....Town.....
 Tel. No.....PIN.....
 Nationality.....IDNo.....Age.....
 Employed By.....Tel. No.....
 Employment Dates(s).....Employment No.....
 Are you currently indebted to the Training Loan Fund? Yes No
 Amount due (KSh.).....Rate of Repayment.....
 If so, state Name of Borrower.....
 NB: (a) The Board cannot accept, as sureties, persons who are currently indebted to the Training Loan Fund.
 (b) By the terms and conditions under which the borrower received the loan, I guarantee to repay the amount in full or any part there of which may become due and payable as a result of his/her failure to honour his/her obligation.

Signature of Surety *Date*

FORM NO: TFR 6

(r. 54(2))

FUND DISBURSEMENT APPLICATION FORM

<i>For Official Use only</i>	
Application No.....
Date Received.....

Part 1: Instructions

Please read the notes below before completing this form

- (a) Amounts applied for MUST be strictly for the purpose set out in Section 68 of the Tourism Act 2011
- (b) You are required to attach copies of the detailed proposal including related budget forecast, forecasted gains and any other relevant documentation to the application
- (c) The proposal should clearly reveal how the amount requested for shall be utilized and expected gain for when the requested for are applied
- (d) The declaration under Part 5 must be signed by a person of a rank not below the Managing Director/Chief Executive Officer Level.
- (e) The Board may approve with or without conditions, not approve with or without explanations.

Part 2: Applicant details

- (i) Name of Applicant (Legal or Natural)
- (ii)
- (iii) TAX PIN.....
- (iv) Postal Address.....
- (v) Telephone Number(s).....
- (vi) Email Address.....

Part 3: Bank Details

Account Name	
Account Number	
Bank Name	
Bank Branch	
City/Town	

Part 4: Declaration

I certify that the funds shall be applied for the purpose set out in the attached proposal and in conformity with the law.

Name

ID No

Company

Designation

Signature Date

Part 5: FOR OFFICIAL USE ONLY

Amount Approved/Not Approved

(a) In words

(b) In figures: KSh.

Examined by: Signature Date

Examined by: Signature Date

Reviewed by : Signature Date

Recommended by : Signature Date

Approved by: Signature Date

Explanation for Application Approved/Not Approved

.....
.....
.....
.....

Note:—If approved the Fund shall invite the applicant to sign a Disbursement Agreement in the form drafted by the Board.

Made on the 2nd October, 2015.

PHYLIS KANDIE,
Cabinet Secretary for East African Affairs, Commerce and Tourism.