

THE TOURISM ACT, 2011

No. 28 of 2011

Date of Assent: 16th September, 2011

Date of Commencement: By Notice

ARRANGEMENT OF SECTIONS

Sections

PART I: PRELIMINARY

1—Short title and commencement.

2—Interpretation.

PART II: FORMULATION OF NATIONAL TOURISM STRATEGY

3—National Tourism Strategy.

**PART III:—ESTABLISHMENT OF TOURISM REGULATORY,
DEVELOPMENT AND MARKETING BODIES**

A. The Tourism Regulatory Authority

4—Establishment of Authority.

5—Headquarters of the Authority.

6—Object and purpose of the Authority.

7—Functions of the Authority.

8—Board of the Authority.

9— Powers of the Board of the Authority.

10—Tenure and vacation of office.

11—Disclosure of interest.

12—Meetings of the Board of the Authority.

13—Establishment of regional offices.

14—Appointment of Director-General and other staff.

15—Functions of the Director-General.

16—Funds of the Authority.

B. The Kenya Utalii College

17—Establishment of College.

18—Object and purpose of the College.

19—Powers of the College.

20— The Council.

21— Functions of the Council.

- 22— Tenure and vacation of office.
- 23—Conduct of meetings of the Council.
- 24—Disclosure of interest.
- 25— The Principal.
- 26— Appointment of other staff.
- 27—Funds of the College.

C. The Tourism Protection Service

- 28—Establishment of Tourism Protection Service.

D. The Kenya Tourism Board

- 29—Establishment of the Kenya Tourism Board.
- 30—Object and purpose of the Tourism Board.
- 31 —Functions of the Tourism Board.
- 32—Board of Directors.
- 33—Tenure and vacation of office.
- 34—Meetings of the Board of Directors.
- 35—Disclosure of interest.
- 36—Delegation of functions.
- 37—Appointment of the Chief Executive Officer and other staff.
- 38—Functions of the Chief Executive Officer.
- 39—Funds of the Tourism Board.

E. The Kenyatta International Convention Centre

- 40—Establishment of Kenyatta International Convention Centre.
- 41—Object and purpose of the Convention Centre.
- 42—Functions of the Convention Centre.
- 43—Board of the Convention Centre.
- 44—Tenure and vacation of the office.
- 45—Meetings of the Board of the Convention Centre.
- 46—Disclosure of interest.
- 47—Delegation of functions.
- 48—Appointment of the Chief Executive Officer and other staff.
- 49—Functions of the Chief Executive Officer.
- 50—Funds of the Convention Centre.

PART IV—ESTABLISHMENT OF TOURISM RESEARCH AND MONITORING INSTITUTE

- 51—Establishment of Kenya Tourism Research Institute.
- 52—Object and purpose of the Institute.
- 53—Functions of the Institute.
- 54— Board of the Institute.
- 55—Tenure and vacation of office.
- 56—Conduct and meetings of the Board of the Institute.
- 57—Disclosure of interest.
- 58—Delegation of functions.
- 59—Appointment of Director and other staff.
- 60—Research permit.
- 61—Establishment of tourism database.
- 62—Director to have access to public records etc.
- 63—Access to data by a person.
- 64—Funds of the Institute.
- 65—Monitoring mechanisms.

PART V—ESTABLISHMENT OF FINANCIAL BODIES

A. The Tourism Fund

- 66—Establishment of Tourism Fund.
- 67—Object and purpose of the Fund.
- 68—Board of Trustees.
- 69—Functions of the Board of Trustees.
- 70—Tenure and vacation of office.
- 71—Disclosure of interest.
- 72—Conduct and meetings of the Board of Trustees.
- 73—Appointment of Chief Executive Officer and other staff.
- 74—Records of the Fund to be accessible.

B. The Tourism Finance Corporation

- 75—Establishment of Corporation.
- 76—Object and purpose of the Corporation.
- 77—Board of the Corporation.
- 78—Tenure and vacation of office.
- 79—Meetings of the Board of the Corporation.
- 80—Disclosure of interest.
- 81—Delegation of functions.
- 82—The Chief Executive Officer and other staff.
- 83—Functions of the Chief Executive Officer.
- 84—Loans and credit facilities.
- 85—The funds.

86—The Treasury directives etc.

PART VI—ESTABLISHMENT OF THE TRIBUNAL

87—Establishment of Tribunal.
88—Tenure and vacation of office.
89—Secretary to the Tribunal.
90—Jurisdiction of the Tribunal.
91—Proceedings of the Tribunal.
92—Award of the Tribunal.
93—Contempt of the Tribunal.
94—Quorum of the Tribunal.
95—Disclosure of interest.
96—Appeals to the High Court.
97—Appeals to the Court of Appeal.

PART VII: TOURISM LICENSING AND TAX PROVISIONS

A. Licensing

98—Requirements for licence.
99—Transfer of licence.
100—Suspension of licence.
101—Cancellation of licence.
102—Representation to the Authority.
103—Effects of suspension and cancellation.
104—Registers.

B. Tourism levy

105—Tourism levy.

C. Government Tax incentives

106—Fiscal incentives.

PART VIII— ANNUAL ESTIMATES, ACCOUNTS AND AUDIT PROVISIONS

107—Financial Year.
108—Annual estimates.
109—Accounts, audit and annual reports.

PART IX—OFFENCES, PENALTIES AND ENFORCEMENT

110—Prohibition and offences relating to integrated tourism development Area.

- 111—Prohibition and offences relating to pollution.
- 112—General prohibition and offences.
- 113—Offences relating to corporate body.
- 114—General penalty.
- 115—Authorized officer.
- 116—Prosecutorial powers.
- 117—Restraint of breaches of this Act.

PART X—GENERAL PROVISIONS

- 118—Common seal.
- 119—Protection from personal liability.
- 120—Liability for damages.
- 121—Supercession.
- 122—Regulations.

PART XI—TRANSITIONAL AND REPEAL PROVISIONS

- 123—Transitional provisions.
- 124—Repeal of Acts.

FIRST SCHEDULE - Provisions relating to public consultation

SECOND SCHEDULE - Provisions relating to the meetings of the Board of the Authority

THIRD SCHEDULE - Provisions relating to Council's meetings

FOURTH SCHEDULE - Provisions relating to the meetings of the Board of Directors

FIFTH SCHEDULE - Provisions relating to the meetings of the Board of the Convention Centre

SIXTH SCHEDULE - Provisions relating to the meetings of the Board of the Institute

SEVENTH SCHEDULE- Provisions relating to the meetings of the Board Trustees

EIGHTH SCHEDULE - Provisions relating to the meetings of the Board of the Corporation

NINTH SCHEDULE - Provisions relating to regulated tourism activities and services

TENTH SCHEDULE - Provisions relating to repealed Acts

THE TOURISM ACT, 2011

No. 28 of 2011

AN ACT of Parliament to provide for the development, management, marketing and regulation of sustainable tourism and tourism-related activities and services, and for connected purposes

ENACTED by the Parliament of Kenya, as follows-

PART I –PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Tourism Act, 2011 and shall come into operation on such date the Minister may, by the notice in the Gazette, appoint and different dates may be appointed for different provisions.

Interpretation.

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

“Authority” means the Tourism Regulatory Authority established by section 4;

“authorized officer” means a person appointed by section 115 of this Act;

“College” means the Kenya Utalii College established by section 17 of this Act;

“Council” means the Council of the Kenya Utalii College established by section 20 of this Act;

“ecotourism” means responsible travel to natural areas to view the flora and fauna without disturbance to the economical, ecological and cultural status of the areas;

“environmental impact assessment” means a systematic examination conducted to determine whether or not a program, activity or project will have any adverse impact on the environment;

“Fund” means the Tourism Fund established by section 66;

“host” means a resident of a tourism destination or member of the

community in a tourism destination area;

“hotel” includes a facility used for the reception of guests and travelers desirous of dwelling or sleeping therein;

“lead agency” means a Government ministry, department, state corporation or local authority, in which the law has vested functions of control or management of any of the tourism-related activities and services;

“licence” includes provisional licence granted under the provisions of this Act;

“Minister” means the Minister for the time being responsible for matters relating to tourism;

“Protection Service” means the Tourism Protection Service established by section 28;

“restaurant” means any premises on which the business of supplying food or drink for reward is carried on;

“sustainable tourism” means tourism development that meets the needs of present visitors and hosts while protecting and enhancing opportunity for the future;

“tourism agencies” means the Authority, the College, the Tourism Board, the Institute, the Protection Service, the Fund, the Corporation and the Convention Centre and other tourism and hospitality institutions established by this Act;

“tourism activities and services” means any of the activities and services specified in the Ninth Schedule of this Act;

“Tourism Board” means the Kenya Tourism Board established by section 29;

“tourist” means a person travelling to and staying in a place outside his or her usual abode for more than twenty-four hours, but not more than one consecutive year, for leisure, business or other purpose, not being a work-related activity remunerated from within the place visited;

“tourism product” means a good or service which contributes to the total visitor or tourist experience in a tourism destination area;

“Tribunal” means the Tourism Tribunal established by section 87; and

“visitor” means a person travelling to a place outside his or her usual abode for not more than one consecutive year for leisure, business or other purposes, not being a work-related activity remunerated from the place visited.

PART II—FORMULATION OF NATIONAL TOURISM STRATEGY

National Tourism Strategy.

3.(1) The Minister shall, subject to subsection (5), formulate and publish in the Gazette a national tourism strategy at least once every five years, in accordance with which the tourism sector shall be developed, managed, marketed and regulated.

(2) The national tourism strategy shall prescribe the principles, objectives, standards, indicators, procedures and incentives for the development, management and marketing of sustainable tourism and shall, in particular prescribe—

- (a) for the packaging of niche tourism products and services;
- (b) standards for tourism area development plans;
- (c) measures to facilitate and enhance domestic and regional tourism taking cognizance of the county governments;
- (d) priority areas for tourism development, capacity building and training;
- (e) innovative schemes, incentives and ethics to be applied in the development and marketing of sustainable tourism, including public private partnerships;
- (f) clear targets indicating projection in tourism growth over the next five years;
- (g) national tourism research and monitoring priorities and information systems, including—
 - (i) collection and management of tourism data and information;
 - (ii) intelligence gathering;

- (iii) procedures for gathering tourism data and the analysis and dissemination of tourism information; and
 - (iv) tourism management information systems;
 - (h) measures necessary to ensure equitable sharing of benefits in the tourism sector;
 - (i) adaptation and mitigation measures to avert adverse impacts of climate change on tourism and tourism products and services;
 - (j) reflect regional co-operation and common approaches in tourism development, marketing and regulation; and
 - (k) any other matter that the Minister considers necessary to enhance sustainable tourism in the country.
- (3) The Minister shall periodically review the national tourism strategy and may, by notice in the Gazette, publish a revised national tourism strategy.
- (4) The Minister and all relevant public bodies shall, when exercising or performing any statutory function, take into account and give effect to the national tourism strategy.
- (5) The Minister shall, when formulating a national tourism strategy under subsection (1), consult the public in accordance with the First Schedule.

PART III—ESTABLISHMENT OF TOURISM REGULATORY, DEVELOPMENT AND MARKETING BODIES

A. The Tourism Regulatory Authority

Establishment of Authority.

4. (1) There is established an authority to be known as the Tourism Regulatory Authority.

(2) The Authority shall be a body corporate with perpetual succession, and a common seal and shall in its corporate name, be capable of—

- (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 necessary for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate.

Headquarters of the Authority.

5. The headquarters of the Authority shall be in Nairobi.

Object and purpose of the Authority.

6. The object and purpose of the Authority shall be to regulate the tourism sector.

Functions of the Authority.

7. (1) The functions of the Authority shall be to—

- (a) formulate guidelines and prescribe measures for sustainable tourism throughout the country;
- (b) regulate tourism activities and services countrywide, in accordance with the national tourism strategy;
- (c) register, licence and grade all sustainable tourism and tourist-related activities and services including cottages and private residences engaged in guest house services;
- (d) develop and implement, in consultation with relevant stakeholders, criteria for standardization and classification of tourism facilities and services;
- (e) develop and regulate, in consultation with the ministry for the time being responsible for matters relating to education, tourism and hospitality curriculum, examination and certification;
- (f) develop and implement a code of practice for the tourism sector;
- (g) ensure the development and implementation of high quality tourism sector;

- (h) vet and recommend expatriates seeking employment in the tourism and hospitality sector;
- (i) monitor and assess tourist activities and services to enhance continuous improvement and adherence to sound principles and practices of sustainable tourism;
- (j) undertake, annually, an assessment and audit of tourism activities and services, measures and initiatives at the national level, and prepare and publish an annual national tourism sector status report, in consultation with the Minister and the relevant lead agencies; and
- (k) perform any other functions that are ancillary to the object and purpose for which the Authority is established.

(2) The Minister shall, in each financial year, lay a national tourism sector status report published under subsection (1)(j) before the National Assembly, as soon as reasonably practicable after its publication, where the National Assembly is in session, or where not in session, within twenty one days of the day the National Assembly next sits after the publication.

Board of the Authority.

8. (1) There shall be the Board of the Authority which shall consist of—

- (a) a chairperson appointed by the President;
- (b) the Permanent Secretary in the ministry for the time being responsible for matters relating to tourism or his representative;
- (c) the Permanent Secretary in the ministry for the time being responsible for matters relating to planning and national development or his representative;
- (d) the Permanent Secretary in the ministry for the time being responsible for matters relating to finance or his representative;
- (e) the Permanent Secretary in the ministry for the time being responsible for matters relating to environment or his representative;
- (f) the Director-General of the Authority, who shall be the

secretary;

(g) six other members, not being public officers, nominated or selected through a competitive process taking into account regional balance and gender parity and appointed by the Minister, of whom —

(i) two shall be nominated by the registered tourism sector associations; and

(ii) four shall be persons who have expertise in tourism or tourism-related disciplines.

(2) The members of the Board of the Authority shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

(3) The names of persons proposed for appointment under subsection (1)(a) and (g) shall, before they are appointed, be laid before the National Assembly for approval.

Functions of the Board of the Authority.

9. (1) The Board of the Authority shall —

(a) ensure the proper and effective performance of the functions of the Authority;

(b) approve and ratify the policies of the Authority;

(c) manage, control and administer the assets of the Authority in a manner and for purposes that promote the object and purpose of the Authority;

(d) receive any gifts, grants, donations or endowments made to the Authority;

(e) determine the provisions to be made for capital and recurrent expenditure, and for the reserves of the Authority;

(f) open bank accounts for the funds of the Authority;

(g) subject to the approval of the Minister for the time being responsible for matters relating to finance, invest any of the Authority funds not immediately required for the purposes of

this Act, as it may determine;

- (h) determine and specify the terms and conditions for the appointment and emoluments of the personnel of the Authority;
- (i) co-operate with other organizations undertaking functions similar to its own, whether within or outside Kenya as it may consider appropriate and in furtherance of the object and purpose of the Authority;
- (j) provide for a staff superannuation scheme for the employees of the Authority; and
- (k) approve the borrowing of funds in consultation with the Minister for the time being responsible for matters relating to finance.

(2) Subject to this Act, the Board of the Authority may, by resolution either generally or in any particular case, delegate to any committee of the Board of the Authority or to any member, officer, employee or agent of the Authority, the exercise of any of the powers or, the performance of any of the functions or duties of the Board of the Authority under this Act.

(3) Members of the Board of the Authority shall be paid allowances determined by the Minister, in consultation with the Minister for the time being responsible for matters relating finance.

Tenure and vacation of office.

10. (1) A member of the Board of the Authority appointed under section 8(1) (a) and (g) shall hold office for a term not exceeding three years but shall be eligible for re-appointment for a further term not exceeding three years.

(2) A member of the Board of the Authority other than *ex officio* member may, at any time, resign from the office, in writing, addressed to the appointing authority.

(3) A member of the Board of the Authority, other than *ex officio* member, who is absent from three consecutive meetings of the Board of the Authority without sufficient cause shall cease to be a member of the Board of the Authority.

(4) Where a member of the Board of the Authority is, for sufficient

cause, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy.

(5) Where there is a vacancy—

- (a) under subsection (2) or (3) or section 11(2);
- (b) as a result of declaration under subsection (4); or
- (c) by reason of the death of a member,

the Minister shall appoint another person in accordance with the provisions of section 8(1) to fill the vacancy.

Disclosure of interest.

11. (1) A member of the Board of the Authority who has an interest in a matter for consideration by the Board of the Authority shall disclose, in writing, the nature of that interest and shall not participate in any deliberations of the Board of the Authority relating to that matter.

Conduct of meetings and procedure of the Board of the Authority.

12. The conduct and regulation of the business and affairs of the Board of Authority shall be as provided in the Second Schedule.

Establishment of regional offices.

13. The Board of the Authority shall establish such regional offices of the Authority as the Board of the Authority may determine.

Appointment of Director-General and other staff.

14. (1) The Minister shall, in consultation with the Board of the Authority and subject to subsection (2), appoint the Director-General of the Authority through a competitive process and with the prior approval of the National Assembly.

(2) A person shall not be qualified for appointment as the Director-General under subsection (1) unless that person holds an advanced degree from a university recognized in Kenya in the field of tourism or any other tourism-related discipline and has at least ten years' experience in the relevant field at senior management level.

(3) The Director-General of the Authority shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

(4) The Director-General shall be the Chief Executive Officer of the Authority.

(5) The Board of the Authority may appoint such officers and other staff of the Authority as are necessary for the proper and effective performance of its functions.

Functions of the Director-General.

15. (1) The Director-General shall be responsible for the day to day management of the affairs of the Authority and shall be answerable to the Board of the Authority in the performance of his functions under this Act.

(2) The Director-General shall perform any other functions determined by the Board of the Authority.

Funds for the Authority.

16. (1) There shall be a general fund of the Authority which shall vest in the Board of the Authority.

(2) There shall be paid into general fund of the Authority—

(a) monies appropriated by Parliament for the purposes of the Authority;

(b) donations, grants and gifts made to the Authority; and

(c) monies from any other sources approved by the Minister for the time being responsible for matters relating finance.

(3) There shall be paid out of the general fund any expenditure incurred by the Authority in the exercise of its powers or the performance of its functions under this Act.

(4) The Authority may, subject to the approval of the Minister for the time being responsible for matters relating to finance, invest any funds not immediately required for its purposes, as it may determine.

B. The Kenya Utalii College

Establishment of College.

17. (1) There is established a college to be known as the Kenya Utalii College.

(2) The College shall be a body corporate with perpetual succession, and a common seal and shall in its corporate name, be capable of—

- (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 its functions under this Act, which may be lawfully performed by a body corporate.

(3) The headquarters of the College shall be in Nairobi.

Object and purpose of the College.

18. The College 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 Minister.

Powers of the College.

19. (1) The College shall have power to—

- (a) establish, with the approval of the Minister, such campuses or centres for training and capacity building as are necessary and in furtherance of the objects of the College;
- (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.

The Council of the College.

20. (1) There is established a council of the College which shall, subject to this Act, have general management and control of the College.

(2) The Council shall consist of—

- (a) a chairperson appointed by the President;
- (b) the Permanent Secretary in the ministry for the time being responsible for matters relating to tourism or his representative;
- (c) the Permanent Secretary in the ministry for the time being responsible for matters relating to finance or his representative;
- (d) the Permanent Secretary in the ministry for the time being responsible for the matters relating to education or his representative;
- (e) the Chief Executive Officer of the Fund established under section 66 of this Act;
- (f) the Principal of the College, who shall be the secretary;
- (g) six other members, not being public officers, nominated or selected through a competitive process taking into account regional balance and gender parity and appointed by the Minister, of whom —
 - (i) two shall be nominated by the registered national tourism associations; and
 - (ii) four 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 the Council shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

(4) The names of persons proposed for appointment under subsection (2)(a) and (g) shall, before they are appointed, be laid before the National Assembly for approval.

Functions of the Council.

21. (1) The Council shall—

- (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; and
- (d) provide for the staff superannuation scheme and students welfare.

(2) In performance of its function under subsection (1)(a), the Council shall not charge or dispose of immovable property of the College except in accordance with the procedures laid down by the Government.

(3) Subject to this Act, the Council may, by resolution either generally or in a particular case, delegate to a committee of the Council or to a member, officer, employee or agent of the Council, the exercise of any of the powers or, the performance of a function or a duty of the Council under this Act.

(4) The Minister may, in consultation with the Council, by notice in the Gazette, make regulations and guidelines as are necessary to carry out the purposes of this section.

(5) Members of the Council shall be paid allowances determined by the Minister, in consultation with the Minister for the time being responsible for matters relating to finance.

Tenure and vacation of office.

22. (1) A member of the Council appointed under section 20 (2)(a) and (g) shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

(2) A member of the Council, other than an *ex officio* member may, at any time, resign from office in writing addressed to the appointing authority.

(3) A member of the Council, other than *ex officio* member, who is absent from three consecutive meetings of the Council without sufficient cause shall cease to be a member of the Council.

(4) Where a member of the Council is, for sufficient cause, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy.

(5) Where there is a vacancy—

- (a) under subsection (2) or (3) or section 24(2); or
- (b) as a result of declaration under subsection (4); or
- (c) by reason of the death of a member,

the Minister shall appoint another person in accordance with the provisions of section 20(2) to fill the vacancy.

Conduct of meetings and affairs of the Council.

23. The conduct and regulation of the business and affairs of the Council shall be as provided in the Third Schedule.

Disclosure of interest.

24. (1) A member of the Council who has an interest in a matter for consideration by the Council shall disclose, in writing, the nature of the interest and shall not participate in the deliberations of the Council in respect of that matter.

(2) A member who fails to disclose interest in a matter in accordance with subsection (1) shall cease to be a member.

The Principal.

25.(1) The Minister shall, in consultation with the Council and subject to subsection (2), appoint the Principal of the College through a

competitive process and with the prior approval of the National Assembly.

(2) A person shall not be qualified for appointment as the Principal under subsection (1) unless that person holds an advanced degree in tourism or hospitality management or a related discipline from a university recognized in Kenya and has at least ten years' experience in tourism, hospitality or a related sector.

(3) A person appointed to be the Principal under subsection (1) shall hold office for one term of five years but shall be eligible for re-appointment for a further one term of five years.

(4) The Principal shall be the Chief Executive Officer of the College.

(5) The Principal shall—

(a) be the academic and administrative head of the College;

(b) have overall responsibility for the direction, organization, administration, programmes and courses of the College;

(c) be responsible to the Council for the general conduct and discipline of the staff and students; and

(d) have such other powers and duties as may be assigned by the Council.

Appointment of other staff.

26. The Council may appoint such other officers or staff as are necessary for the proper and effective performance of the functions the College.

Funds of the College.

27. (1) There shall be a general fund of the College which shall vest in the Council and into which shall be paid—

(a) monies appropriated by Parliament for the purposes of the College;

(b) monies that may accrue to or vest in the College in the course of the performance of its functions under this Act;

(c) monies provided for training and capacity building from the

Fund; and

(d) monies from any other source provided or donated or lent to the College and approved by the Minister for the time being responsible for matters relating to finance.

(2) There shall be paid out of the general fund of the College any expenditure incurred by the College in the exercise of its powers or the performance of its functions under this Act.

(3) The Council may, subject to the approval of the Minister for the time being responsible for matters relating to finance, invest any funds not immediately required for its purposes, as it may determine.

C. The Tourism Protection Service

Establishment of the Tourism Protection Service.

28. There is established a Tourism Protection Service which shall be a specialised police service under the supervision of the National Police Service and the command of the Inspector- General of the National Police Service.

D. The Kenya Tourism Board

Establishment of the Kenya Tourism Board.

29. (1) There is established a board to be known as the Kenya Tourism Board.

(2) The Tourism Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (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 such other things necessary for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate.

(3) The headquarters of the Tourism Board shall be in Nairobi.

Object and purpose of the Tourism Board.

30. The object and purpose of the Tourism Board shall be to market Kenya as a tourist destination.

Functions of the Tourism Board.

31. The Tourism Board shall —

- (a) develop, implement and co-ordinate a national tourism marketing strategy;
- (b) market Kenya at local, national, regional and international levels as a premier tourist destination;
- (c) identify tourism market needs and trends and advise tourism stakeholders accordingly; and
- (d) perform any other functions that are ancillary to the object and purpose for which the Tourism Board is established.

Board of Directors.

32. (1) There shall be a Board of Directors of the Tourism Board which shall consist of—

- (a) a chairperson appointed by the President;
- (b) the Permanent Secretary of the ministry for the time being responsible for matters relating to tourism or his representative;
- (c) the Permanent Secretary of the ministry for the time being responsible for matters relating to finance or his representative;
- (d) the Chief Executive Officer of the Fund;
- (e) the Chief Executive Officer of the Tourism Board, who shall be the secretary; and
- (f) five other members nominated or selected through a competitive process taking into consideration regional balance and gender parity and appointed by the Minister, of whom —
 - (i) two shall be nominated by the registered national tourism associations; and

- (ii) three shall be persons with knowledge or experience in matters relating to international tourism, finance, business administration, law, marketing or a related discipline.

(2) The names of persons proposed for appointment under subsection (1)(a) and (f) shall, before they are appointed, be laid before the National Assembly for approval.

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

(4) The Board of Directors shall ensure the proper and effective performance of the functions of the Tourism Board.

(5) The Board of Directors may enter into partnership with another body or organization within or outside Kenya as it may consider appropriate, in furtherance of the objects of the Tourism Board.

(6) The members of the Board of Directors shall be paid allowances determined by the Minister, in consultation with the Minister responsible for matters relating to finance.

Tenure and vacation of office.

33. (1) A member of the Board of Directors appointed under section 32(1) (a) and (f) shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

(2) A member of the Board of Directors, other than an *ex officio* member may, at any time, resign from office by giving notice, in writing, addressed to the appointing authority.

(3) A member of the Board of Directors, other than an *ex-officio* member, who is absent from three consecutive meetings of the Board of Directors without sufficient cause shall cease to be a member of the Board of Directors.

(4) Where a member of the Board of Directors is, for sufficient cause, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy.

(5) Where there is a vacancy—

- (a) under subsection (2) or (3) or section 35(2); or
- (b) as a result of declaration under subsection (4); or
- (c) by reason of the death of a member,

the Minister shall appoint another person in accordance with the provisions of section 32 (1) to fill that vacancy.

Conduct of meetings of the Board of Directors.

34. The conduct of the meetings of the Board of Directors shall be in accordance with the Fourth Schedule.

Disclosure of interest.

35.(1) A member of the Board of Directors who has an interest in a matter for consideration by the Board of Directors shall disclose, in writing, the nature of that interest and shall be disqualified from participating in any deliberations of the Board of Directors relating to that matter.

(2) A member who fails to disclose interest in a matter in accordance with subsection (1) shall cease to be a member of the Board of Directors.

Delegation of functions.

36. Subject to this Act, the Board of Directors may, by resolution either generally or in any particular case, delegate to any committee of the Board of Directors or to any member, officer, employee or agent of the Tourism Board, the exercise of any of the powers or, the performance of any of the functions or duties of the Board of Directors under this Act.

Appointment of the Chief Executive Officer and other staff.

37. (1) The Minister shall, in consultation with the Board of Directors and subject to subsection (2), through a competitive process, appoint a person to be the Chief Executive Officer of the Tourism Board.

(2) A person shall not be qualified for appointment as the Chief Executive Officer under subsection (1) unless that person has an advanced degree in marketing, business administration or related discipline and has at least ten years' experience at senior management level in tourism or hospitality or related sector.

(3) The Chief Executive Officer shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

(4) The Board of Directors may appoint such officers and other staff as may be necessary for the proper and effective performance of the functions of the Tourism Board.

Functions of the Chief Executive Officer.

38.(1) The Chief Executive Officer shall be responsible for the day to day administration of the affairs of Tourism Board and the performance of its functions under this Act.

(2) The Chief Executive Officer shall perform any other functions determined by the Board of Directors.

Funds of the Tourism Board.

39. (1) There shall be a general fund of the Tourism Board which shall vest in the Board of Directors and into which shall be paid—

- (a) monies appropriated by Parliament for the purposes of the Tourism Board;
- (b) monies that may accrue to or vest in the Tourism Board in course of the performance of its functions under this Act or any other law and approved by Parliament;
- (c) monies provided to the Tourism Board from the Fund;
- (d) donations, grants and gifts made to the Tourism Board, and
- (e) monies from any other source approved by the Minister for the time being responsible for matters relating to finance.

(2) There shall be paid out of the general fund of the Tourism Board any expenditure incurred by the Tourism Board in the exercise of its powers or the performance of its functions under this Act.

(3) The Tourism Board may, subject to the approval of the Minister for the time being responsible for finance, invest any funds not immediately required for its purposes, as it may determine.

E. The Kenyatta International Convention Centre

Establishment of Kenyatta International Convention Centre.

40. (1) There is established a convention centre to be known as the Kenyatta International Convention Centre (hereinafter referred to as "the Convention Centre").

(2) The Convention Centre shall be a body corporate with perpetual succession, and a common seal and shall in its corporate name, be capable of—

- (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 such other things or acts for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate.

(3) The headquarters of the Convention Centre shall be in Nairobi.

Object and purpose of the Convention Centre.

41. The object and purpose of the Convention Centre shall be to promote business of meetings, conferences and exhibitions.

Functions of the Convention Centre.

42. The functions of the Convention Centre shall be to —

- (a) organize and host meetings and provide incentives for conferences and exhibitions at the Convention Centre;
- (b) develop and implement the national meetings, incentives for conferences and exhibitions strategy, in collaboration with the Tourism Board upon consultation with the relevant stakeholders;
- (c) market the Convention Centre, in collaboration with the Tourism Board; and
- (d) perform any other functions that are ancillary to the object and purpose for which the Convention Centre is established.

Board of the Convention Centre.

43. (1) There shall be a Board of the Convention Centre which shall consist of—

- (a) a chairperson appointed by the President;
- (b) the Permanent Secretary of the ministry for the time being responsible for matters relating to tourism or his representative;
- (c) the Permanent Secretary of the ministry for the time being responsible for matters relating to finance or his representative;
- (d) the Chief Executive Officer of the Tourism Board;
- (e) the Chief Executive Officer of the Convention Centre, who shall be the secretary; and
- (f) five other members, not being public officers, appointed by the Minister through a competitive process taking into account regional balance and gender parity, of whom –
 - (i) two shall be nominated by the registered national tourism associations; and
 - (ii) three shall be persons with knowledge or experience in matters relating to business management or marketing.

(2) The names of persons proposed for appointment under subsection (1)(a) and (f) shall, before they are appointed, be laid before the National Assembly for approval.

(3) The members of the Board of the Convention Centre shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

(4) The Board of the Convention Centre shall ensure the proper and effective performance of the functions of the Convention Centre.

(5) The Board of the Convention Centre may enter into partnership with any other body or organization, within or outside Kenya, as it may consider appropriate and in furtherance of the object and purpose for

which the Convention Centre is established.

(6) The members of the Board of the Convention Centre shall be paid allowances determined by the Minister, in consultation with the Minister for the time being responsible for matters relating to finance.

Tenure and vacation of office.

44. (1) A member of the Board of the Convention Centre, other than an *ex officio* member, shall hold office for a term not exceeding three years but shall be eligible for re-appointment for one further term of three years.

(2) A member of the Board of the Convention Centre, other than an *ex officio* member may, at any time, resign from office by giving notice, in writing, addressed to the appointing authority.

(3) A member of the Board of the Convention Centre, other than an *ex officio* member, who is absent from three consecutive meetings of the Board of the Convention Centre without sufficient cause shall cease to be a member of the Board of the Convention Centre.

(4) Where a member of the Board of the Convention Centre is, for sufficient cause, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy.

(5) Where there is a vacancy—

- (a) under subsection (2) or (3) or section 46(2); or
- (b) as a result of declaration under subsection (4); or
- (c) by reason of the death of a member,

the Minister shall appoint another person in accordance with the provisions of section 43(1) to fill that vacancy.

Conduct of meetings of the Board of the Convention Centre.

45. The conduct of the meetings of the Board of Convention Centre shall be in accordance with the Fifth Schedule.

Disclosure of interest.

46. (1) A member of the Board of the Convention Centre who has an interest in a matter for consideration by the Board of the Convention Centre shall disclose, in writing, the nature of that interest and shall not participate in the deliberations of the Board of the Convention Centre in

respect of that matter.

(2) A member who fails to disclose interest in a matter in accordance with subsection (1) shall cease to be a member of the Board of the Convention Centre.

Delegation of functions.

47. Subject to this Act, the Board of the Convention Centre may, by resolution either generally or in any particular case, delegate to any committee of the Board of the Convention Centre or to any member, officer, employee or agent of the Convention Centre, the exercise of any of the powers or, the performance of any of the functions or duties of the Board of the Convention Centre under this Act.

Appointment of the Chief Executive Officer and other staff.

48. (1) The Minister shall, in consultation with the Board of the Convention Centre and subject to subsection (2), appoint a person to be the Chief Executive Officer of the Convention Centre through a competitive process and with prior approval of the National Assembly.

(2) A person shall not be qualified for appointment as the Chief Executive Officer under subsection (1) unless that person has an advanced degree in marketing, business administration or a related discipline and has at least ten years' experience at senior management level in tourism or hospitality or related sector.

(3) A person appointed to be the Chief Executive Officer under subsection (1) shall hold office for a term of three years but shall be eligible for re-appointed for one further term of three years.

(4) The Board of the Convention Centre may appoint such officers and other staff as may be necessary for the proper and effective performance of the functions of the Convention Centre.

Functions of the Chief Executive Officer.

49.(1) The Chief Executive Officer shall be responsible for the day to day administration of the affairs of the Convention Centre and the performance of functions under this Act.

(2) The Chief Executive Officer shall perform any other functions determined by the Board of the Convention Centre.

Funds of the Convention Centre.

50. (1) There shall be a general fund of the Convention Centre which shall vest in the Board of the Convention Centre and shall consist of—

(a) monies appropriated by Parliament for the purposes of the Convention Centre;

(b) monies that may accrue to or vest in the Convention Centre in the course of the performance of its functions;

(c) donations, grants and gifts made to the Convention Centre, and

(d) monies from any other source approved by the Minister for the time being responsible for matters relating to finance.

(2) There shall be paid out of the general fund of the Convention Centre any expenditure incurred by the Convention Centre in the exercise of its powers or the performance of its functions under this Act.

(3) The Convention Centre may, subject to the approval of the Minister for the time being responsible for matters relating to finance, invest any funds not immediately required for its purposes, as it may determine.

PART IV- ESTABLISHMENT OF TOURISM RESEARCH INSTITUTE AND MONITORING MECHANISM

A. The Tourism Research Institute

Establishment of Tourism Research Institute.

51.(1) There is established an institute to be known as the Tourism Research Institute (hereinafter referred to as "the Institute").

(2) The Institute shall be a body corporate with perpetual succession, and a common seal and shall in its corporate name, be capable of—

(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 such other things or acts for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate.

(3) The headquarters of the Institute shall be in Nairobi.

Object and purpose of the Institute.

52. The object and purpose of the Institute shall be to undertake and co-ordinate tourism research and analysis in accordance with the provisions of this Act.

Functions of the Institute.

53.(1) The Institute shall—

- (a) collect and analyze information, for the sector and other clients in the private and public sectors, relating to —
 - (i) tourism products and services at the local, national, regional and international levels;
 - (ii) trends in tourism;
 - (iii) processes or activities likely to impact on sustainable tourism; and
 - (iv) tourism statistics.
- (b) assess strategies and techniques for product development and marketing;
- (c) undertake market intelligence;
- (d) determine, in consultation with lead agencies, the carrying capacities of the various tourism destinations and conservation needs and priorities;
- (e) assess information, that is the basis of integrated tourism development area plans;
- (f) research on sustainable tourism and other emerging areas;
- (g) give information on early warning, disaster management, impacts and mitigation and adaptive strategies to climate change;

- (h) organize symposia, conferences, workshops and other meetings to promote the exchange of views on issues relating to tourism research and analysis;
- (i) publish, annually, research findings and communicate recommendations to the relevant lead agencies, institutions and other stakeholders in the tourism sector; and
- (j) perform any other functions that are ancillary to the object and purpose for which the Institute is established.

Board of the Institute.

54. (1) There shall be the Board of the Institute which shall consist of—

- (a) a chairperson appointed by the President;
- (b) the Permanent Secretary of the ministry for the time being responsible for matters relating to tourism or his representative;
- (c) the Permanent Secretary of the ministry for the time being responsible for matters relating finance or his representative;
- (d) the Permanent Secretary of the ministry for the time being responsible for matters relating to science and technology or his representative;
- (e) the Director-General of the Kenya National Bureau of Statistics;
- (f) the Director of the Kenya Institute for Public Policy Research and Analysis (KIPPPRA);
- (g) the Director of the Institute, who shall be the secretary; and
- (h) six other members appointed by the Minister through a competitive process, taking into account regional balance and gender parity, of whom –
 - (i) two shall be nominated by the registered national tourism associations;
 - (ii) two shall represent the institutions of higher learning; and

(iii) two shall be persons qualified and competent in multi-disciplinary research.

(2) The names of persons proposed for appointment under subsection (1)(a) and (h) shall, before they are appointed, be laid before the National Assembly for approval.

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

(4) The Board of the Institute shall ensure the proper and effective performance of the functions of the Institute.

(5) The Board of the Institute may enter into partnership with another body or organization within or outside Kenya as it may consider appropriate in furtherance of the object and purpose for which the Institute was established.

(6) The members of the Board of the Institute shall be paid allowances determined by the Minister, in consultation with the Minister for the time being responsible for matters relating to finance.

Tenure and vacation of office.

55. (1) A member of the Board of the Institute, other than an *ex officio* member, shall hold office for a term of three years and shall be eligible for re-appointment for one further term not exceeding three years.

(2) A member of the Board of the Institute appointed under section 54(1)(a) and (f) may, at any time, resign from office by giving a notice, in writing, addressed to the appointing authority.

(3) A member of the Board of the Institute, other than an *ex officio* member, who is absent from three consecutive meetings of the Board of the Institute without sufficient cause shall cease to be a member of the Board of the Institute.

(4) Where a member of the Board of the Institute is, for a sufficient cause, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy.

(5) Where there is a vacancy—

(a) under subsection (2) or (3) or section 57(2); or

(b) as a result of declaration under subsection (4); or

(c) by reason of the death of a member,

the Minister shall appoint another person in accordance with the provisions of section 54(1) to fill that vacancy.

Conduct of the meetings of the Board of the Institute.

56. The conduct of the meetings of the Board of the Institute shall be in accordance with the Sixth Schedule.

Disclosure of interest.

57.(1) A member of the Board of the Institute who has an interest in a matter for consideration by the Board of the Institute shall disclose, in writing, the nature of that interest and shall not participate in any deliberations of the Board of the Institute relating that matter.

(2) A member of the Board of the Institute who fails to disclose interest in a matter in accordance with subsection (1) shall cease to be a member of the Board of the Institute.

Delegation of functions.

58. Subject to this Act, the Board of the Institute may, by resolution either generally or in any particular case, delegate to any committee of the Board of the Institute or to any member, officer, employee or agent of the Institute, the exercise of any of the powers or, the performance of any of the functions or duties of the Board of the Institute under this Act.

Appointment of the Director and other staff.

59. (1) The Minister shall, in consultation with the Board of the Institute and subject to subsection (2), appoint the Director of the Institute through a competitive process.

(2) A person shall not be qualified for the appointment as the Director under subsection (1) unless that person holds an advanced degree from a recognized university in Kenya in the field of tourism or other tourism-related discipline and has at least ten years' experience in the relevant field at senior management level.

(3) A person appointed to be the Director of the Institute under subsection (1) shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

(4) The Director shall be the Chief Executive Officer of the Institute.

(5) The Board of the Institute may appoint such officers and other staff of the Institute that are necessary for the proper and effective performance of the function of the Institute.

Research permit.

60. (1) A person shall not undertake research on the tourism sector unless that person has a research permit granted by the Institute to carry out the research.

(2) A person granted a research permit under subsection (1) shall be required, upon completion of the research, to deposit a copy of the research report, thesis or assessment with the Institute in a manner prescribed by the Institute.

(3) Where a person carrying out the research is from outside Kenya, that person shall be required to have a sponsoring institution from the home country and a locally recognized collaborating institution which shall guarantee that the researcher shall comply with the requirements under this Act.

(4) The Minister may, on his own motion or on recommendation of the Board of the Institute, prescribe regulations to carry out the purposes of this section.

Establishment of Tourism data- base.

61. (1) The Institute shall, in collaboration with relevant lead agencies and stakeholders, establish a comprehensive tourism database for the tourism sector in Kenya.

(2) The database established under subsection (1) shall include relevant data produced by the National Bureau of Statistics, universities and research institutions or as a consequence of collaborative research by the Institute with foreign institutions and researchers.

(3) The Institute shall, in consultation with relevant lead agencies and stakeholders, ensure that data is collected in accordance with any harmonized national standards that may be prescribed under this Act or regulations made hereunder .

(4) The Institute shall, in respect of the data and information that it holds, progressively make the data and information available and accessible, through any means, to all the stakeholders and the general

public.

(5) The Minister may, on his own motion or on recommendation of the Board of the Institute, prescribe regulations to carry out the purposes of this section.

Director to have access to public records etc.

62. (1) The Director shall, on request, have access to the public records or documents of a lead agency in custody of a person or an establishment where, in his opinion, the information sought is for the purposes of obtaining the required tourism data or completion or correction of the information already obtained.

(2) A person who does not grant the Director access to the records or documents in accordance with subsection (1) commits an offence.

Access to data by person.

63. (1) Subject to subsection (3), a person may, upon application, access any data or information upon payment of the prescribed fee.

(2) The Institute shall avail the data or information under subsection (1) in the format requested unless-

- (a) it is reasonable for it to make the information available in another format; or
- (b) the information is already publicly available and easily accessible to the applicant in another format.

(3) The Institute may refuse to grant an application under subsection (1) where the data or information requested is classified and restricted.

(4) The Institute shall communicate to the applicant, in writing, the reasons for refusal within twenty-one days from the date of the making the decision.

(5) The Minister may, on his own motion or on recommendation of the Board of the Institute, prescribe regulations to effectively carry out of the provisions of this section.

Funds of the Institute.

64. There shall be a general fund of the Institute which shall vest in the Board of the Institute and into which shall be paid—

- (a) monies appropriated by Parliament for the

purposes of the Institute;

- (b) monies that may accrue to or vest in the Institute in the course of the performance of its functions;
- (c) monies provided to the Institute from the Fund;
- (d) donations, gifts and grants made to the Institute; and
- (e) monies from any other source approved by the Minister for the time being responsible for matters relating to finance.

(2) There shall be paid out of the general fund of the Institute any expenditure incurred by the Institute in the exercise of its powers or the performance of its functions under this Act.

(3) The Institute may, subject to the approval of the Minister for the time being responsible for matters relating finance, invest any funds not immediately required for its purposes, as it may determine.

B. Monitoring mechanisms

Monitoring mechanisms.

65. (1) The Minister may, on his own motion or on recommendation of the Board of the Institute, develop monitoring mechanisms and set indicators to determine—

- (a) sound management of tourism products and services; and
- (b) trends affecting Kenya's tourism sector.

(2) The Minister shall require any person collecting data or information that is relevant to the tourism sector to regularly report to the Minister on the results of the monitoring mechanisms against the predetermined indicators.

(3) The Minister shall, at least once every five years, submit to the National Assembly a monitoring report and avail the monitoring report to the public.

PART V—ESTABLISHMENT OF FINANCIAL BODIES

A. The Tourism Fund

Establishment of Tourism Fund.

66. (1) There is established a fund to be known as the Tourism Fund which shall vest in and be operated and managed by the Board of Trustees.

(2) There shall be paid into the Fund —

- (a) monies appropriated by Parliament for the purposes of the Fund;
- (b) monies received under section 105(4), fees and other monies charged upon tourism activities and services;
- (c) income from investments made under section 69(e) or (j) by the Board of Trustees;
- (d) grants, donations, bequests or other gifts made to the Fund; and
- (e) monies from any other source approved by the Minister for the time being responsible for matters relating to finance.

Establishment of Board of Trustees

67. (1) There is established a board of trustees of the Fund to be known as the Board of Trustees.

(2) The Board of Trustees shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (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 such other things necessary for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate.

(3) The headquarters of the Board of Trustees of the Fund shall be in

Nairobi.

(4) The Board of Trustees shall consist of—

- (a) a chairperson appointed by the President, who shall be a person with competence in finance matters;
- (b) the Permanent Secretary of the ministry for the time being responsible for matters relating to tourism or his representative;
- (c) the Permanent Secretary of the ministry for the time being responsible for matters relating to finance or his representative;
- (d) six other members appointed by the Minister through a competitive process taking into account regional balance and gender parity, of whom —
 - (i) two shall be nominated by the registered national tourism associations; and
 - (ii) four shall be persons qualified and competent in the field of tourism, financial accounting, management or marketing.
- (e) the Chief Executive Officer of the of the Board of Trustees , who shall be the secretary.

(5) The names of persons proposed for appointment under subsection (4)(a) and (d) shall, before they are appointed, be laid before the National Assembly for approval.

(6) The members of the Board of Trustees shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

Object and purpose of the Fund.

68. The object and purpose of the Fund shall be to—

- (a) finance the development of tourism products and services;
- (b) finance the marketing of Kenya as a tourist destination through the Tourism Board;
- (c) finance the activities of the Protection Service;

- (d) finance the tourism research, tourism intelligence and the national tourism information management system;
- (e) finance the activities of the Tourism Sector Safety, Communication and Crisis Management Centre to be established and managed by the Ministry;
- (f) finance training and capacity development activities of the College and of such other tourism hospitality training institutions as may be established under this Act; and
- (g) mobilize resources to support tourism-related activities.

Functions of the Board of Trustees.

69. (1) The functions of the Board of Trustees shall be to—

- (a) collect the tourism levy imposed under section 105 of this Act or any other written law;
- (b) establish, equip and control such other tourism and hospitality training institutions as it may be necessary upon approval by the Minister;
- (c) formulate sound policies for the regulation and management of the Fund;
- (d) solicit for funds and other assistance to promote the object for which the Fund is established;
- (e) determine the amounts of money payable for the purposes of the Fund and formulate the conditions for disbursement;
- (f) invest any surplus funds not immediately required in securities approved by the Treasury, for the purposes of realizing the objects and purpose for which the Fund is established;
- (g) establish a tourism training revolving fund;
- (h) keep and maintain audited accounts of the Fund and publish the accounts in the manner approved by the Treasury;
- (i) cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Fund;

- (j) receive any gifts, donations, grants or endowments made to the Fund, and to make legitimate disbursements; and
- (k) perform any other functions that are ancillary to the objects and purpose for which the Fund is established.

(2) The members of the Board of Trustees shall be paid allowances determined by the Minister, in consultation with the Minister for the time being responsible for matters relating to finance.

Tenure and vacation of office.

70. (1) A member of the Board of Trustees appointed under section 67(4) (a) and (d) shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

(2) A member of the Board of Trustees, other than an *ex officio* member may, at any time, resign from the office by giving notice, in writing, addressed to the appointing authority.

(3) A member of the Board of Trustees, other than an *ex-officio* member, who is absent from three consecutive meetings of the Board without sufficient cause shall cease to be a member of the Board of Trustees.

(4) Where a member of the Board of Trustees is, for sufficient cause, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy.

(5) Where there is a vacancy—

- (a) under subsection (2) or (3) or section 71(2); or
- (b) as a result of declaration under subsection (4); or
- (c) by reason of the death of a member,

the Minister may appoint another person in accordance with the provisions of section 67(4) to fill the vacancy.

Disclosure of interest.

71.(1) A member of the Board of Trustees who has an interest in a matter for consideration by the Board of Trustees shall disclose, in writing, the nature of that interest and shall not participate in the deliberations of

the Board of Trustees in respect of that matter.

(2) A member of the Board of Trustees who fails to disclose interest in a matter in accordance with subsection (1) shall cease to be a member of the Board of Trustees.

Conduct of the meetings of the Board of Trustees.

72. The conduct of business in the meetings of the Board of Trustees shall be in accordance with the Seventh Schedule.

Appointment of Chief Executive Officer.

73.(1) The Minister shall, in consultation with the Board of Trustees and subject to subsection (2), appoint the Chief Executive Officer to the Fund through a competitive process and with the prior approval of the National Assembly.

(2) A person shall not be qualified for appointment as the Chief Executive Officer under subsection (1) unless that person is qualified and competent in financial matters and has at least ten years' experience in the relevant field.

(3) The Chief Executive Officer shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

(4) The Board of Trustees may appoint such officers and other staff of the Board of Trustees that are necessary for the proper and effective performance of the functions of the Board of Trustees.

Records of the Fund to be accessible.

74. The records of the Fund kept under section 69(h) shall be accessible to the public for inspection, upon payment of the prescribed fee.

B. The Tourism Finance Corporation

Establishment of Corporation.

75. (1) There is established a corporation to be known as the Tourism Finance Corporation (hereinafter referred to as "the Corporation").

(2) The Corporation shall be a body corporate with perpetual succession, and a common seal and shall, in its corporate name, be capable of—

(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 such other things necessary for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate.

(3) The headquarters of the Corporation shall be in Nairobi.

Object and purpose of the Corporation.

76. The object and purpose of the Corporation shall be to —

- (a) provide financial assistance to investors or entrepreneurs in the tourism sector including small and medium and community based enterprises for development, expansion and maintenance of tourism activities and services;
- (b) provide for investment opportunities in the tourism sector; and
- (c) provide business advisory services to the tourism sector.

Corporation Board.

77. (1) There shall be the Board of the Corporation which shall consist of —

- (a) a chairperson appointed by the President, who shall be a person qualified in banking and financial matters;
- (b) the Permanent Secretary of the ministry for the time being responsible for matters relating to tourism or his representative;
- (c) the Permanent secretary of the ministry for the time being responsible for matters relating to finance or his representative;
- (d) the Chief Executive Officer of the Corporation appointed under section 82, who shall be the secretary; and
- (e) six other members appointed by the Minister through a

competitive process, taking into account regional balance and gender parity, of whom—

- (i) two shall be nominated by the registered national tourism associations; and
- (ii) four shall be persons qualified and competent in finance, banking, law, investment or a related discipline.

(2) The names of persons proposed for appointment under subsection (1)(a) and (e) shall, before they are appointed, be laid before the National Assembly for approval.

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

(4) The Board of the Corporation shall ensure the proper and effective performance of the functions of the Corporation.

(5) The members of the Board of the Corporation shall be paid allowances determined by the Minister, in consultation with the Minister for the time being responsible for matters relating to finance.

Tenure and vacation of office.

78. (1) A member of the Board of the Corporation, other than an *ex officio* member, shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

(2) A member of the Board of the Corporation may, at any time, resign from office by giving notice, in writing, addressed to the appointing authority.

(3) A member of the Board of the Corporation, other than an *ex officio* member, who is absent from three consecutive meetings of the Board without sufficient cause shall cease to be a member of the Board of the Corporation.

(4) Where a member of the Board of the Corporation is, for sufficient cause, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy.

- (5) Where there is a vacancy—
 - (a) under subsection (2) or (3) or section 80(2); or
 - (b) as a result of declaration under subsection (4); or
 - (c) by reason of the death of a member,

the Minister shall appoint another person appointed in accordance with the provisions of section 77(1) to fill that vacancy.

Conduct of the meetings of the Corporation Board.

79. The conduct of the meetings of the Board of the Corporation shall be in accordance with the Eighth Schedule.

Disclosure of interest.

80. (1) A member of the Board of the Corporation who has an interest in a matter for consideration by the Board of the Corporation shall disclose, in writing, the nature of that interest and shall not participate any deliberations of the Board of the Corporation relating to that matter.

(2) A member of the Board of the Corporation who fails to disclose interest in accordance with subsection (1) shall cease to be a member of the Board of the Corporation.

Delegation of functions.

81. Subject to this Act, the Board of the Corporation may, by resolution either generally or in any particular case, delegate to any committee of the Board of the Corporation or to any member, officer, employee or agent of the Corporation, the exercise of any of the powers or, the performance of any of the functions or duties of the Board of the Corporation under this Act.

Chief Executive Officer and other staff.

82. (1) The Minister shall, in consultation with the Board of the Corporation and subject to subsection (2), appoint a Chief Executive Officer to the Corporation through a competitive process and with prior approval of the National Assembly.

(2) A person shall not be qualified for appointment as the Chief Executive Officer under subsection (1) unless that person holds an advanced degree from a recognized university in Kenya in the field of business administration or financial management and has at least ten years' experience in the relevant field at a senior management level.

(3) A person appointed to be the Chief Executive Officer under subsection (1) shall hold the office for a term of three years but shall be eligible for re-appointment for one further term of three years.

(4) The Board of the Corporation may appoint such officers and other staff of the Corporation that are necessary for the proper and effective performance of the functions of the Corporation.

Functions of the Chief Executive Officer.

83. (1) The Chief Executive Officer shall be responsible for the day to day administration of the affairs of the Corporation and shall be answerable to the Board of the Corporation.

(2) The Chief Executive Officer shall perform any other functions determined by the Board of the Corporation.

Loans and credit facilities.

84. (1) An investor or entrepreneur in the tourism sector may obtain a loan or credit facilities from the Corporation in accordance with this Act, on terms and conditions that the Board of the Corporation may prescribe.

(2) The Board of the Corporation shall, from time to time, formulate credit policy on lending and recovery of monies, venture capital projects, equity funding and other funding as may be required, with the approval of the Minister responsible for finance.

Funds of the Corporation.

85. (1) There shall be a general fund of the Corporation which shall vest in the Board of the Corporation and into which shall be paid—

- (a) monies appropriated by Parliament for the purposes of the Corporation;
- (b) monies that may accrue to, or vest in the Corporation in the course of the performance of its functions;
- (c) any donations, grants or gifts made to the Corporation; and
- (d) monies from any other sources approved by the Minister for the time being responsible for matters relating to finance.

(2) There shall be paid out of the general fund of the Corporation

any expenditure incurred by the Corporation in the exercise of its powers or the performance of its functions under this Act.

(3) The Corporation may, subject to the approval of the Minister for the time being responsible for matters relating to finance, invest any funds not immediately required for its purposes, as it may determine.

Treasury directives and effective measures.

86. (1) The Minister for the time being responsible for matters relating to finance may give directives to the Corporation on matters relating to finance and the Corporation shall comply.

(2) The Minister may, on his own motion or on recommendation of the Board of the Corporation, prescribe the manner in which to effectively carry out the objects and purpose of the Corporation.

PART VI—TOURISM TRIBUNAL

Establishment of Tribunal.

87.(1) There is established a tribunal to be known as the Tourism Tribunal which shall consist of —

- (a) a chairperson nominated by the Judicial Service Commission and appointed by the Minister;
- (b) an advocate of the High Court of Kenya nominated by the Law Society of Kenya and appointed by the Minister;
- (c) three other persons who have demonstrated competence and a high level of integrity in the tourism or hospitality sector appointed by the Minister.

(2) The members of the Tribunal shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

(3) The nomination or appointment of members of the Tribunal under subsection (1) shall be through a competitive process taking into account regional balance and gender parity, and with the prior approval of the National Assembly.

Tenure and vacation of office.

88. (1) A member of the Tribunal shall hold office for a term of three

years but shall be eligible for re-appointment for one further term of three years.

(2) The office of a member of the Tribunal shall become vacant—

- (a) at the expiry of three years from the date of appointment;
- (b) if he accepts any office the holding of which, if he were not a member of the Tribunal, would make him not eligible for appointment to the office of a member of the Tribunal; or
- (c) if he is removed from membership of the Tribunal by the Minister for reasons of physical or mental infirmity, unable to exercise the functions of his office;
- (d) if he resigns his office by writing under his hand addressed to the Minister;
- (e) under section 95(2); or
- (f) upon his death.

(3) Members of the Tribunal shall be paid the allowances approved by the Minister, in consultation with the Minister for the time being responsible for matters relating to finance.

Secretary to the Tribunal.

89. (1) The Tribunal shall have a secretary who shall be a public officer appointed by the Public Service Commission through a competitive process.

(2) The secretary shall hold office on the terms and conditions specified in the letter of appointment.

(3) The secretary shall be responsible for the day to day affairs of the Tribunal and shall be answerable to the Tribunal in performance of his functions.

(4) The secretary shall perform any other functions determined by the Tribunal.

Jurisdiction of the Tribunal.

90. The Tribunal shall have the jurisdiction to hear and determine—

- (a) appeals arising from any decision made under this Act;

- (b) any complaints arising from the exercise of the Minister's powers under this Act;
- (c) any conflicts that may arise between tourism agencies established under this Act;
- (d) questions relating to refusal to grant a licence by the Authority under this Act or unreasonable delay in the making of that grant; and
- (e) any complaints by any person aggrieved by any act done by any person under this Act.

Proceedings of the Tribunal.

91. (1) A person may make a complaint or appeal, in writing, within sixty days of the act or omission or decision complained of.

(2) On the hearing of a complaint or an appeal, the Tribunal shall have all the powers of a subordinate court to—

- (a) summon witnesses, take evidence on oath or affirmation and order the production of documents; or
- (b) summon expert evidence as may be necessary.

(3) Where the Tribunal considers it desirable for the purposes of minimising expenses, to avoid delay or for any special reason, it may receive evidence by affidavit and administer interrogatories and require the person to whom the interrogatories have been made to respond.

(4) All summons, notices or other documents issued under the hand of the Chairperson of the Tribunal shall be deemed to have been issued by the Tribunal.

(5) An aggrieved person may be represented before the Tribunal by an Advocate.

(6) Subject to this Act, the Tribunal may regulate its own procedure.

Awards of the Tribunal.

92. (1) The Tribunal may—

- (a) award damages;

- (b) confirm, vary or set aside the decision appealed against; or
- (c) make an order for the maintenance of the status quo of any matter or activity which is the subject of a complaint or appeal before it until the complaint or appeal is determined.

(2) The Tribunal shall have power to award the costs of any proceedings before it and to direct that the costs shall be taxed in accordance within such scale as it may prescribe.

(3) The Tribunal may, on its own motion or upon application by an aggrieved party, review its decisions, awards or orders.

(4) Judgments of the Tribunal shall be executed and enforced in the same manner as judgments of a subordinate court.

Contempt of the Tribunal.

93. A person who —

- (a) fails to attend the Tribunal after being summoned by the Tribunal;
- (b) refuses to take an oath or affirmation before the Tribunal, or being a public officer, refuses to produce any article or document when lawfully required to do so by the Tribunal;
- (c) knowingly gives evidence or information before the Tribunal which he knows to be misleading; or
- (d) at any sitting of the Tribunal –
 - (i) willfully insults any member or officer of the Tribunal; or
 - (ii) willfully interrupts the proceedings or commits any other act of contempt of the Tribunal;
- (e) fails or neglects to comply with a decision, order, direction or notice confirmed by the Tribunal,

commits an offence.

Quorum for the Tribunal.

94. (1) The quorum for the hearing and determining a cause or a matter referred to the Tribunal shall be the Chairperson and two other

members.

(2) Where, for any reason, the quorum under subsection (1) is not met for part of the hearing, the jurisdiction of the Tribunal may be exercised by the Chairperson, sitting with less the members.

(3) The Chairperson shall preside at the meetings of the Tribunal and in the absence of the Chairperson, a member elected by members present and voting.

Disclosure of interest.

95. (1) A member of the Tribunal who has an interest in the matter for consideration by the Tribunal shall disclose, in writing, the nature of that interest and shall not participate in the deliberations of the Tribunal in respect of that matter.

(2) A member who fails to disclose interest in matter in accordance with subsection (1) shall cease to be a member of the Tribunal.

Appeals to the High court.

96.(1) A person aggrieved by a decision or order of the Tribunal may, within thirty days of that decision or order, appeal against the decision or the order to the High Court.

(2) Upon the hearing of an appeal under this section, the High Court may —

- (a) confirm, set aside or vary the decision;
- (b) remit the proceedings to the Tribunal with instructions for further consideration, report, proceedings or evidence as the court may consider fit to give;
- (c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or
- (d) make any other order as it may consider just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Tribunal.

Appeals to the Court of appeal.

97. A person aggrieved by the decision or order of the High Court may, within sixty days of that decision or order, appeal against that decision or order to the Court of Appeal on matter of law.

PART VII — TOURISM LICENSING, TOURISM LEVY AND TAX PROVISIONS

A. Licensing

Requirement for licence.

98.(1) A person shall not undertake any of the tourism activities and services specified in the Ninth Schedule, unless that person has a licence issued by the Authority.

(2) A person seeking a licence or any variation of a licence held by him shall apply to the Board of the Authority in such manner and form as may be prescribed by the Authority.

(3) An application for a licence or for the variation of licence under subsection (1) shall be accompanied by such fees as may be prescribed by the Authority.

(4) The Authority may, on receipt of an application under this section, investigate or require the submission of such further information as it may be necessary in order to enable it consider the application.

(5) The Authority shall, in considering the licence application, have regard to the material considerations which include—

- (a) the standard for the tourism area development plan as prescribed by the Minister under section 3(2)(b);
- (b) the protection of fragile environmental resources, ecosystems and habitats as provided for by the ministry for the time being responsible for matters relating to the environment;
- (c) an environmental impact assessment licence issued under Part VI of the Environmental Management and Co-ordination Act, 1999 No.8 of 1999;
- (d) any representations received from members of the public; and
- (e) a recommendation or approval from any other relevant authority as may be necessary.

(6) After considering an application made under this section, the Authority may grant the applicant the licence or variation applied for or may refuse the grant, and may attach to the licence granted terms or conditions as the Authority may consider necessary.

(7) A licence issued under this Act shall expire on the 31st December of the year in respect of which it is issued.

(8) An application for the renewal of an existing licence shall be made at least two months before the expiry date of the existing licence.

(9) The Minister may, on the advise of the Authority given after consultation with the relevant lead agencies and other stakeholders, by notice in the Gazette, amend the Ninth Schedule to this Act.

Transfer of licence.

99.(1) A licence issued under this Act may be transferred by the holder to another person only in respect of the tourism activity or service in relation to which that licence was issued.

(2) Where a licence is transferred under this section, the person to whom it is transferred and the person transferring it shall jointly notify the Authority in writing of the transfer within thirty days after the transfer.

(3) Where no joint notification of a transfer is given in accordance with subsection (2), the licence shall be deemed not to have been transferred.

(4) A transfer of a licence under this section shall take effect on the date the Authority is notified of that transfer.

(5) A person who contravenes the provisions of this section commits an offence.

Suspension of licence.

100. The Authority may, subject to section 102, suspend a licence issued under this Act where—

- (a) a licensee is being investigated in relation to an offence under this Act;
- (b) an allegation of misconduct has been made against a licensee;
- (c) the licensee made a false declaration in the application for the licence; or

- (d) a licensee has contravened a provision of this Act.

Cancellation of licence.

101. The Authority shall, subject to section 102, cancel a licence where a licensee—

- (a) is convicted of an offence under this Act or the regulations made thereunder; or
- (b) ceases to be qualified for the issue of a licence under this Act.

Representation to the Authority.

102. (1) The Authority shall not suspend or cancel a licence unless the Authority has given the licensee at least thirty days notice of its intention to suspend or cancel the licence and has provided the licensee with an opportunity to make a representation to the Authority.

(2) A licensee who is not satisfied with a decision made under subsection (1) may appeal to the Tribunal within twenty eight days from the date of the decision.

Effect of suspension or cancellation.

103. A person whose licence has been suspended or cancelled shall not engage in the tourism activity or service in respect of which the licence was granted during the duration of suspension or after cancellation.

Registers.

104.(1) The Authority shall keep and maintain registers of—

- (a) all standards for the tourism area development plans formulated by the Minister under the provisions of this Act;
- (b) all licences and permits issued under this Act;
- (c) tourism facilities, activities and services licensed under this Act;
- (d) all public and private sector institutions or associations involved in tourism or tourism-related activities and services;
- (e) all authorized expatriates, in consultation with the ministry for the time being responsible for matters relating to Immigration, working in the tourism and hospitality sector within the country; and

(f) all institutions offering tourism and hospitality training.

(2) All registers kept and maintained under this section shall be open for inspection by members of the public during official working hours, at the Authority's offices or an office designated by the Authority, on the payment of a prescribed fee.

B. Tourism levy

Tourism levy

105. (1) The Minister may, by order, require the payment by persons engaged in tourism activities and services of a tourism levy.

(2) The tourism levy order may make different provisions in relation to different tourism activities and services.

(3) A tourism levy may contain provisions as to the evidence by which a person's liability to the tourism levy, or his discharge of that, may be established, and as to the time at which any amount payable by any person by any of tourism activity and service shall become due.

(4) All monies received in respect of the tourism levy shall be paid into the Fund established under section 67 of this Act.

(5) A person who fails to comply with any provision of a tourism levy order commits an offence.

C. Government tax incentives

Fiscal incentives.

106.(1) Despite the provisions of any relevant revenue Act, the Minister responsible for finance may, on the recommendation of the Minister, propose tax and other fiscal incentives, disincentives or fees to induce or promote the development of sustainable tourism.

(2) Without prejudice to the generality of subsection (1), the tax and fiscal incentives, disincentives or fees may include—

- (a) customs and excise waiver in respect of imported capital goods for investment in sustainable tourism activities and services;
- (b) tax rebates to tourism activities and services that promote sustainable tourism and environmental conservation;
- (c) tax disincentives to deter bad tourism activities and services;

- (d) user fees to ensure that those who use tourism activities and services pay proper value for the tourism products and services rendered.

PART VIII— ANNUAL ESTIMATES, ACCOUNTS AND AUDIT

Financial year.

107. The financial year of the respective tourism agencies established under this Act shall be the period of twelve months ending on the thirtieth June in each year.

Annual estimates.

108. (1) At least three months before the commencement of each financial year, the respective tourism agencies established under this Act shall cause to be prepared estimates of the revenue and expenditures for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the respective tourism agency for the financial year and in particular, the estimates shall provide for-

- (a) the payment of the salaries, allowances and other charges in respect of the staff;
- (b) the payment of pensions, gratuities and other charges in respect of the staff;
- (c) the proper maintenance of the buildings and grounds;
- (d) the maintenance, repair and replacement of the equipment and other property; and
- (e) the creation of reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of any other matters.

(3) The annual estimates shall be approved by respective tourism agency before the commencement of the financial year to which they relate, and shall be submitted to the Minister for approval, and after the Minister has given approval, the respective tourism agency shall not increase any sum provided in the estimates without the written consent of the Minister.

(4) No expenditure shall be incurred for the purposes of a tourism agency except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization of the respective tourism agency given with the prior approval of the Minister.

Accounts, audit and annual reports.

109. (1) The respective tourism agencies shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the respective tourism agencies.

(2) The respective tourism agency shall cause accounts of each respective tourism agency to be prepared and be reported in accordance with the Public Audit Act, 2003 No.12 of 2003.

PART IX — OFFENCES, PENALTIES AND ENFORCEMENT

Prohibition and offences relating to integrated tourism development area plan.

110. (1) A person shall not fraudulently alter—

- (a) an approved integrated tourism development area plan required to be developed; or
- (b) an approved integrated tourism development area plan under this Act.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding twenty-four months, or to both.

Prohibition and offences relating to pollution.

111. (1) A person shall not—

- (a) discharge any dangerous materials, substances or oil into a designated tourism development area contrary to the provisions of this Act or any other law; or
- (b) pollute wildlife habitats and ecosystems, or discharge any pollutant detrimental to the environment contrary to the provisions of this Act or any other law.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding

five hundred thousand shillings, or imprisonment, in case of a natural person, to a term of not exceeding thirty-six months, or to both.

(3) In addition to the fine imposed under subsection (2), the court may direct the convicted person to —

- (a) pay the full cost of cleaning up the polluted wildlife habitat and ecosystem and mitigating effects of pollution; and
- (b) clean up the polluted habitats and ecosystems and mitigating effects of pollution to the satisfaction of the Authority.

(4) Without prejudice to the provisions of subsections (2) and (3), the court may direct the connected person to meet the cost of the effect of pollution to a third party through adequate compensation, restoration or restitution.

General prohibition and offences.

112. (1) A person shall not—

- (a) breach or fail to comply with the provisions of this Act;
- (b) breach or fail to comply with any of, the terms or conditions of a licence issued to him under this Act;
- (c) fail to comply with a lawful requirement or demand made or given by an authorized officer;
- (d) obstruct a person in the execution of his powers or duties under this Act;
- (e) knowingly or recklessly make a statement or representation which is false;
- (f) knowingly or recklessly furnish a document or information required under this Act which is false; or
- (g) knowingly or recklessly use or furnish a fake or forged or invalid licence or a licence that has been altered without authorization.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not

exceeding eighteen months, or to both.

Offences relating to corporate body.

113. Where an offence under this Act is committed by a body corporate or any other association of individuals, a director, partner or any other person involved in, or acting or purporting to act in the management of its affairs commits an offence unless that person proves that—

- (a) the act or omission constituting the offence took place without his knowledge; or
- (b) he took reasonable steps to prevent the commission of the offence.

General penalty.

114. A person who commits an offence under this Act for which no specific penalty is provided is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding twelve months, or to both.

Authorized officer.

115.(1) The Director-General may, in writing, appoint any person to be an authorized officer for the purposes of the carrying out of the provisions of this Act.

(2) Notwithstanding subsection (1), the following officers shall be authorized officers for the purposes of this Act—

- (a) officers of the Protection Service; or
- (b) any other person upon whom any written law vests functions of maintenance of law and order.

Prosecutorial powers.

116. An authorized officer may, with the leave of the Attorney-General given under the Criminal Procedure Code Cap. 75, conduct prosecution for an offence committed under this Act.

Restraint of breaches of this Act.

117. (1) Any person who has reason to believe that the provisions of this Act have been, are being, or are about to be violated, may petition the High Court for—

- (a) a declaration that the provisions of this Act are being, have been, are about to be contravened;
- (b) an injunction restraining any specified person from carrying out the contravention;
- (c) the writ of mandamus against an officer or a person who has failed to perform a duty imposed by or under this Act; or
- (d) any remedy at law or equity for preventing or enforcing the provisions of this Act.

PART X—GENERAL PROVISIONS

Common seal.

118. The common seal of any of the tourism agencies established under this Act shall be kept in such custody as the respective tourism agency may direct and shall not be used except on the order of that respective tourism agency.

Protection from personal liability.

119. A member of any of the tourism agencies or any officer, employee or agent of any tourism agency shall not be liable for an act done by that person or omitted to be done or ordered to be done by that person in discharge of the persons' duties, if the person, at the time, whether or not within the limits of the jurisdiction of that person, in good faith, believed he had jurisdiction to do or order the act complained of to be done.

Liability for damages.

120. The provisions of section 119 shall not relieve a tourism agency of the liability to pay compensation or damages to a person for an injury to him, his property or any of his interests caused by the exercise of the powers conferred on the respective tourism agency by this Act or by any other law or by the failure, whether wholly or partially, or any works.

Supercession.

121. Where any conflict arises between the provisions of this Act and any other Act with respect to the development, management, marketing or regulation of the tourism sector, the provisions of this Act shall prevail.

Regulations.

122.(1) The Minister may, on his own motion or on the recommendation of the respective tourism agency, make regulations

prescribing all matters which by this Act are required to be prescribed or which are necessary for the better carrying out of, or giving effect to, the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), Regulations under subsection (1) may provide for—

- (a) the conditions which a licence or permit may be granted or issued under this Act;
- (b) the procedures to be followed when applying for a licence or permit;
- (c) the criteria for standardization and classification of tourism facilities and services;
- (d) the classification of tourism activities and services;
- (e) fees and other charges required to be paid under the Act;
- (f) the restriction, regulation or other control of tourism activities and services;
- (g) beach management;
- (g) the training of personnel for the tourism agencies and the tourism and hospitality sector in general;
- (h) the Code of Practice for the tourism and hospitality sector; and
- (i) co-operation and consultation with the Commission for Higher Education in matters relating the regulation of the courses or programmes of instruction leading to the award of certificates and diplomas in the tourism and hospitality sector.

(3) Regulations made under this section may require acts or things to be performed or done to the satisfaction of the Minister, and may empower the respective tourism agencies to issue orders imposing conditions and dates upon, within or before which the acts or things shall be performed or done.

PART XI—TRANSITIONAL AND REPEAL PROVISIONS

Transitional provisions.

123. (1) The rights, assets and liabilities accrued in respect of the properties vested in the Kenya Utalii College, the Kenya Tourist Board, the Kenyatta International Conference Centre, the Kenya Tourist Development Corporation and the Catering and Tourism Development Levy Trustees established by the Acts repealed by section 124, or by any other legal instrument in force immediately before the commencement of this Act, which shall cease to have effect upon the commencement of this Act (in this Part referred to as “the former agencies”) shall, by virtue of this subsection be transferred, vested in, imposed or be enforceable against the respective tourism agencies established under this Act.

(2) The persons employed by the former agencies shall be transferred to the respective tourism agencies established under this Act.

(3) Any proceedings taken by or against the former agencies immediately before the commencement of this Act may be continued by or against them by the respective tourism agencies established under this Act.

(4) A contract subsisting between the former agencies and another person before the commencement of this Act shall subsist between the respective tourism agencies established under this Act and that person.

(5) Any licence or permit issued or granted by the former agencies and in force immediately before the commencement of this Act shall, with the approval of the Minister, remain in force for the unexpired period and shall be deemed to have been granted or issued under the provisions of this Act.

Repeal of Acts.

124. The Acts specified in the Twelfth Schedule are repealed.

FIRST SCHEDULE

(s.5(5))

PROVISIONS RELATING TO PUBLIC CONSULTATION

1. (1) Where this Act imposes a requirement for public consultation in matters relating to a tourism strategy, plan, activity or service, the respective tourism agency shall publish a notice —

- (a) in the Gazette;
 - (b) in at least two newspapers with national circulation;
 - (c) in at least one newspaper circulating in the locality to which the strategy, plan, activity or service relates; and
 - (d) in at least one Kenyan radio station broadcasting in that locality.
- (2) The notice shall in each case—
- (a) set out a summary of the strategy, plan, activity or service;
 - (b) state the premises at which the details of the strategy, plan, activity or service may be inspected;
 - (c) invite written comments on or objections to the strategy, plan, activity or service;
 - (d) specify the person or body to which the comments are to be submitted; and
 - (e) specify a date by which the comments or objections are required to be received, not being a date earlier than sixty days after publication of the notice.
- 2.** The respective tourism agency shall make arrangements for the public to obtain copies, at reasonable cost, of documents relating to the strategy, plan, activity or service which are in the possession of the respective tourism agency.
- 3.** The respective tourism agency shall consider the—
- (a) written comments or objections received on or before the date specified under paragraph 1(2) (e); and
 - (b) comments, whether in writing or not, received at a public meeting held in relation to the strategy, plan, activity or service at which the respective tourism agency was represented, or by any other invitation, to comment.
- 4.** The respective tourism agency shall publish, in accordance with paragraph 1 of this Schedule, notice of the fact that a copy of the written decision of the respective tourism agency relating to the strategy, plan, activity or service, and the reasons thereof, is available for public inspection at the same premises as were notified under paragraph 1(2) (b).
- 5.** Where regulations made under this Act so require, the respective tourism agency shall cause a public meeting relating to a strategy, plan, activity or service to be held before the respective tourism agency makes its decision on the strategy, plan, activity or service.

SECOND SCHEDULE

(s.12)

**PROVISIONS RELATING TO MEETINGS OF THE BOARD OF THE
AUTHORITY**

1. The Board of the Authority shall meet at least once in every three months to conduct the business of the Board of Authority.

2. The Chairperson may or upon request call a special meeting of the Board of the Authority at any time, where he or she considers it expedient for the transaction of the business of the Board of the Authority.

3. Other than a special meeting, or unless three quarters of members agree, at least twenty one days' written notice of every meeting of the Board of the Authority shall be given to every member of the Board of the Authority by the secretary.

4. The quorum at a meeting of the Board of the Authority shall be half of the members or a greater number determined by the Board of the Authority in respect of an important matter.

5. The Chairperson shall preside at the meetings of the Board of the Authority and in the absence the vice-chairperson, and in his absence, a member of the Board of the Authority elected by the members present from among their number shall preside.

6. The matters of the Board of the Authority shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

7. The proceedings of the Board of the Authority shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

8. At the first meeting of the Board of Authority, the members shall elect a vice-chairperson, not being an *ex-officio* member, from among its members.

9. Subject to the provisions of this Schedule, the Board of the Authority may determine its own procedure and the procedure for any committee of the Board of the Authority and for attendance of any other persons at the meetings and may make standing orders in respect thereof.

THIRD SCHEDULE

(s.23)

PROVISIONS RELATING TO MEETINGS OF THE COUNCIL

- 1.** The Council shall meet at least once in every three months to conduct the business of the Council.
- 2.** The Chairperson may call a special meeting of the Council at any time, where he or she considers it expedient for the transaction of the business of the Council.
- 3.** Other than a special meeting, or unless three quarters of members agree, at least fourteen days' written notice of every meeting of the Council shall be given to every member of the Council by the secretary.
- 4.** The quorum at a meeting of the Council shall be half of the members or a greater number determined by the Council, in respect of an important matter.
- 5.** The Chairperson shall preside at the meetings of the Council and in the absence the vice-chairperson, and in his absence, a member of the Council elected by the members present from among their number shall preside.
- 6.** The matters of the Council shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.
- 7.** The proceedings of the Council shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.
- 8.** At the first meeting of the Council, the members shall elect a vice-chairperson, not being an *ex-officio* member, from among its members.
- 9.** Subject to the provisions of this Schedule, the Council may determine its own procedure and the procedure for any committee of the Council and for attendance of any other persons at the meetings and may make standing orders in respect thereof.

FOURTH SCHEDULE (s.34)

PROVISIONS RELATING TO THE MEETINGS OF THE BOARD OF DIRECTORS

- 1.** The Board of Directors shall meet at least once every three months to conduct the business of the Board of Directors.
- 2.** The Chairperson may call a special meeting of the Board of Directors at any time, where he or she considers it expedient for the transaction of the business of the Board of Directors.
- 3.** Other than a special meeting, or unless three quarters of members agree, at least fourteen days' written notice of every meeting of the Board of Directors

shall be given to every member of the Board of Directors by the secretary.

4. The quorum at a meeting of the Board of the Institute shall be half of the members or a greater number determined by the Board of Directors, in respect of an important matter.

5. The Chairperson shall preside at the meetings of the Board of Directors and in the absence the vice-chairperson, and in his absence, a member of the Board of Directors elected by the members present from among their number shall preside.

6. The matters of the Board of Directors shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

7. The proceedings of the Board of Directors shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

8. At the first meeting of the Board of Directors, the members shall elect a vice-chairperson, not being an ex officio member, from among its members.

9. Subject to the provisions of this Schedule, the Board of the Directors may determine its own procedure and the procedure for any committee of the Board of Directors and for attendance of any other persons at the meetings and may make standing orders in respect thereof.

FIFTH SCHEDULE

(s.45)

PROVISIONS RELATING TO THE MEETINGS OF THE BOARD OF THE CONVENTION CENTRE

1. The Board of the Convention Centre shall meet at least once in every three months to conduct the business of the Board of the Convention Centre.

2. The Chairperson may call a special meeting of the Board of the Convention Centre at any time where he or she considers it expedient for the transaction of the business of the Board of the Convention Centre.

3. Other than a special meeting, or unless three quarters of members agree, at least fourteen days' written notice of every meeting of the Board of the Convention Centre shall be given to every member of the Board of the Convention Centre by the secretary.

4. The quorum at a meeting of the Board of the Convention Centre shall be half of the members or a greater number determined by the Board of the Convention Centre, in respect of an important matter.

5. The Chairperson shall preside at the meetings of the Board of the Convention Centre and in the absence the vice-chairperson, and in his absence, a

member of the Board of the Convention Centre elected by the members present from among their number shall preside.

6. The matters of the Board of the Convention Centre shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

7. The proceedings of the Board of the Convention Centre shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

8. At the first meeting of the Board of the Convention Centre, the members shall elect a vice-chairperson, not being an *ex-officio* member, from among its members.

9. Subject to the provisions of this Schedule, the Board of the Convention Centre may determine its own procedure and the procedure for any committee of the Board of the Convention Centre and for attendance of any other persons at the meetings and may make standing orders in respect thereof.

SIXTH SCHEDULE

(s.56)

PROVISIONS RELATING TO THE MEETINGS OF THE BOARD OF THE INSTITUTE

1. The Board of the Institute shall meet at least once every in three months to conduct the business of the Board of the Institute.

2. The Chairperson may call a special meeting of the Board of the Institute at any time where he or she considers it expedient for the transaction of the business of the Board of the Institute.

3. Other than a special meeting, or unless three quarters of members agree, at least fourteen days' written notice of every meeting of the Board of the Institute shall be given to every member of the Board of the Institute by the secretary.

4. The quorum at a meeting of the Board of the Institute is half of the members or a greater number determined by the Board of the Institute in respect of an important matter.

5. The Chairperson shall preside at the meetings of the Board of the Institute and in the absence the vice-chairperson, and in his or her absence, a member of the Board of the Institute elected by the members present from among their number shall preside.

6. The matters of the Board of the Institute shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

7. The proceedings of the Board of the Institute shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

8. At the first meeting of the Board of the Institute, the members shall elect a vice-chairperson, not being an *ex-officio* member, from among its members.

9. Subject to the provisions of this Schedule, the Board of the Institute may determine its own procedure and the procedure for any committee of the Board of the Institute and for attendance of any other persons at the meetings and may make standing orders in respect thereof.

SEVENTH SCHEDULE (s.72)

PROVISIONS RELATING TO THE MEETINGS OF THE BOARD OF TRUSTEES

1. The Board of Trustees shall meet at least once in every three months to conduct the business of the Board of Trustees.

2. The Chairperson may call a special meeting of the Board of Trustees at any time, where he or she considers it expedient for the transaction of the business of the Board of Trustees.

3. Other than a special meeting, or unless three quarters of members agree, at least fourteen days written notice of every meeting of the Board of Trustees shall be given to every member of the Board of Trustees by the secretary.

4. The quorum at a meeting of the Board of Trustees shall be half of the members or a greater number determined by the Board of Trustees in respect of an important matter.

5. The Chairperson shall preside at the meetings of the Board of Trustees and in the absence the vice-chairperson, and in his absence, a member of the Board of Trustees elected by the members present from among their number shall preside.

6. The matters of the Board Trustees shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

7. The proceedings of the Board of Trustees shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

8. At the first meeting of the Board of Trustees, the members shall elect a vice-chairperson, not being an *ex-officio* member, from among its members.

9. Subject to the provisions of this Schedule, the Board of Trustees may

determine its own procedure and the procedure for any committee of the Board of Trustees and for attendance of any other persons at the meetings and may make standing orders in respect thereof.

EIGHTH SCHEDULE (s.79)

PROVISIONS RELATING TO THE MEETINGS OF THE BOARD OF THE CORPORATION

1. The Board of the Corporation shall meet at least once every three months to conduct the business of the Board of Corporation.

2. The Chairperson may call a special meeting of the Board of the Corporation at any time, where he or she considers it expedient for the transaction of the business of the Board of the Corporation.

3. Other than a special meeting, or unless three quarters of members agree, at least fourteen days' written notice of every meeting of the Board of the Corporation shall be given to every member of the Board of the Corporation by the secretary.

4. The quorum at a meeting of the Board of the Corporation is half of the members or a greater number determined by the Board of the Corporation, in respect of an important matter.

5. The Chairperson shall preside at the meetings of the Board of the Corporation and in the absence the vice-chairperson, and in his absence, a member of the Board of the Corporation elected by the members present from among their number shall preside.

6. The matters of the Board of the Corporation shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

7. The proceedings of the Board of the Corporation shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

8. At the first meeting of the Board of the Corporation, the members shall elect a vice-person, not being an *ex-officio* member, from among its members.

9. Subject to the provisions of this Schedule, the Board of the Corporation may determine its own procedure and the procedure for any committee of the Board of the Corporation and for attendance of any other persons at the meetings and may make standing orders in respect thereof.

NINTH SCHEDULE (s.98(1))

PROVISIONS RELATING TO REGULATED TOURISM ACTIVITIES AND SERVICES

(a) Class "A" Enterprises

- (i) Hotels;
- (ii) Members clubs;
- (iii) Motels;
- (iv) Inns;
- (v) Hostels;
- (vi) Health and spa resorts;
- (vii) Retreat lodges;
- (viii) Ecolodges;
- (ix) Tree houses;
- (x) Floatels;
- (xi) Service flats,
- (xii) Service apartments,
- (xiii) Beach cottages,
- (xiv) Holiday cottages,
- (xv) Game lodges,
- (xvi) Tented camps;
- (xvii) Safari or mobile camps,
- (xviii) Bandas,
- (xix) Cultural homes and centres,
- (xx) Villas;
- (xi) Homestays;
- (xii) Guest houses; and
- (xxiii) Time shares.

(b) Class "B" Enterprises

- (i) Restaurants; and
- (ii) Other food and beverage services.

(c) Class "C" Enterprises

- (i) Tour or safari operators;
- (ii) Tourist service vehicle hire;
- (iii) Local air charter;
- (iv) Travel agency;
- (v) Water sports;
- (vi) Balloon operators; and
- (vii) Boat excursions;

(d) Class "D" Enterprises

- (a) Game fishing outfitters;
- (b) Enterprises offering camps and camping equipment for hire;
- (c) Nature parks;
- (d) Nature reserves;
- (e) Nature trails;
- (f) Game ranches;
- (g) Amusement parks; and
- (h) Non-citizen tour leaders or guides.

(e) Class "E" Enterprises

- (i) Local traditional boat operators;
- (ii) Professional safari photographers;
- (iii) Curio vendors;
- (iv) Private zoos;
- (v) Citizen tour leaders or guides; and
- (vi) General vendors; and
- (vii) Beach operators.

- (f) Class "F" Enterprises
Entertainment facilities
- (g) Class "G" Enterprises
Conference and event services
- (h) Class "H" Enterprises
Tourism and hospitality training institutions

TENTH SCHEDULE (s.134)

PROVISIONS RELATING TO THE REPEALED ACTS

1. The Tourism Industry Licensing Act, Cap. 381;
2. The Kenya Tourist Development Corporation Act, Cap. 382;
3. The Hotel Accommodation Act, Cap.478; and
4. The Hotels and Restaurants Act, Cap. 494.