

Tourism Act 72 of 1993 (TA)

Topic: Tourism

IN A CALABASH

Introduction

The tourism industry is an important industry for South Africa. In order to regulate and ensure that the industry is a top class one, certain standards have been laid down under an overarching law called the Tourism Act (TA). This Act is currently under review and will in time be replaced by a new Act.

Objectives of the Act

The Tourism Act 72 of 1993 (TA) primarily seeks to maintain and enhance the standards of tourism facilities and services hired out or made available to tourists in South Africa.

The TA also seeks to co-ordinate and rationalise, as far as possible, the activities of persons who are active in the tourism industry in South Africa.

The TA authorises the Minister to establish a grading and classification scheme in respect of accommodation establishments as well as schemes for individual sectors of the tourism industry, the membership of which is completely voluntary.

The TA makes provision for the appointment of a National Registrar of Tourist Guides, and it prohibits any person from acting for gain as a tourist guide unless he or she has been registered as a tourist guide and complies with the Tourist Board Standards.

The important objectives of the TA are to establish the South African Tourism Board, an office for a National Tourism Regulator and certain Tourism Regulations.

The Tourism Board is competent and obliged to exercise, perform and carry out certain powers, functions and duties housed under the TA and its Regulations.

Application of the Act and its implication to Tourism

The TA applies to all persons who operate in the Tourism Industry and/or who provide tourism related products and/or services, including–

- the South African Tourism Board;

- regional Tourism Boards;
 - the National Registrar of Tourist Guides;
 - the Provincial Registrars of Tourist Guides;
 - accommodation establishments;
 - restaurants;
 - tourist service providers;
 - curio outlets;
 - game farms and reserves; and
 - heritage sites.
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Summary of the provisions of the Act

Provincial tourism Acts

The TA must be read closely with the respective provincial tourism acts which guide tourism in the respective provinces.

The aims of the provincial tourism acts are to provide for the appointment of Provincial Registrars of Tourist Guides, to promote the sustainable development of tourism in the provinces and to register tourist guides, tour operators, couriers, accredited training providers in the tourism industry, hotels, conference centres, restaurants, designated tourist amenities and accommodation establishments.

Development and growth of the tourism sector

The National Registrar of Tourist Guides will liaise with the–

- Tourism Board;
- Provincial Registrars of Tourist Guides, established under the respective provincial tourism acts;
- tourist guides;
- associations of tourist guides;
- education and training authorities;
- the South African Police Service; and
- the Consumer Council.

In addition, the Tourism Regulator will liaise with the provincial consumer affairs bodies and any other person or organisation to

- facilitate the growth and development of the tourist guiding sector;
- improve and maintain standards in the tourist guiding sector;
- co-operate on matters of mutual interest in the tourist guiding sector; and
- review the regulations relating to tourist guides and recommend amendments thereof to the Minister.

National registrar of tourist guides

In terms of the TA, all tourist guides operating in South Africa must register with the National Registrar of Tourist Guides.

His or her details will be kept in an up-to-date central database.

Registration of tourist guides

A tourist guide must register with the Department of Tourism via the relevant regional office, which application must be made in accordance with the procedure set out in the TA, read with the regulations.

No person will be registered as a tourist guide unless he or she can show that he or she is competent to perform the services of a tourist guide and

- has not been convicted of an offence or been sentenced to imprisonment without the option of a fine within the Republic or elsewhere;
- has not lost his or her South African citizenship or right of permanent residence or work permit in the Republic; and
- has passed the prescribed quality assurance process that a tourist guide shall complete not later than two years after the date of his or her last registration.

Once registered, a tourist guide will be issued with a registration certificate and a badge which will be valid for a period of two years, which upon expiry may be renewed for a further 2 year period by application.

If a tourist guide has acquired, since his or her registration, a competence in a prescribed field of specialisation or an additional competence within a field of specialisation, the Provincial Registrar of Tourist Guides shall, on the application of the tourist guide accompanied by the prescribed fee, issue to the tourist guide a new registration certificate reflecting that additional competence along with a new badge, which shall be in the prescribed form.

The Provincial Registrar of Tourist Guides may refuse to approve an application for registration as a tourist guide if the applicant's registration was withdrawn on the grounds of misconduct at any time within the period of three years preceding the date of application.

Provincial registrars of tourist guides

In terms of the TA, a Provincial Registrar of Tourist Guides will be appointed for each province.

A Provincial Registrar of Tourist Guides will keep a register of tourist guides within the province concerned and will

- record in the register the prescribed particulars with regard to each registered tourist guide;
- delete from the register the particulars of any tourist guide whose registration has been withdrawn;
- make the prescribed endorsement against the name of any tourist guide whose registration has been suspended;
- inform the National Registrar of any changes;
- publish or otherwise disseminate information about registered tourist guides within the province and associations of tourist guides and any other information to promote and develop the tourist guiding sector within the province;

- promote and develop the tourist guiding sector within the province;
- deal with lodged complaints;
- act when a tourist guide becomes subject to any disqualification; and
- exercise disciplinary powers in this regard.

Code of conduct and ethics

The National Registrar will prepare a code of conduct and ethics for tourist guides which with each tourist guide will have to comply.

The code of conduct and ethics will include provisions requiring a tourist guide to take all reasonable steps to ensure the safety of a tourist whom the tourist guide is accompanying and to render to the tourist services of an acceptable standard.

Tourism guides–Prohibitions

A person who is not a registered tourist guide or whose registration as a tourist guide has been suspended or withdrawn, may NOT, for reward, whether monetary or otherwise, act as a tourist guide.

A person who has become subject to any disqualification may NOT, for reward, whether monetary or otherwise, continue to act as a tourist guide.

A person, company or close corporation may NOT, for the promotion of any business undertaking conducted by him, her or it, employ or continue to employ as a tourist guide any person who is not a registered tourist guide or whose registration as a tourist guide has been suspended or withdrawn or who has become subject to a disqualification.

A tourist guide may NOT drive a vehicle with a carrying capacity of more than 10 persons and at the same time act as a tourist guide.

No person, company or close corporation employing a tourist guide may allow the tourist guide to drive a vehicle which is carrying more than 10 persons and at the same time act as a tourist guide.

Duty of seller of travelling facilities to destinations in foreign countries

In terms of the TA, read with the regulations, where any travel agent or any other person who, in the course of his or her business, sells or facilitates for the client or buyer a journey to any destination in a foreign country, such person must advise the buyer or client that it is preferable that the buyer or client takes out the necessary travel insurance and must offer any assistance which he or she is able to offer in this regard.

In order to comply with the above, the agent or seller shall at all times have clearly exhibited in his or her place of business a notification with the following wording:



“NOTICE TO CLIENTS

Assistance to obtain travel insurance in terms of section 22 of the Tourism Act, 1993 is available on request.”

Inspect accommodation establishment if requested

The board may, at the request of any person who conducts or intends to conduct any accommodation establishment and upon payment of the prescribed fee, inspect any accommodation establishment and may issue a document in the prescribed form stating that such establishment would have complied with any relevant provisions of a grading scheme had such establishment been evaluated with reference to such provisions.



WHAT HAPPENS IF YOU DO NOT COMPLY?

Complaints and charges

Where a person is of the view that a tourist guide has not complied with the code of conduct and ethics or where such person is not happy with the services rendered by the tourist guide, such person may lodge a complaint with a Provincial Registrar.

The Provincial Registrar shall, if the complaint discloses a contravention of this Act or any other law constituting an offence, lay a charge with the South African Police Service and take steps to have the tourist guide disqualified.

The Provincial Registrar can, if the complaint discloses misconduct which constitutes a contravention of the code of conduct and ethics, take steps to have the tourist guide disqualified.

Disqualification of tourist guide

If a Provincial Registrar has reason to believe that a tourist guide has become subject to any disqualification, the Provincial Registrar can inform the tourist guide by notice of the allegations and call upon that tourist guide to make representations in connection with such charges.

Where the tourist guide personally presents his or her case, an adviser of his or her choice may assist him or her.

If, after considering the allegations against the tourist guide and his or her representations, if any, the Provincial Registrar is satisfied that one or more of the disqualifications are applicable, the Provincial Registrar will withdraw the person's registration as a tourist guide.

During such procedure, the Provincial Registrar may by notice suspend the tourist guide pending any decision, provided that before the decision to suspend the registration of the tourist guide is taken, he or she will be allowed an opportunity to make representations to show why the registration should not be suspended.

If the registration of a tourist guide is suspended, the Provincial Registrar will make the prescribed endorsement in the register against the name of the tourist guide.

The Provincial Registrar will publish the names of persons whose registration has been withdrawn in the Government Gazette and in at least one newspaper that circulates in the province concerned.

Disciplinary measures

Where a Provincial Registrar has reason to believe that a tourist guide is guilty of misconduct, being either a contravention of any provision of the TA or any other law, any contravention of the code of conduct and ethics or where the guide fails to comply with any registration condition, the Provincial Registrar will begin an investigation and notify the tourist guide of the charge against him or her.

The guide will have the right to submit representations in connection with the charge.

If, after considering the charge against the tourist guide and his or her representations, if any, the Provincial Registrar is satisfied that the tourist guide is guilty of the charge of which he or she is accused, the Provincial Registrar may

- issue a warning to the tourist guide;
- impose the prescribed fine, not to exceed R1 000 on the tourist guide; or
- withdraw the registration as a tourist guide for such period, not exceeding five years, as the Provincial Registrar may determine.

Pending the outcome of the disciplinary procedure, the Provincial Registrar may, by notice, suspend the tourist guide, but he or she is allowed make representations to show why the registration should not be suspended.

If the registration of a tourist guide is suspended, the Provincial Registrar shall make the prescribed endorsement in the register against the name of the tourist guide.

Appeals and reviews

Any person who considers him- or herself aggrieved by a decision of a Provincial Registrar may appeal against the decision in question to the National Registrar in the prescribed manner, within the prescribed period and upon payment of the prescribed fee.

Endorsement in register regarding suspension of registration of tourist guide

An endorsement in the register against the name of a tourist guide whose registration is suspended must indicate

- the provision of the Act in terms of which the suspension was done;
- a brief summary of the allegation giving rise to the suspension;
- the date of commencement of the suspension;
- the period of suspension; and
- the date on which the suspension will expire.

Offences and penalties

Where any person

- professes to be a member of a grading and classification scheme, while he or she is not such a member;
- uses, in relation to any accommodation establishment conducted by him or her, any depiction or depictions of a star or stars, unless he or she is a member of a grading scheme;
- uses, in relation to any accommodation establishment conducted by him or her, an insignia depicting a number of stars which is greater than the number which he or she is authorised to depict in terms of such scheme;
- contravenes the code of conduct and ethics for tourist guides; or
- fails to render his or her assistance in respect of insurance to a buyer referred,

such person shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

Furthermore, any company or close corporation that employs or continues to employ as a tourist guide any person who is not a registered tourist guide, any person whose registration as a tourist guide has been suspended or withdrawn or any person who has become subject to a disqualification or allows a tourist guide to drive a vehicle which holds more than 10 passengers and while operating as a tourist guide simultaneously shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000.00.

Other risks

- In addition to losing one's license, losing one's grading or being fined, an entity that fails to comply with the TA could lose valuable business, suffer major reputational fall-out or open itself up for civil claims where damages and harm have been suffered by any client as a result of poor standards and/or negligence.



RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

In order to demonstrate compliance with the Act, the following controls must be in place and or done:

- Register tourist guides;
- Display registration certificate and badge;
- Check that the name of the tourist guide is in register;
- Comply with Code of Conduct and Ethics;

- Display travel insurance sign;
- Establish and adhere to safe travel guide procedures and practices; and
- Ensure establishment is inspected and receive confirmation that prescribed standards are being complied with in the form of grading signage.

FURTHER INFORMATION

Regulator

National Department of Tourism

Website

www.tourism.gov.za