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GENERAL NOTICE

NOTICE 520 OF 2011

DEPARTMENT OF TOURISM

CALL FOR COMMENT ON THE DRAFT TOURISM BILL, 2011

I, Marthinus Christoffel Johannes van Schalkwyk, Minister of Tourism, hereby publish for comment, the Tourism Draft Bill, 2011 contained in the schedule below.

All interested persons and organisations are invited to comment on the Draft Bill in writing, and to direct their comment within 60 days of publication of this notice to the Director-General of the Department of Tourism, attention Ms Mmaditlonki Setwaba, Private Bag X424, Pretoria, 0001 or hand delivered to Tourism House, 17 Trevenna Street, Sunnyside, Pretoria, Fax to: (012) 444-7101 and/ or by email to: msetwaba@tourism.gov.za.

Kindly provide the name, address telephone number, fax number and email address of the person or organisation submitting the comments.

Comments must reach the Department of Tourism within 60 days after publication of this notice. Comments received after the closing date may not be considered.



MARTHINUS VAN SCHALKWYK, MP

MINISTER OF TOURISM

SIGNED ON:

Schedule Tourism Draft Bill, 2011

TOURISM BILL, 2011

TOURISM DRAFT BILL, 2011

To provide for the development and promotion of sustainable tourism for the social, economic and environmental benefit of South Africa and for the enjoyment of all its citizens and foreign visitors; to provide for the continued existence of the South African Tourism Board; to repeal the Tourism Act 72 of 1993 and provide for transitional measures; and to provide for incidental matters.

BE IT ENACTED by the Parliament of the Republic of South Africa as follows:-

ARRANGEMENT OF SECTIONS

	CHAPTER 1	7
	INTERPRETATION, OBJECTS AND APPLICATION.....	7
15	1. Definitions	7
	2. Objects of Act	8
	3. Application of Act	8
	CHAPTER 2	9
20	NATIONAL TOURISM SECTOR STRATEGY, NORMS AND STANDARDS, CODES OF GOOD PRACTICE	9
	4. National Tourism Sector Strategy.....	9
	5. National tourism information and monitoring system	10
	6. Information by tourism businesses	11
	7. Norms and Standards for tourism	12
25	8. Codes of Good Practice for tourism	14
	CHAPTER 3	14
	NATIONAL QUALITY ASSURANCE STRATEGY AND GRADING SYSTEM	14
	9. National Quality Assurance Strategy and Grading System	14

TOURISM BILL, 2011

CHAPTER 1 : INTERPRETATION, OBJECTS AND APPLICATION

	CHAPTER 4.....	16
	SOUTH AFRICAN TOURISM BOARD	16
	10. Continued Existence	16
	11 Functions of the Board	16
5	12. Powers of the Board	17
	13. Delegation of Powers and Functions	17
	14. Composition of the Board.....	18
	15. Term of office of members.....	19
	16. Disqualification from membership of Board.....	19
10	17 Vacation of office and filling of vacancies	20
	18 Remuneration of members of the Board.....	21
	19. Board meetings	21
	20. Conduct of meetings	22
	21. Resolution without meeting	22
15	22. Funds of the Board	23
	23. Financial accountability.....	23
	24. Committees of Board.....	23
	25. Appointment of Chief Executive Officer	23
	26. Employment contract and performance agreeemen	24
20	27. Resignation and dismissal of Chief Executive Officer	25
	28. Appointment of Staff	25
	CHAPTER 5	26
	TOURISM PROTECTION	26
	29. Appointment of Tourism Protector	26
25	30. Accreditation of scheme	26
	31. Powers and Functions of the Tourism Protector	27
	CHAPTER 6	28
	TOURIST GUIDES.....	28
	32. National registrar of tourists guide	28
30	33. Provincial Registrar of tourist guide.....	29
	34. Procedure relating to registration of tourist guide	30
	35. Competence	32
	36. Code of conduct and ethics	32
	37. Complaints	32
35	38. Action by Provincial Registrar regarding disqualification of tourist guide	33
	39. Disciplinary measures	34

SOUTH AFRICAN TOURISM BILL, 2011

CHAPTER 1 : INTERPRETATION, OBJECTS AND APPLICATION

s1

Draft 4 (2) (210)

40. Appeals and review	36
41. Prohibitions	36
42. Disputes	37

CHAPTER 7	37
------------------------	-----------

5 GENERAL	37
------------------------	-----------

SCHEDULE 1	40
-------------------------	-----------

TRANSITIONAL PROVISIONS.....	40
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Schedule Tourism Draft Bill, 2011

TOURISM BILL, 2011

CHAPTER 1

INTERPRETATION, OBJECTS AND APPLICATION

1. Definitions

In this Act, unless the context indicates otherwise -

- 5 (a) **“Board”** means the South African Tourism Board contemplated in section 8;
- (b) **“Department”** means the national Department responsible for tourism;
- (c) **“Director-General”** means the Director-General: Tourism;
- (d) **“Minister”** means the Cabinet member responsible for tourism;
- 10 (e) **“national tourism sector strategy”** means the national tourism sector strategy determined by the Minister in terms of section 4;
- (f) **“organ of state”** has the meaning assigned in section 239 of the Constitution of the Republic of South Africa;
- (g) **“Public Finance Management Act”** means the Public Finance Management Act, 1999(Act No. 1 of 1999);
- 15 (h) **“prescribed”** means prescribed by regulation;
- (i) **“regulation”** means a regulation made by the Minister under this Act;
- (j) **“Schedule”** means a Schedule to this Act;
- (k) **“this Act”** includes the norms and standards and regulations;
- 20 (l) **“tourism”** comprises the activities of foreign visitors and South African residents travelling to and staying at places outside their usual environment for not more than one consecutive year for leisure,

TOURISM BILL, 2011

CHAPTER 1 INTERPRETATION, OBJECTS AND APPLICATION

business and other purposes not related to the exercise of an activity remunerated from within the place visited;

(m) **“Tourism Protector”** means the Tourism Protector designated by the Minister in terms of section 29;

5 (n) **“Tourist guide”** means any person registered in terms of section 34 and who for reward, whether monetary or otherwise, accompanies any person who travels within or visits any place within the Republic and who furnishes such person with information or comments with regards to any matter;

10 **2. Objects of Act**

The objects of this Act are-

- (a) to promote responsible tourism for the benefit of South Africa and for the enjoyment of all its citizens and foreign visitors;
- 15 (b) to provide for the effective domestic and international marketing of South Africa as a tourist destination;
- (c) to promote quality tourism products and services;
- (d) to promote for growth, development and transformation of the tourism sector; and
- (e) to enhance co-operation and co-ordination between all spheres of government in developing and managing tourism.

20 **3. Application of Act**

- (1) This Act applies throughout the Republic.
- (2) In the event of any conflict between a section of this Act and:

TOURISM BILL, 2011

CHAPTER 2 : NATIONAL TOURISM SECTOR STRATEGY, NORMS AND STANDARDS, CODES OF GOOD PRACTICE

- 5
- (a) other national legislation in force immediately prior to the date of commencement of this Act, the section of this Act prevails if the conflict specifically concerns the management and development of tourism;
 - (b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and
 - (c) a municipal by-law, the section of this Act prevails.
- (3) This Act binds all organs of state:
- (a) in the national and local spheres of government; and
 - (b) in the provincial sphere of government, subject to section 146 of the Constitution.
- 10

CHAPTER 2

NATIONAL TOURISM SECTOR STRATEGY, NORMS AND STANDARDS, CODES OF
GOOD PRACTICE

4. National Tourism Sector Strategy

- 15
- (1) The Minister must by notice in the Gazette and after following the consultation process in subsection (3) establish a national tourism sector strategy to promote the objects of this Act.
 - (2) The national tourism sector strategy must provide at least the strategies, objective, indicators, targets, plans, guidelines and procedures of the Minister and institutional
- 20
- arrangements relating to the promotion and development of tourism.

TOURISM BILL, 2011

CHAPTER 2 NATIONAL TOURISM SECTOR STRATEGY, NORMS AND STANDARDS, CODES OF GOOD PRACTICE

(3) Before establishing the national tourism sector strategy in terms of subsection (1), the Minister must –

- 5 (a) give notice of the proposed national tourism sector strategy in the Gazette;
- (b) invite members of the public to submit to the Minister, within the time specified in the notice but not exceeding 60 days of publication of the notice, written representations regarding the proposed national tourism sector strategy;
- (c) consider what steps, if any, are appropriate to bring the contents of the proposed national tourism sector strategy to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
- 10 (d) consider any written representations so received.

(4) The Minister may review the national tourism sector strategy upon following the procedure in subsection (3).

15 (5) The Minister, the Director General, MEC, an organ of state and any institution established by government to exercise tourism functions must give effect to the national tourism sector strategy when exercising any powers and performing any function in terms of this Act.

5. National tourism information and monitoring system

(1) The Minister may establish a national tourism information and monitoring system for-

- 20 (a) collecting, recording, managing, analysing and disseminating information and data on tourism; and
- (b) monitoring developments and trends in tourism.

(2) The Minister may make regulations on -

- (a) the nature and form of the national tourism information and monitoring system;

TOURISM BILL, 2011

CHAPTER 2 : NATIONAL TOURISM SECTOR STRATEGY, NORMS AND STANDARDS, CODES OF GOOD PRACTICE

- 5
- (b) the categories, content and form of the data and information to be captured on the national tourist information and monitoring system;
 - (c) the content, form and manner in which organs of state and any institution responsible for developing and managing tourism must provide the Minister with data and information and the intervals at which the information and data must be provided; and
 - (d) any other matter necessary for the proper administration and functioning of the national tourism information and monitoring system.

6. Information by tourism businesses

- 10
- (1) The Minister may for purposes of planning and development in relation to tourism growth and development establish and maintain a database of information on tourism businesses.
 - (2) The Minister may by notice in the Gazette-
 - 15 (a) list the categories of tourism businesses that may provide information in terms of this Act;
 - (b) determine the period within which information is to be provided;
 - (c) determine the form and manner for providing information which must include at least-
 - 20 (i) the name and form of the tourism business;
 - (ii) the geographical area of operation;
 - (iii) nature of services;
 - (iv) particulars relating to the classification and grading of the tourism business;
 - (v) particulars relating to the statistics and information in relation to matters pertaining to the services or facilities offered;

TOURISM BILL, 2011

CHAPTER 2 NATIONAL TOURISM SECTOR STRATEGY, NORMS AND STANDARDS, CODES OF GOOD PRACTICE

- (vi) accessibility for people with disability, children and the aged;
- (vii) subject to subsection (5), the place and manner for submission of information which may include submission to any organ of state; and
- (viii) any other information which is necessary for the database.

- 5 (d) Determine the type of recognition and incentives that may accrue to tourism businesses that may provide information.
- (4) The Minister may make different provisions in respect of different categories of tourism services and facilities.
- (5) The determination that information be submitted to an organ of state may be made
10 only in consultation with that organ of state.
- (6) For purposes of a comprehensive database of information, nothing in this chapter prevents the Minister, after publication of a notice in terms of subsection (2) from collecting information about tourism businesses from any other source.

7. Norms and standards for tourism

- 15 (1) The Minister may, by notice in the *Gazette* and after following the consultation process in subsection (2), determine -
 - (a) norms and standards -
 - (i) for responsible tourism;
 - (ii) for service excellence; and
 - 20 (iii) to promote the achievement of any of the objects of this Act.
 - (b) indicators to measure compliance with such norms and standards.
- (2) Before determining norms and standards in terms of subsection (1), the Minister must -

TOURISM BILL, 2011

CHAPTER 2 · NATIONAL TOURISM SECTOR STRATEGY, NORMS AND STANDARDS, CODES OF GOOD PRACTICE

-
- (a) give notice of the proposed norms and standards -
- (i) in the *Gazette*;
 - (ii) in at least 2 newspapers published and circulating nationally;
 - (iii) in a newspaper published and circulating in each province; and
- 5 (b) invite members of the public to submit to the Minister, within the time specified in the notice but not exceeding 60 days of publication of the notice, written representations regarding the proposed norms and standards; and
- (c) consider any written representations so received.
- 10 (3) Organs of state responsible for developing and managing tourism must apply any norms and standards determined in terms of subsection (1) in the exercise or performance of their powers and functions.
- (4) An MEC responsible for tourism in a province may, after consultation with the Minister, by notice in the *Gazette*, determine-
- 15 (a) provincial norms and standards that are not in conflict with national norms and standards contemplated in subsection (1);
- (b) indicators to measure compliance with such norms and standards.
- 20 (5) For purposes of norms and standards for responsible tourism, responsible tourism is tourism which minimises negative economic, environmental, and social impacts; generates greater economic benefits for local people and enhances the well-being of host communities, improves working conditions and access to the industry; involves local people in decisions that affect their lives and life chances;• makes positive contributions to the conservation of natural and cultural heritage, to the maintenance of the world's diversity; provides more enjoyable experiences for tourists through more meaningful connections with local people, and a greater understanding of local
- 25 cultural, social and environmental issues; provides access for physically challenged people; and is culturally sensitive, engenders respect between tourists and hosts, and builds local pride and confidence;

TOURISM BILL, 2011

CHAPTER 3 NATIONAL QUALITY ASSURANCE STRATEGY AND GRADING SYSTEM

8. Codes of good practice for tourism

The Minister may by notice in the *Gazette*, issue codes of good practice to guide the conduct of tourism services, facilities and organs of state responsible for developing and managing tourism and to promote the achievement of the objects of the Act.

5

CHAPTER 3**NATIONAL QUALITY ASSURANCE STRATEGY AND GRADING SYSTEM****9. National Quality Assurance Strategy and Grading System**

(1) The Minister may-

- 10 (a) develop a national quality assurance strategy for tourism businesses that promotes –
- (i) the objects of this Act;
 - (ii) the national tourism sector strategy;
 - (iii) excellence in the provision of tourism services and products; and
- 15 (b) upon recommendation of the Board, develop a national grading and classification system for tourism with a view to the maintenance or enhancement of the standards and the quality of tourism services and products; and
- (c) monitor and evaluate the quality of tourism services and products.
- (2) The national grading and classification system may-
- (a) establish schemes in respect of tourism services and products;

20 (b) apply any basis of differentiation which the Minister may deem fit;

 - (c) classify tourism services and products into different classes on the ground of inter alia, the nature, extent, variety, availability and quality of the tourism services and product rendered.

TOURISM BILL, 2011

CHAPTER 3 : NATIONAL QUALITY ASSURANCE STRATEGY AND GRADING SYSTEM

-
- (3) The acquisition, continuation and termination of membership of a member of a scheme shall be governed by the provisions of the scheme.
- 5 (4) The Minister shall grant authority to a person rendering tourism services and facilities to use and display in respect of those services and product the prescribed insignia, which shall include a depiction of a star or number of stars which indicate the grading awarded in respect of the tourism services and facilities in terms of the scheme.
- (5) The Tourism Grading Council of South Africa that existed immediately before the commencement of this Act continues to exist as a juristic person in terms of this Act.
- 10 (6) The Tourism Grading Council of South Africa is to implement the national quality assurance strategy and grading system and to ensure the achievements of its objectives.
- (7) The Minister may, in writing and subject to such conditions as the Minister may determine, delegate the overseeing of the Tourism Grading Council of South Africa and the performance of any functions in this Chapter to-
- 15 (a) the Department;
- (b) the Board; or
- (c) any other suitable body.
- (8) A delegation under this Chapter-
- 20 (a) does not prevent the performance of the function by the Minister; and the Minister may at any time review, amend or set aside any decision made under the delegation; and
- (b) may be revoked by the Minister at any time.

TOURISM BILL, 2011

CHAPTER 3 CHAPTER 4

CHAPTER 4**SOUTH AFRICAN TOURISM BOARD****10. Continued existence of South African Tourism Board**

5 (1) The South African Tourism Board, established under the Tourism Act 72 of 1993 as a juristic person, continues to exist and must exercise its powers and perform its functions in accordance with the provisions of this Act.

(2) The Public Finance Management Act, 1999 applies to the Board.

11. Functions of Board

- (1) The functions of the Board are -
- 10 (a) to market South Africa as a domestic and international tourist destination;
- (b) to market South African tourism products and facilities internationally and domestically;
- (c) to develop and implement a marketing strategy for tourism that promotes –
- (i) the objects of this Act; and
- 15 (ii) the national tourism sector strategy.
- (d) advise the Minister on any other matter related to tourism marketing;
- (e) with the approval of the Minister, establish a National Conventions Bureau to market South Africa as a business tourism destination by-
- (i) co-coordinating bidding for international conventions;
- 20 (ii) reporting on the performance of the National Conventions Bureau; and
- (iii) liaising with other organs of state and suitable bodies to promote South Africa as a business tourism destination; and

TOURISM BILL, 2011

CHAPTER 3 . SOUTH AFRICAN TOURISM BOARD

- (f) perform any other prescribed function.
- (2) The Board must perform any function imposed upon it in accordance with a policy direction issued by the Minister and in terms of this Act.

12. Powers of Board

5 The Board may, in order to perform any function contemplated in section (11)-

- (a) with the approval of the Minister open and operate offices within or outside of South Africa which may be necessary or advisable for the effective performance of its functions;
- (b) with the approval of the Minister, granted with the concurrence of the Cabinet member responsible for finance, borrow money from a money lending institution in
10 the Republic;
- (c) insure the Board against-
 - (i) any loss, damage or risk;
 - (ii) any liability it may incur in the application of this Act;
- (d) employ persons who are necessary for the exercise of the powers, the performance of
15 the functions and carrying out the duties of the Board;
- (e) perform legal acts, including acts in association with or on behalf of any other person or organ of state; and
- (f) conclude agreements with organs of state and other persons.

20 13. Delegation of Powers and Functions

- (1) The Board may in writing and subject to such conditions as it may determine, delegate any of its powers or functions in terms of this Act -
 - (a) to any committee of the Board;

TOURISM BILL, 2011

CHAPTER 3 SOUTH AFRICAN TOURISM BOARD

- (b) to an employee of the Board; or
- (c) with the concurrence of the Minister, to any other suitable body.

(2) A delegation under subsection (1) -

- (a) does not divest the Board of its responsibility;
- 5 (b) does not prevent the exercise of the function or the performance of the power by the Board itself, which may at any time review, amend or set aside any decision made under the delegation; and
- (c) may be revoked by the Board at any time.

14. Composition of Board

- 10 (1) The Board consists of at least 9 and not more than 13 members appointed by the Minister on the basis of their knowledge, experience or qualifications relating to the functions of the Board.
- (2) The Minister may appoint one officer of the Department to represent the Department on the Board.
- 15 (3) When appointing the members of the Board, the Minister must strive to ensure that in its composition, the Board is broadly representative of society, with due regard to race, gender and disability.
- (4) Before appointing the members of the Board, the Minister must by notice in the *Gazette* and in two newspapers published and circulating nationally –
- 20 (a) invite nominations for membership of the Board; and
- (b) publish the names of persons appointed as members of the Board in terms of subsection (1) and the dates of commencement of their terms of office.
- (5) The notice contemplated in subsection (4) must specify a period of at least 30 days for nominations to be submitted to the Minister.

TOURISM BILL, 2011

CHAPTER 3 . SOUTH AFRICAN TOURISM BOARD

- (6) The Minister shall appoint one member of the Board as the chairperson and another as deputy chairperson of the Board from amongst the members appointed in terms of section 14(1).

15 Term of office of members of Board

- 5 (1) Members of the Board hold office for a period of 3 years from the date of their appointment by the Minister.
- (2) Any person whose period of office has expired shall be eligible for reappointment.
- (3) Despite subsections (1) and (2), the Minister may, by notice in the *Gazette*, extend the period of office of all members of the Board for a maximum period of 12 months.

10

16. Disqualification from membership of Board

- (1) A person may not be appointed as a member of the Board if that person -
- (a) is not a South African citizen and ordinarily resident in the Republic;
- (b) is an un-rehabilitated insolvent;
- 15 (c) is disqualified under any law from practising that person's profession;
- (d) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and sentenced to imprisonment without the option of a fine or, in the case of fraud, any other offence involving dishonesty or any sexual offence, to a fine or imprisonment or both;
- 20 (e) subject to subsection (2), has been convicted of an offence in a foreign country and sentenced to imprisonment without the option of a fine or, in the case of fraud, any other offence involving dishonesty or any sexual offence, to a fine or imprisonment or both;

TOURISM BILL, 2011

CHAPTER 3 SOUTH AFRICAN TOURISM BOARD

- (f) has at any time been removed from an office of trust on account of breach of fiduciary duty; or
- (2) An offence contemplated in subsection (1) (e) must constitute an offence under South African law.

5

17. Vacation of office and filling of vacancies

- (1) A member of the Board must vacate office if the member-
 - (a) resigns by written notice addressed and delivered to the Minister and to the Chairperson of the Board;
 - 10 (b) ceases to hold any qualification necessary for that member's appointment to the Board;
 - (c) is declared by a competent court to be of unsound mind or mentally disordered; or
 - (d) is removed from office by the Minister-
 - (i) in the public interest and for just cause; and
 - 15 (ii) after consulting the Board.

- (2) If for any reason the office of a member of the Board becomes vacant the Minister may appoint any person as a member of the Board for the unexpired portion of the period of the office concerned.

- (3) The Minister may on good cause shown dissolve the Board by way of notice in the *Gazette* and appoint a new Board in accordance with section 14.

20

- (4) If the Board is dissolved in terms of subsection (3) the Minister may, in her or his discretion, defer the reconstitution of the Board and, in the notice by which the Minister has so dissolved the Board or by any subsequent notice in the *Gazette*,

TOURISM BILL, 2011

CHAPTER 3 : SOUTH AFRICAN TOURISM BOARD

appoint one or more persons, on such conditions as the Minister may deem necessary, to manage the affairs of the Board until the appointment of the new Board.

18. Remuneration of members of the Board

A member of the Board, who is not in the full-time employment of the State, may be paid the remuneration and allowances determined by the Minister with the approval of the Cabinet member responsible for finance.

19. Board meetings

(1) The Board must hold at least 4 ordinary meetings each year.

(2) The chairperson of the Board-

(a) may convene a special meeting of the Board; and

(b) must convene a special meeting within 14 days of receiving a written request to do so, signed by a majority of the members.

(3) The request referred to in subsection (2) (b) must clearly state the reason for the request and only those matters may be discussed at the special meeting.

(4) The Minister may request a meeting with the Board at any time, should the need arise.

(5) If the chairperson and deputy-chairperson are not present, the members present must appoint another member to preside at the meeting.

(6) At a meeting, a majority of the members present constitutes a quorum.

(7) A decision of the majority of the members present at any quorate meeting constitutes a decision of the Board and in the event of an equality of votes; the chairperson has a casting vote in addition to a deliberative vote.

(8) A decision taken by a majority of members present at a quorate meeting, or an act performed in terms of such a decision, is not invalid merely by reason of-

TOURISM BILL, 2011

CHAPTER 3 SOUTH AFRICAN TOURISM BOARD

- (a) a casual vacancy on the Board; or
- (b) the fact that any person not entitled to sit as a member of the Board, participated at a meeting at the time the decision was taken.

20. Conduct of meetings

- 5 (1) The Board may, by resolution, make rules to further regulate its proceedings.
- (2) Minutes of the proceedings of every meeting of the Board must be-
 - (a) recorded and kept in a manner that cannot be altered or tempered with; and
 - (b) submitted to the next meeting of the Board for consideration and, if adopted, signed by the chairperson.
- 10 (3) The Board may-
 - (a) permit members to participate in a particular meeting by telephone via audio-visual technology and a member who participates in this manner is regarded as being present at the meeting; and
 - (b) invite a person to attend a meeting for the purpose of advising or informing the
- 15 Board on any matter.

21. Resolution without meeting

- (1) The Board may adopt a resolution without a meeting if at least a majority of the members indicate their support for the resolution in accordance with a procedure previously established by the Board.
- 20 (2) A resolution in terms of subsection (1)-
 - (a) has the same status as if it was adopted at a meeting; and
 - (b) must be regarded as having been adopted on a day determined in accordance with the procedure contemplated in subsection (1).

TOURISM BILL, 2011

CHAPTER 3 : SOUTH AFRICAN TOURISM BOARD

22 Funds of the Board

- (1) The funds of the Board consist of -
- (a) monies appropriated by Parliament for that purpose;
 - (b) any money paid to the Board for services provided in terms of this Act;
 - 5 (c) any money received by way of donation; and
 - (d) any other amounts to which the Board is or may become entitled.
- (2) The Board may use its funds for defraying expenditure incurred in exercising its powers and performing its functions under this Act.
- (3) The Board may invest any of its funds not immediately required -
- 10 (a) subject to any investment policy that may be prescribed in terms of the Public Finance Management Act; and
 - (b) in such a manner that the Minister may approve.
- (4) The Board may charge and recover fees for any services rendered.

23. Financial accountability

- 15 The Board must be managed in accordance with the Public Finance Management Act.

24. Committees of Board

The Board may establish any committees to assist the Board in the performance of its duties and may determine their composition and terms of reference.

25. Appointment of Chief Executive Officer

- 20 (1) The Board, acting with the concurrence of the Minister, must appoint a suitably qualified person as the chief executive officer.

TOURISM BILL, 2011

CHAPTER 3 SOUTH AFRICAN TOURISM BOARD

(2) The chief executive officer:

- (a) is an employee of the Board and is accountable to the Board;
- (b) is appointed for a period not exceeding 5 years; and
- (c) may be reappointed by the Board with the concurrence of the Minister, but may not serve for more than 2 consecutive terms.

(3) The chief executive officer holds office on terms and conditions, including those relating to remuneration and allowances as the Board may determine in accordance with a policy approved by the Minister, acting in concurrence with the Cabinet member responsible for finance.

(4) The chief executive officer is responsible for the efficient management of the business and affairs of the Board and must perform any function delegated by the Board.

26 Employment contract and performance agreement

(1) The Board and the chief executive officer must conclude a written contract of employment which must incorporate in an appropriate form the provisions of section 57 of the Public Finance Management Act.

(2) The Board and the chief executive officer must conclude a performance agreement -

(a) as soon as reasonably practicable but within 3 months after the appointment of the chief executive officer; and

(b) thereafter, annually within 1 month of the commencement of each financial year.

(3) The performance agreement must include-

(a) measurable performance objectives and targets that must be met by the chief executive officer, and the time frames within which those performance objectives and targets must be met;

TOURISM BILL, 2011

CHAPTER 3 : SOUTH AFRICAN TOURISM BOARD

- (b) standards and procedures for evaluating the performance of the chief executive officer and intervals for evaluation; and
- (c) the consequences for substandard performance.

27. Resignation and dismissal of Chief Executive Officer

- 5 (1) The Board, after giving the chief executive officer an opportunity to be heard and acting in concurrence with the Minister, may dismiss the chief executive officer for any lawful reason.
- (2) The chief executive officer may resign by notice in writing to the Minister and the Board as determined in the contract of employment referred to in section 26.
- 10 (3) If the chief executive officer is for any reason absent or is unable to carry out her or his duties, or if a vacancy in the office of the chief executive officer exists, the Board may, with the concurrence of the Minister, appoint any person who meets the requirements determined in subsection 25(1) to act as chief executive officer until the chief executive officer is able to resume those functions or until the vacant position is
- 15 filled.
- (4) An acting chief executive officer:
 - (a) may exercise all the powers and must perform all the duties of the chief executive officer; and
 - (b) is appointed on terms and conditions, including those relating to remuneration and
 - 20 allowances as the Board may determine in accordance with the policy set out in section 25(3).

28. Appointment of Staff

- 25 (1) The Board must determine an employment and remuneration policy for the South African Tourism Board with the approval of the Minister, acting with the concurrence of the Cabinet member responsible for finance.
- (2) The chief executive officer:

TOURISM BILL, 2011

CHAPTER 3 TOURISM PROTECTION

- (a) after consulting the Board, must determine a staff establishment necessary to assist the Board in carrying out its functions; and
- (b) appoint persons in posts on the staff establishment.
- 5 (3) An employee is employed subject to the terms and conditions determined by the chief executive officer in accordance with the employment policy set out in subsection (1).

CHAPTER 5**TOURISM PROTECTION****29 Appointment of Tourism Protector**

- 10 The Minister may designate a suitably qualified officer of the Department as the Tourism Protector.

30. Accreditation of scheme

- 15 (1) The Tourism Protector may on own initiatives or in response to a proposal from persons conducting business within a particular tourism sector, recommend to the Minister the accreditation of a particular scheme or arrangement established by or for a particular tourism sector to resolve tourist complaints.
- (2) The Tourism Protector may only make the recommendation after:
- (a) consulting with persons conducting business within the particular tourism sector;
- (b) publishing the proposed scheme for public comments;
- 20 (c) considering any comments made during consultations and public comments; and
- (d) making any revisions to the proposed scheme as published for comments.
- (3) A scheme must:
- (a) be consistent with the objects of this Act;

TOURISM BILL, 2011

CHAPTER 3 : TOURISM PROTECTION

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- (b) be consistent with the purpose and policies of the National Consumer Protection Act; and
- (c) comply with any requirements prescribed by the Minister.
- (4) The Minister by notice in the Gazette may-
- 5 (a) accredit a scheme on the recommendation of the Tourism Protector in terms of subsection (1); or
- (b) amend or withdraw all or part of an accredited scheme on the recommendation of the Tourism Protector.
- (5) The Tourism Protector –
- 10 (a) must monitor the effectiveness of a scheme; and
- (b) may reasonably require any accredited scheme to provide information necessary for the purposes of monitoring in terms of paragraph (a).

31. Powers and Functions of the Tourism Protector

- (1) Upon receiving a tourist complaint, the Tourism Protector may –
- 15 (a) refer the complaint to a scheme or arrangement established by or for a particular tourism sector to resolve tourist complaints for the purpose of resolving the complaint;
- (b) refer the complaint to a provincial consumer protection authority or a consumer court if the Tourism Protector believe that the issues raised by the complaint can be dealt with expeditiously and fully by such referral;
- 20 (c) refer the complaint to the National Prosecuting Authority, if the complaint alleges that a person has committed an offence;
- (d) refer the complaint to the equality court if the complaint alleges that a person had discriminated a tourist unfairly; or

TOURISM BILL, 2011

CHAPTER 3 TOURIST GUIDES

- (e) refer the complaint to another regulatory authority with jurisdiction over the matter.

CHAPTER 6**TOURIST GUIDES****5 32. National Registrar of Tourist Guides**

- (1) The Minister shall appoint a suitably qualified officer in the Department as the National Registrar of Tourist Guides and publish his or her name in the Government Gazette.
- (2) The National Registrar shall-
- 10 (a) maintain a central database of all tourist guides registered by Provincial Registrars in terms of section 34;
- (b) prepare a code of conduct and ethics for tourist guides in accordance with section 36;
- (c) hear and determine appeals lodged under section 40;
- (d) monitor trends in the tourist guiding sector by conducting research and analysis;
- 15 (e) publish or otherwise disseminate information about tourist guides, associations of tourist guides and any other information to promote and develop the tourist guiding sector nationally;
- (f) liaise with the Board, Provincial Registrars, tourist guides, associations of tourist guides, education and training authorities, the South African Police Services, the
- 20 Consumer Council, the provincial consumer affairs bodies and any other person or organisation to-
- (i) facilitate the growth and development of the tourist guiding sector;
- (ii) improve and maintain standards in the tourist guiding sector; and
- (iii) co-operate on matters of mutual interest in the tourist guiding sector.

TOURISM BILL, 2011

CHAPTER 3 : TOURIST GUIDES

33. Provincial Registrars of Tourist Guides

(1) The Member of the Executive Council responsible for tourism in each province shall appoint a suitably qualified officer in the province as the Provincial Registrar of Tourist Guides for that province and publish his or her name in the Provincial Gazette.

(2) A Provincial Registrar shall-

(a) for the purposes of section 34, keep a register of tourist guides within the province concerned and shall-

(i) record in the register the prescribed particulars with regard to each registered tourist guide;

(ii) delete from the register the particulars of any tourist guide whose registration has been withdrawn;

(iii) make the prescribed endorsement against the name of any tourist guide whose registration has been suspended; and

(iv) inform the National Registrar of anything done in terms of subparagraph (i), (ii) or (iii);

(b) publish or otherwise disseminate information about registered tourist guides within the province and associations of tourist guides and any other information to promote and develop the tourist guiding sector within the province;

(c) promote and develop the tourist guiding sector within the province in any manner other than as contemplated in paragraph (b);

(d) deal with complaints lodged under section 37;

(e) act in accordance with section 38 when a tourist guide becomes subject to any disqualification mentioned in section 34(3); and

(f) exercise disciplinary powers in accordance with section 39.

TOURISM BILL, 2011

CHAPTER 3 TOURIST GUIDES

- (3) The registration of a tourist guide by a Provincial Registrar in terms of subsection (2) shall be valid in all the provinces of the Republic.

34. Procedure relating to registration of tourist guides

- 5 (1) Any person who wishes to be registered as a tourist guide shall apply to any Provincial Registrar in the prescribed manner, and the application shall be accompanied by the prescribed registration fee.
- (2) No person shall be registered as a tourist guide in terms of this Act unless he or she shows proof of the competence contemplated in section 35.
- (3) No person shall be registered as a tourist guide in terms of this Act if he or she-
- 10 (a) is within the Republic or elsewhere convicted of an offence and is sentenced to imprisonment without the option of a fine;
- (b) loses his or her South African citizenship or right of permanent residence or work permit in the Republic;
- (c) has failed to pass the prescribed quality assurance process that a tourist guide shall complete not later than two years after the date of his or her last registration.
- 15 (4) If the Provincial Registrar is satisfied that the applicant complies with the competence for registration as a tourist guide and that the applicant is not subject to any disqualification mentioned in subsection (3), he or she shall register the applicant as a tourist guide.
- 20 (5) When the Provincial Registrar registers any person as a tourist guide, he or she shall issue to that person a registration certificate and a badge, which shall be in the prescribed form.
- (6) Registration as a tourist guide shall be valid for a period of 2 years, reckoned from the date of issue of the registration certificate.
- 25 (7) Any person registered as a tourist guide may before the end of the period for which he or she has been registered, apply to the Provincial Registrar on the prescribed form for the renewal of his or her registration as a tourist guide in

TOURISM BILL, 2011

CHAPTER 3 : TOURIST GUIDES

respect of the ensuing period of 2 years, and if the person so applies for the renewal of his or her registration, his or her registration shall upon the payment of the prescribed fee be renewed, unless he or she has become subject to any of the disqualifications mentioned in subsection (3) since the previous registration or renewal of registration.

- (8) If a tourist guide has since his or her registration acquired a competence contemplated in section 35 in a prescribed field of specialisation or an additional competence within a field of specialisation the Provincial Registrar shall, on the application of the tourist guide made in the prescribed manner, accompanied by the prescribed fee, issue to the tourist guide a new registration certificate reflecting that competence and also a new badge, which shall be in the prescribed form.
- (9) Subject to paragraphs (b) and (c), the Provincial Registrar may refuse to approve an application for registration as a tourist guide if the applicant's registration was withdrawn on the grounds of misconduct in terms of section 39 at any time within the period of 3 years preceding the date of application.
- (10) If the Provincial Registrar is contemplating a refusal under paragraph (a), he or she shall, by notice sent by registered post or any other effective method, inform the applicant of the possible refusal and the reason therefor and call upon the applicant to submit such representations in connection therewith as he or she may wish to make, within a period specified in the notice, which, in any case, may not be fewer than 30 days from the date of the notice.
- (11) Before the Provincial Registrar decides on an application under this subsection, he or she shall consider the representations, if any, made by the applicant in accordance with paragraph (b).

TOURISM BILL, 2011

CHAPTER 3 TOURIST GUIDES

35. Competence

The competence mentioned in section 34(2) shall be determined by the South African Qualifications Authority established by the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), in either unit standards or national qualifications, to meet the objectives of the National Qualifications Framework defined in the said Act.

36. Code of conduct and ethics

(1) The National Registrar shall in the prescribed manner, after consultation with the Member of the Executive Council referred to in section 33, the Provincial Registrars, stakeholder groupings, prepare and publish a code of conduct and ethics with which all registered tourist guides shall comply.

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

37. Complaints

(1) Any person may lodge a complaint with a Provincial Registrar if a person is acting as a tourist guide in contravention of section 41(1), (2) or (4).

(2) The Provincial Registrar shall, if the complaint discloses an offence, lay a charge with the South African Police Services.

(3) In the case of a contravention of section 41(2), the Provincial Registrar shall consider taking steps in accordance with section 38.

(4) Any person may lodge a complaint with a Provincial Registrar regarding the misconduct of a tourist guide.

(5) The Provincial Registrar shall, if the complaint discloses-

(a) a contravention of this Act or any other law constituting an offence, lay a charge with the South African Police Services and take steps in accordance with section 39;

TOURISM BILL, 2011

CHAPTER 3 : TOURIST GUIDES

(b) misconduct not constituting an offence, including a contravention of the code of conduct and ethics contemplated in section 36, take steps in accordance with section 39.

(6) Any person may lodge a complaint with a Provincial Registrar regarding a contravention of section 41(3) or (5).

(7) The Provincial Registrar shall, if the complaint discloses an offence, lay a charge with the South African Police Services.

(8) The Provincial Registrar concerned shall within 14 days report to the National Registrar in writing on the result of any case dealt with in terms of subsection (1), (2) or (3).

38. Action by Provincial Registrar regarding disqualification of tourist guide

(1) If a Provincial Registrar has reason to believe that a tourist guide has become subject to any disqualification mentioned in section 34(3), the Provincial Registrar shall by notice, sent by registered post or any other effective method, inform the tourist guide of the allegations against him or her and call upon that tourist guide to submit such representations in connection therewith as he or she may wish to make, within a period specified in the notice, which, in any case, may not be fewer than 30 days from the date of the notice.

(2) The notice shall direct the attention of the tourist guide to the possibility of his or her registration as a tourist guide being withdrawn.

(3) If the tourist guide requests the Provincial Registrar to be allowed to present his or her case personally before the Provincial Registrar, the Provincial Registrar shall grant such request.

(4) Where the tourist guide personally presents his or her case in terms of subsection (3), he or she may be assisted by an adviser of his or her choice.

(5) If, after considering the allegations against the tourist guide and his or her representations, if any, the Provincial Registrar is satisfied that one or more of the

TOURISM BILL, 2011

CHAPTER 3 TOURIST GUIDES

disqualifications mentioned in section 34(3) are applicable, the Provincial Registrar shall withdraw the person's registration as a tourist guide.

(6) The Provincial Registrar may by the notice referred to in subsection (1) suspend, for a period not exceeding 30 days, the registration of the tourist guide concerned, pending the decision of the Provincial Registrar under subsection (5), provided that before the decision to suspend the registration of the tourist guide is taken, he or she shall be afforded an opportunity to make representations to show why the registration should not be suspended.

(7) The provisions of subsections (3) and (4) are applicable to any proceedings for the suspension of the registration of a tourist guide under subsection (6).

(8) If the registration of a tourist guide is suspended in terms of subsection (6), the Provincial Registrar shall make the prescribed endorsement in the register against the name of the tourist guide.

(9) The Provincial Registrar shall cause the names of persons whose registration has been withdrawn under this section to be published in the *Government Gazette* and in at least one newspaper that circulates in the province concerned.

39. Disciplinary measures

(1) A Provincial Registrar who has reason to believe that a tourist guide is guilty of misconduct by-

(a) contravening a provision of this Act or any other law;

(b) contravening the code of conduct and ethics contemplated in section 36; or

(c) failing to comply with any condition subject to which he or she has been registered, shall institute an investigation or cause an investigation to be instituted and, if satisfied that there is substance to such belief, by notice, sent by registered post or any other effective method, inform the tourist guide of the charge against him or her and call upon that tourist guide to submit such representations in connection therewith as he or she may wish to make, within a period specified in the notice, which, in any case, may not be fewer than 30 days from the date of the notice.

TOURISM BILL, 2011

CHAPTER 3 : TOURIST GUIDES

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- (2) The notice shall direct the attention of the tourist guide to the possible penalties mentioned in subsection (5).
- (3) If the tourist guide requests the Provincial Registrar to be allowed to present his or her case personally before the Provincial Registrar, the Provincial Registrar shall grant such request.
- (4) Where the tourist guide personally presents his or her case in terms of subsection (3), he or she may be assisted by an adviser of his or her choice.
- (5) If, after considering the charge against the tourist guide and his or her representations, if any, the Provincial Registrar is satisfied that the tourist guide is guilty of the charge of which he or she is accused, the Provincial Registrar may-
- (a) issue a warning to the tourist guide;
- (b) impose the prescribed fine, which may not exceed R1 000, on the tourist guide; or
- (c) withdraw the registration as a tourist guide for such period, not exceeding five years, as the Provincial Registrar may determine.
- (6) The Provincial Registrar may, by the notice referred to in subsection (1), suspend, for a period not exceeding 30 days, the registration of the tourist guide concerned, pending the decision of the Provincial Registrar under subsection (5): Provided that before the decision to suspend the registration of the tourist guide is taken, he or she shall be afforded an opportunity to make representations to show why the registration should not be suspended.
- (7) The provisions of subsections (3) and (4) are applicable to any proceedings for the suspension of the registration of a tourist guide under subsection (6).
- (8) If the registration of a tourist guide is suspended in terms of subsection (6), the Provincial Registrar shall make the prescribed endorsement in the register against the name of the tourist guide.

TOURISM BILL, 2011

CHAPTER 3 TOURIST GUIDES

40. Appeals and reviews

- 5 (1) Any person who considers himself or herself aggrieved by a decision of a Provincial Registrar, may appeal against the decision in question to the National Registrar in the prescribed manner, within the prescribed period and upon payment of the prescribed fee.
- (2) If the appellant requests the National Registrar to be allowed to argue his or her appeal personally before the National Registrar, the National Registrar shall grant such request.
- 10 (3) Where the appellant personally argues his or her appeal in terms of paragraph (2), he or she may be assisted by an adviser of his or her choice.
- (4) The National Registrar may confirm, set aside or amend the decision.
- (5) The power to determine an appeal in terms of this section is not restricted to the merits of the decision appealed against, but includes the power to review any irregularity alleged regarding the decision.

41. Prohibitions

- 15 (1) No person who is not a registered tourist guide or whose registration as a tourist guide has been suspended or withdrawn, may for reward, whether monetary or otherwise, act as a tourist guide.
- 20 (2) No person who has become subject to any disqualification mentioned in section 34(3) may for reward, whether monetary or otherwise, continue to act as a tourist guide.
- 25 (3) No person, company or close corporation may for the promotion of any business undertaking conducted by him, her or it, employ or continue to employ as a tourist guide any person who is not a registered tourist guide or whose registration as a tourist guide has been suspended or withdrawn or who has become subject to a disqualification contemplated in subsection (2).

TOURISM BILL, 2011

CHAPTER 7 · GENERAL

- (4) No tourist guide may drive a vehicle with a carrying capacity of more than 10 persons and at the same time act as a tourist guide.
- (5) No person, company or close corporation employing a tourist guide may allow that tourist guide to drive a vehicle in contravention of subsection (4).

5 **42. Disputes**

- (1) Where a dispute or disagreement arises between the National Registrar and a Provincial Registrar concerning the performance of any of the functions contemplated in section 33, 34, 36, 37, 38, 39 or 40, the matter shall be referred to the Director-General for arbitration and his or her decision shall be final.
- 10 (2) The Director-General shall make a decision within 60 days after the date on which the matter is referred to him or her in terms of subsection (1).

CHAPTER 715 **GENERAL****43. Offences and penalties**

- (1) Any person who
 - (a) professes to be a member of a grading and classification scheme referred to in section 9, while he or she is not such a member-
 - 20 (b) Contravenes section 41;
 - (c) uses in relation to any tourism services and facilities offered by him any depiction or depictions of a star of stars, unless he is a member of a scheme referred to in paragraph (a);

TOURISM BILL, 2011

CHAPTER 7 GENERAL

- (d) uses in relation to any tourism services and facilities by him an insignia depicting a number of stars which is greater than the number which he is authorized to depict in terms of such tourism services and facilities;
- (e) knowingly makes or assists in providing information or any documents as required by this Act, that contains an untrue statement of a material fact;
- (f) knowingly omits to state a material fact in or on any of the documents referred to in paragraph (e)

is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 1 year.

- (2) any company or close corporation that contravenes section 41(3) or (5) shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000.

44. Delegation of powers and functions

- (1) The Minister may in writing and subject to such conditions as the Minister may determine, delegate to the Director-General, any other officer of the Department or an organ of state any power or duty conferred on the Minister by this Act.
- (2) The Minister may not delegate the power:
- (a) to make a regulation;
- (b) to appoint a member of the Board.
- (3) The Director-General may in writing and subject to such conditions as the Director-General may determine, delegate to any other officer of the Department, any power or duty conferred on the Director-General by this Act or delegated to the Director-General under subsection (1).
- (4) Any delegation in terms of subsection (1) or (2) –
- (a) must be in writing;

TOURISM BILL, 2011

CHAPTER 7 : GENERAL

- (b) does not prevent the person who made the delegation from exercising the power or performing the duty so delegated; and
- (c) may at any time be withdrawn by that person.

45. Regulations

- 5 (1) The Minister may by notice in the *Gazette*, make regulations –
- (a) with regards to tourism information centres in the areas including –
- (i) the means of collecting information, the scope and content of the information, the collation and updating of information by visitor information centres.
- (ii) business and management;
- 10 (iii) business hours;
- (iv) centre facilities;
- (v) staff and training;
- (vi) information and displays; and
- (vii) signage and identification.
- 15 (b) the manner procedure for lodging complaints with the Tourism Protector;
- (c) any matter which may or must be prescribed under this Act; and
- (d) generally, any matter that the Minister considers necessary or expedient in order to achieve the objects of this Act.
- 20 (2) A regulation made under this section may, for any contravention thereof, or failure to comply therewith, prescribe a fine or imprisonment of a period not exceeding 12 months or to both such fine and imprisonment.

TOURISM BILL, 2011

TRANSITIONAL PROVISIONS

46. Repeal of laws

The Tourism Act 72 of 1993 is hereby repealed.

47. Transitional arrangements

The transitional arrangements in Schedule 1 must be read and applied as substantive provisions of this Act.

48. Short title and commencement date

(1) This Act-

(a) is called the Tourism Act, 2011; and

(b) commences on a date to be determined by the President by proclamation in the Gazette

(2) Different dates may be determined under subsection (1) (b) with respect to different provisions of this Act.

SCHEDULE 1**TRANSITIONAL PROVISIONS****1 South African Tourism Board**

(1) Despite the repeal of the Tourism Act 72 of 1993 –

(a) the South African Tourism Board continues to perform its functions under that Act until a date determined by the Minister by notice in the *Gazette*;

(b) the members of the South African Tourism Board in office on commencement of this Act shall remain in office and must perform their functions until a date determined by the Minister by notice in the *Gazette*;

TOURISM BILL, 2011

SCHEDULE 1 : TRANSITIONAL PROVISIONS

- (c) anything done in terms of the Tourism Act, 1993 by the South African Tourism Board shall on commencement of this Act be deemed to have been done in terms of this Act.

2 Grading and classification schemes

- (1) Any grading and classification scheme established by the Minister under sections 18 and section 19 of the Tourism Act 72 of 1993 must be regarded as a grading and classification system developed by the Minister as contemplated in section 9 of this Act.
- (2) Any schemes established in respect of tourism services and products, any basis of differentiation applied, classification of tourism services and products into different classes in terms of section 18 and 19 of the Tourism Act, must be regarded as a scheme established in respect of tourism services and products, basis of differentiation applied and classification of tourism services and product into different classes in terms of this Act.

3. Tourist Guides

- (1) Any registration as a tourist guide and application in terms of section 21A of the Tourism Act, 1993, appeal complaint, action by Provincial Registrar regarding disqualification of tourist guide, disciplinary measure, appeal and review or other proceedings commenced prior to the commencement date of this Act may be continued with as if they had been instituted in terms of this Act.
- (2) The National Registrar and the Provincial Registrars appointed in terms of section 20 and 21 of the Tourism Act, 1993 must be regarded as the National and Provincial Registrars in terms of section 32 and 33 of this Act.
- (3) Any code of conduct and ethics published in terms of section 21 of the Tourism Act must be regarded as a code of conduct and ethics published in terms of this Act.

TOURISM BILL, 2011

SCHEDULE 1 TRANSITIONAL PROVISIONS

3 Regulations under Tourism Act 72 of 1993

Any regulations made by the Minister under section 26 of the Tourism Act 72 of 1993 remain in force and may be amended or repealed under section 40.
