

The Tourist Enhancement Act
[2004]

ARRANGEMENT OF SECTIONS
27 of 2004

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1. Short title.

1. This Act may be cited as the Tourism Enhancement Act, 2004.

2. Interpretation.

2. In this Act-

"aircraft" means commercial or private aircraft;

"authorized officer" means an officer authorized by the Minister to carry out a function under section 6(1)(b);

"Board" means the Board of Management of the Fund, established under section 11;

"carrier" means-

- (a) any person (whether incorporated or not) transporting passengers by ship or aircraft on any voyage or flight to or from Jamaica;
- (b) the master or other person in command or control of the transporting ship or aircraft;
- (c) the agent in Jamaica of any person referred to in paragraph (a); and
- (d) if the person referred to in paragraph (a) or the agent referred to in paragraph (c) is a corporation, every director and manager of that corporation;

"Fund" means the Tourism Enhancement Fund established under section 9;

"ship" means a steamship or any other ship, boat, lighter or other craft of any description used for transport by water;

"tourism enhancement fee" means the fee imposed by section 4; and

"traveller" means a person who travels to Jamaica and proposes to return, by sea or by air, to any place outside Jamaica.

3. Principal objects of Act.

3. The principal objects of this Act are to-

- (a) implement projects and programmes which impact on the growth and development of the tourism sector;
- (b) encourage better management of environmental resources in Jamaica;
- (c) enhance the overall tourist experience in Jamaica; and
- (d) provide for the sustainable development of the tourism sector.

4. Tourism Enhancement Fee.

4.-(1) Subject to the provisions of this Act, there shall be paid by each traveller, a tourism enhancement fee of-

- (a) US\$10 or the Jamaican dollar equivalent, in respect of travel by air;
- (b) US\$2 or the Jamaican dollar equivalent in respect of travel by sea.

(2) The fees specified in subsection (1) may, from time to time, be varied by the Minister by order subject to affirmative resolution.

(3) A tourism enhancement fee shall not be payable by travellers who-

- (a) are under the age of 2 years;

- (b) enjoy diplomatic immunities or privileges;
- (c) are travelling by air destined for some other place outside Jamaica and who are in transit in Jamaica for 24 hours or less;
- (d) are crew members of a commercial airline or ship and who are on duty; or
- (e) fall within a category of travellers prescribed by the Minister.

5. Power to waive, remit or refund fee.

5. The Minister may, upon the application made by or on behalf of any person who has paid, or is liable for payment of a tourism enhancement fee, waive, remit or refund such fee in whole or in part if, in the circumstances of the case, he deems it expedient so to do, and any such waiver, remission or refund may be subject to such special conditions as may be imposed by the Minister.

6. Duty of carrier to collect fee.

6.-(1) Except as may otherwise be provided by an order made pursuant to section 8, the carrier shall upon issue of a return ticket or other document to a traveler-

- (a) collect from the traveller, the applicable tourism enhancement fee;
 - (b) pay over the amount collected to an authorized officer within forty-five days.
- (2) Any carrier who fails to collect any tourism enhancement fee which he is required by subsection (1) to collect shall, notwithstanding such failure, pay the amount of such fee to the authorized officer.
- (3) Every carrier shall, in relation to the tourism enhancement fee, keep such records and furnish such returns in such form and to such persons as may be prescribed.

7. Payment of fee into Fund.

7. Moneys collected by way of tourism enhancement fees shall be paid into the Fund.

8. Ministerial order.

8.-(1) Subject to the provisions of this section, the Minister may by order provide that in lieu of the provisions of section 6, the provisions of the order shall apply in relation to the payment and collection of a tourism enhancement fee.

- (2) An order made pursuant to subsection (1) may-
 - (a) be made to apply generally to the collection of the tourism enhancement fee;
 - (b) impose on the carrier a duty to ensure that every traveller leaving Jamaica from a specified place is in possession of a receipt or such other document issued in respect of the payment of a tourism enhancement fee; and

(c) contain such consequential, supplementary or ancillary provisions as maybe necessary or desirable to give proper effect to the provisions of the order.

(3) An order made pursuant to subsection (1) shall be subject to affirmative resolution.

9. Establishment of the Tourism Enhancement Fund.

9.-(1) There is hereby established for the purposes of this Act, a body to be known as the Tourism Enhancement Fund which shall be a body corporate to which section 28 of of the Interpretation Act shall apply.

(2) The provisions of the First Schedule shall have effect as to the constitution of the Fund otherwise in relation thereto.

10. Functions of the Fund.

10. The Fund shall perform such functions as may be necessary to give effect to the objects specified in section 3 and, without prejudice to the generality of the foregoing, such functions shall include-

(a) coordinating the Master Plan for Sustainable Tourism Development;

(b) administering and controlling the assets of the Fund;

(c) utilizing the revenues received by the Fund to achieve the objects of this Act;

(d) approving and monitoring the implementation of tourism projects and programmes;

(e) collecting the tourism enhancement fee; (f) investing the moneys of the Fund;

(g) collaborating with other agencies to achieve growth and development in areas of the tourism sector including heritage, entertainment, culture, environment and community-based tourism;

(h) doing or causing to be done such other things as are necessary or expedient for or in connection with the proper performance of the functions of the Fund.

11. Establishment of Board of Management.

11.-(1) There shall be established for the purposes of this Act, a Board of Management of the Fund which shall, subject to the provisions of this Act, be responsible for the policy and general administration of the affairs of the Fund.

(2) The provisions of the Second Schedule shall have effect as to the constitution of the Board and otherwise in relation thereto.

12. Policy directions.

12. The Minister shall give to the Board such directions as he may consider necessary for the achievement of the following objectives-

(a) encouraging sustainable development of the Jamaican tourism sector;

(b) promoting the generation of growth in the tourism sector;

- (c) enhancing the experience of tourists visiting Jamaica;
- (d) facilitating greater linkages with other sectors in the economy;
- (e) encouraging better management of environmental resources in Jamaica.

13. Implementation of projects, etc.

13. The Board shall review, approve, finance and monitor the implementation of projects and programmes which enhance the growth and development of the tourism sector.

14. Resources of the Fund.

14. The financial resources of the Fund shall consist of-

- (a) such moneys as may from time to time be placed at its disposal for the purposes of this Act by Parliament;
- (b) the tourism enhancement fee;
- (c) moneys received from loans or otherwise;
- (d) moneys earned by or arising from investments made by or on behalf of the Fund;
- (e) such moneys and other property as may lawfully be paid to, or become vested in, the Fund in respect of any matters incidental to its functions; and
- (f) any other moneys payable to the Fund.

15. Application of revenue.

15. The revenue and financial resources of the Fund shall be applied for the purposes authorized by this Act or any other law in relation to its functions and, without prejudice to the generality of the foregoing, such revenue and financial resources shall, so far as practicable, be used-

- (a) to implement projects and programmes which impact on the growth and development of the tourism sector;
 - (b) for the administration and management of the Fund;
 - (c) for other purposes conducive to the sustainable development of the tourism sector,
- on such terms and conditions as are specified in regulations made under section 24.

16. Borrowing powers.

16.-(1) Subject to subsection (2), the Fund may borrow sums required by it for meeting any of its obligations or discharging any of its functions.

(2) The power of the Fund to borrow shall be exercisable only with the approval of the Minister responsible for finance, as to the amount, the terms and conditions and as to the source of borrowing that may be effected.

(3) An approval given in respect of any of the purposes of this section may be either general or limited to a particular borrowing or otherwise and may be either unconditional or subject to conditions.

17. Power to invest moneys.

17. All moneys of the Fund not immediately required to be expended in meeting any of its obligations or discharging any of its functions may be invested in such securities as may be approved either generally or specifically by the Minister after consultation with the Minister responsible for finance and the Fund may, with the approval of the Minister after consultation with the Minister responsible for finance, sell all or any of such securities.

18. Guarantee by Minister responsible for finance for borrowing by Fund and repayment of sums issued to meet guarantees.

18.-(1) The Minister responsible for finance may guarantee, in such manner and on such conditions as he thinks fit, with the approval of the House of Representatives, the repayment of the principal and interest on any authorized borrowings of the Fund.

(2) Where the Minister responsible for finance is satisfied that there has been default in the repayment of any principal moneys or interest guaranteed under the provisions of this section, he shall direct the repayment out of the Consolidated Fund and assets of Jamaica of the amount in respect of which there has been such default.

(3) The Fund shall make to the Accountant-General, at such times and in such manner as the Minister may direct, payments of such amounts as may be so directed in or towards repayment of any sums issued in fulfillment of any guarantee given under this section, and payments of interest on what is outstanding for the time being in respect of any sums so issued at such rate as the Minister may direct, and different rates of interest may be directed as respects different sums and as respects interest for different periods.

19. Accounts and audit.

19.-(1) The Fund shall keep proper accounts and other records in relation to its business and shall prepare annually a statement of accounts in a form satisfactory to the Minister, being a form which complies with established accounting principles.

(2) The accounts of the Fund shall be audited by an auditor appointed annually by the Fund and approved by the Minister.

(3) As soon as the accounts of the Fund have been audited, the Board shall send the statement of its accounts referred to in subsection (1) to the Minister, together with a copy of any report made by the auditor on that statement or on the accounts of the Fund.

20. Annual Report.

20.-(1) The Board shall, within six months after the end of each financial year, cause to be made and shall submit to the Minister a report-

(a) dealing generally with the proceedings and activities of the Fund during the preceding financial year; and

(b) containing-

(i) a full statement showing the administration of the assets of the Fund and containing full particulars of all transactions connected therewith; and

(ii) the operational plans within which the Fund proposes to carry out its functions.

(2) The Minister shall cause a copy of the report to be laid on the Table of the House of Representatives and of the Senate.

21. Exemption from income tax.

21. The income of the Fund shall be exempt from the payment of income tax.

22. Estimates of Revenue and Expenditure.

22. The Fund shall, in each financial year, before a date specified by the Minister, submit to the Minister for his approval estimates of income and expenditure of the Fund for the ensuing financial year.

23. Offences.

23.-(1) Any person who, for the purpose of evading the payment by himself or by any other person of a tourism enhancement fee, or knowingly makes any false statement or false representation commits an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding six months.

(2) If any carrier fails or refuses to pay the tourism enhancement fee in accordance with this Act or any regulations made hereunder, the amount of the fee, administrative fees relating thereto or any interest thereon shall be recoverable by the Fund as a civil debt in a Resident Magistrate's Court notwithstanding any limitation as to the amount recoverable under the Judicature (Resident Magistrates) Act.

(3) Any carrier which fails to comply with section 6(3), commits an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding six months.

24. Regulations.

24.-(1) The Minister may make regulations forgiving effect to the provisions and purposes of this Act.

(2) Regulations made under subsection (1) shall be subject to affirmative resolution.

FIRST SCHEDULE

(Section 9(2))

The Tourism Enhancement Fund

1.-(1) The seal of the Fund shall be kept in the custody of the chairman or of any officer of the Fund authorized by the Board in that behalf, and shall be affixed to instruments pursuant to a resolution of the Board in the presence of the chairman or any other member duly authorized to act in that behalf, and the secretary.

(2) The seal of the Fund shall be authenticated by the signature of the secretary or any other member of the Board duly authorized to act in that behalf.

2. (1) Subject to sub-paragraph (2) the Fund shall appoint and employ at such remuneration and on such terms and conditions as it thinks fit an Executive Director, a Secretary and such other officers and servants as it thinks necessary for the proper carrying out of the provisions of this Act.

(2) The Minister shall give prior approval to-

(a) any salary in excess of the prescribed rate per annum assigned to any post;

(b) any appointment made to any post to which a salary in excess of the prescribed rate is assigned;

(c) payments under any pension scheme or for the payment of any gratuity or other like benefit to, or in respect of the service of, any officer or servant.

(3) In subparagraph (2), the prescribed rate means a rate of two million dollars or such higher rate as the Minister may, by order prescribe.

3. All documents other than those required by law to be under seal made by, and all decisions of, the Fund may be signified under the hand of the Chairman or any member of the Board authorized to act in that behalf or an officer of the Fund so authorized.

4. The expenses of the Fund (including the remuneration of the staff thereof and members of the Board) shall be defrayed out of the income of the Fund or from sums provided for the purpose by Parliament.

SECOND SCHEDULE

(Section 11 (2))

The Board of Management of the Fund

1.-(1) The Board shall consist of such members not being less than nine nor more than thirteen as the Minister may from time to time appoint and who appear to the Minister to have ability and experience in matters relating to tourism and finance.

(2) In particular, the Board shall specifically include representatives from-

- (a) the Ministry responsible for tourism;
- (b) the Jamaica Tourist Board;
- (c) the Tourism Product Development Company;
- (d) the Jamaica Hotel and Tourist Association;
- (e) the Association of Jamaica Attractions Limited; and
- (f) the Ministry responsible for finance.

(3) The Executive Director of the Fund shall be an ex officio member of the Board.

2.-(1) The Minister shall appoint a chairman and a deputy chairman from among the members of the Board.

(2) In the case of the absence or inability to act of the chairman, the deputy chairman shall exercise the functions of the chairman.

(3) In the case of the absence or inability to act at any meeting of both the chairman and the deputy chairman the remaining members shall elect one of their number to act as chairman of that meeting.

3. Subject to the provisions of this Schedule, a member of the Board shall hold office for a period not exceeding three years and each such member shall be eligible for re-appointment.

4. The Minister may appoint any person to act in the place of any member of the Board in the case of the absence or inability to act of such member.

5.-(1) Any member of the Board other than the chairman may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the chairman, and from the date of the receipt by the Minister of such instrument, such member shall cease to be a member of the Board.

(2) The chairman may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt of such instrument by the Minister.

6. The Minister may at any time revoke the appointment of any member if he considers it expedient so to do.

7. The names of all members of the Board as first constituted and every change in membership thereof shall be published in the Gazette.

8.-(1) The Minister may, on the application of any member of the Board, grant leave of absence to such member.

(2) The appointment of a member shall be regarded as terminated if, without the grant of leave of absence, that member is absent from three consecutive meetings of the Board.

9.-(1) The Board shall meet at such times as may be necessary or expedient for the transaction of business (but at least six meetings shall be held within each financial year) and such meetings shall be held at such places and times and on such days as the Board shall determine.

(2) The chairman may at any time call a special meeting of the Board to be held within seven days of a written request for the purpose addressed to him by any two members of the Board.

(3) The chairman or, in the case of the absence or inability to act of the chairman, the deputy chairman or the person elected to act as chairman in accordance with the provisions of subparagraph (3) of paragraph 2 shall preside at the meetings of the Board, and when so presiding the chairman, deputy chairman or the person elected as aforesaid to act as chairman, as the case may be, shall have an original and a casting vote.

(4) The quorum of the Board shall-

(a) where the Board is comprised of thirteen members, be six; and (b) where the Board is comprised of nine members, be five.

(5) The decisions of the Board shall be by a majority of votes and, in addition to an original vote, the chairman or other member presiding at the meeting shall have a casting vote in any case in which the voting is equal.

(6) Minutes in proper form of each meeting of the Board shall be kept.

(7) Subject to the provisions of this Schedule the Board may regulate its own proceedings.

10. A member of the Board who is directly or indirectly interested in any matter which is being dealt with by the Board shall-

(a) disclose the nature of his interest at a meeting of the Board; and

(b) not take part in any deliberation or decision of the Board with respect to that matter.

11.-(1) The Board may appoint such committees as it thinks fit, consisting wholly or partly of members of the Board and may delegate to such committees such of the Board's functions as it thinks fit.

(2) A delegation under subparagraph (1) shall not prevent the exercise by the Board of any function so delegated.

12. There shall be paid to the chairman and each member of the Board such remuneration, if any (whether by way of honorarium, salary or fees) and such allowances as the Minister may determine.

13. No act done or proceeding taken under this Act by the Board shall be questioned on the ground of-

(a) the existence of any vacancy in the chairmanship of, or any defect in the constitution of, the Board; or

(b) any omission, defect or irregularity not affecting the merits of the case.

14.-(1) No member of the Board shall be personally liable for any act or default of the Board done or omitted to be done in good faith in the course of the operation of the Board.

(2) Where any member of the Board is exempt from liability by reason only of the provisions of this paragraph, the Fund shall be liable to the extent that it would be if that member were an employee or agent of the Fund.

15. The office of member of the Board shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.