

ANTIGUA AND BARBUDA



THE TOURISM AUTHORITY ACT, 2008

No. 6 of 2008

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The Tourism Authority Act, 2008.

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I Assent,

[L.S.]

Louise Lake-Tack,
Governor-General.

11th November, 2008

ANTIGUA AND BARBUDA

THE TOURISM AUTHORITY ACT, 2008

No. 6 of 2008

AN ACT to provide for the establishment of the Antigua and Barbuda Tourism Authority and for incidental and connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short title

This Act may be cited as the Tourism Authority Act, 2008.

2. Interpretation

In this Act—

“Authority” means the Antigua and Barbuda Tourism Authority established by Section 3;

“Board” means the Board of the Authority that is established in accordance with section 8;

“Chief Executive Officer” means the officer appointed under section 18 by the Authority as Chief Executive Officer of the Authority;

“Council” means the Tourism Advisory Council established in accordance with section 17; and

“Minister” means the Minister responsible for Tourism.

PART II

ESTABLISHMENT OF THE AUTHORITY AND FUNCTIONS THEREOF AND RELATED MATTERS

3. Establishment of the Authority

There is established a body corporate to be known as the Antigua and Barbuda Tourism Authority and trading as experience Antigua and Barbuda.

4. Functions of the Authority

The functions of the Authority are—

- (a) to develop policies for the promotion of tourism in Antigua and Barbuda;
- (b) to design and implement marketing strategies for the promotion of the tourism industry in Antigua and Barbuda;
- (c) to advise the government and the Antigua and Barbuda tourism industry on matters relating to the strategies referred to in paragraph (b);
- (d) to put measures in place to provide sufficient and suitable air lift and sea transport services to and from Antigua and Barbuda;
- (e) to encourage the establishment of amenities, facilities and services for the enjoyment of Antigua and Barbuda as a tourist destination;
- (f) to carry out research to inform the government and the tourism industry;
- (h) to do any other things incidental to the proper discharge of its functions.

5. Seal of the Authority

(1) The Seal of the Authority shall be kept in the custody of the Chairman or Deputy Chairman or such officer of the Authority as the Board approves and may be affixed to documents or instruments pursuant to a resolution of the Board.

(2) The seal of the Authority shall be authenticated by the signature of the Chairman or the Deputy Chairman and the Secretary.

(3) All documents or instruments, other than those required by law to be under seal, and all decisions of the Authority may be signified under the hand of the Chairman or Deputy Chairman.

6. Business Plan

(1) The Authority shall prepare and submit to the Minister by the 1st day of January in each year a business plan for the development of tourism in Antigua and Barbuda.

(2) The annual tourism plan shall—

- (a) serve as a guide for structuring the programme of tourism promotion and visitor service activities for the succeeding year commencing on January 1st; and
- (b) specify the aims of the programme and outline the methods to be employed to accomplish those aims.

7. Directions by Minister

The Authority shall comply with directions given by the Minister in respect of the policy to be followed by the Authority in the performance of its functions under this Act or any other enactment.

PART III

ESTABLISHMENT OF BOARD OF DIRECTORS AND RELATED MATTERS

8. Establishment of Board of Directors

(1) There shall be a Board of Directors of the Authority which shall be responsible for the execution of the policy and the general administration of the Authority.

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

9. Disqualification of Directors

A person is not qualified for appointment as a Director if he is employed by the Authority.

10. Declaration of interests

(1) If a Director has any pecuniary interest, direct or indirect, in any contract, proposed contract, licence or other matter and is present at a meeting of the Board at which the contract, proposed contract, licence or other matter is the subject of consideration, he shall at the meeting and as soon as

practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract, proposed contract, licence or other matter or vote on any question with respect to it and shall be excluded from the meeting for the duration of the consideration, discussion and voting procedure.

(2) If any person fails to comply with the provisions of subsection (1) he shall be guilty of an offence and liable—

- (a) on summary conviction to a fine not exceeding \$25,000 or imprisonment for a term not exceeding 2 years, or both; or
- (b) on conviction on indictment to a fine not exceeding \$100,000 or imprisonment for a term not exceeding 5 years, or both,

unless he proves that he did not know that the contract, proposed contract, licence or other matter in which he had a pecuniary interest was the subject of consideration at that meeting.

(3) A disclosure under subsection (1) shall be recorded in the minutes of the Board.

(4) No act or proceeding of the Board shall be questioned on the ground that a Director has contravened this section.

11. Pecuniary interests for the purposes of section 10

(1) For the purposes of section 10, a Director shall be treated, subject to the following provisions of this section and to section 12, as having indirectly a pecuniary interest in a contract, proposed contract, licence or other matter if—

- (a) he or any nominee of his is a member of a company or other body with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the licence or other matter under consideration; or
- (b) he is a partner, or is in the employment of a person with whom the contract was made or is proposed to be made, or who has a direct pecuniary interest in the licence or other matter under consideration; or

(c) he, or any partner of his is a professional adviser to a person who has a direct or indirect pecuniary interest in a contract, proposed contract, licence or other matter.

(2) Subsection (1) does not apply to membership of or employment under any public body.

(3) In the case of married persons the interest of one spouse shall be deemed for the purpose of section 10 to be also the interest of the other.

12. Removal or exclusion of disability, etc.

(1) Section 10 does not apply to an interest in a contract, proposed contract, licence or other matter which a Director has as a member of the public or to an interest in any matter relating to the terms on which the right to participate in any service is offered to the public.

(2) Where a Director has an indirect pecuniary interest in a contract, proposed contract, licence or other matter by reason only of a beneficial interest in securities of a company or other body, and the nominal value of those securities does not exceed \$10,000 or one-thousandth of the total nominal value of the issued share capital of the company or other body, whichever is the less, and if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-thousandth of the total issued share capital of that class, section 10 shall not prohibit him from taking part in the consideration or discussion of the contract, proposed contract, licence or other matter or from voting on any question with respect to it, without prejudice, however, to his duty to disclose his interest.

13. Publication of Appointments etc.

The appointment or resignation of any member of the Board shall be notified in the Gazette.

14. Remuneration of Directors

The Authority may pay the Chairman, each Director and the Secretary to the Board, such remuneration, if any, as the Minister may prescribe in regulations.

15. Committees of the Board

(1) The Board may establish committees for the purpose of executing specific assignments related to the functions of the Board.

(2) A committee established under subsection (1) shall be constituted by suitably qualified members of the public selected by the Board, but any such committee shall not exceed five persons and shall include at least one member of the Board.

(3) A committee established under subsection (1) shall be given a specific time within which the assignment shall be completed and a report made to the Board.

(4) The Board may grant an extension of time to a committee for the purpose of completing an assignment.

(5) The members of the committee may receive such allowances as the Minister may prescribe in regulations.

16. Co-opted members

(1) The Board may co-opt a person to help it in dealing with a matter if it is satisfied that the person's qualifications or experience are appropriate.

(2) A member co-opted to help the Board with a matter is entitled to take part in the Board's proceedings relating to the matter, but has no vote and may not take part in any other proceedings of the Board.

17. Advisory Council

(1) There is established a body to be known as the Tourism Advisory Council.

(2) The Second Schedule shall have effect with respect to the constitution of the Council and otherwise in relation thereto.

(3) The Council shall advise the Board on any matter connected to tourism as the Council thinks fit or that is referred to it by the Board.

PART IV

STAFF AND FUNDS OF THE AUTHORITY AND RELATED MATTERS

18. Appointment to offices

(1) The Authority shall with the approval of the Minister appoint a Chief Executive Officer and other suitably qualified persons to such offices as may be designated by the Minister.

(2) The Chief Executive Officer of the Authority, is subject to the directions of the Board and responsible to the Board for the execution of its policy and the management of its affairs.

19. Other staff

(1) Subject to subsections (2) and (3), the Authority may appoint and employ such officers, agents and servants as it considers necessary for the proper carrying into effect of the provisions of this Act; and at such remuneration and on such terms and conditions as the Board approves.

(2) Notwithstanding subsection (1), no post shall be established and no salary in excess of such amount as the Minister may determine shall be paid by the Authority and no person shall be assigned to any post without prior approval of the Minister.

(3) A person appointed by the Authority under subsection (1) shall not be assigned by the Authority to a post outside of Antigua and Barbuda without the prior approval of the Minister.

20. Secondment of Public officers

The Authority may seek the approval of the Public Service Commission or the Judicial and Legal Services Commission, as the case requires, for the secondment of a public officer to the Authority on such terms and conditions as the Commission determines.

21. Preservation of pension rights, emoluments etc.

(1) Notwithstanding anything to the contrary contained in any enactment, the pension rights of a public officer seconded to the Authority shall be preserved, and his service with the Authority shall, unless the Governor-General otherwise determines count as pensionable service under the Pension Act, as if he had not been seconded.

(2) Where the services of a person employed by the Authority are on loan to the Government that person shall be entitled to such benefits and terms of employment as are applicable to the post which he occupies, and the service with the Authority shall be taken into account as continuous service with the Government and the Pensions Act and the regulations made thereunder shall apply to him as if his service with the Authority were service within the meaning of the enactments aforesaid.

(3) Where a public officer is seconded to the service of the Authority in accordance with subsection (1), the Authority shall refund to the Consolidated Fund at the end of every month after the commencement of this Act, all emoluments accruing in respect of the service of that officer with the Authority.

(4) The sums payable as contributions by the Government under the Social Security Act in respect of such public officers shall at the end of every month after the commencement of this Act be paid into the Consolidated Fund by the Authority and such sums shall be paid by the Government into the Social Security Fund established under the Social Security Act Cap 408

(5) The Authority may with the approval of and subject to such terms and conditions as may be imposed by the Cabinet, provide for the establishment and maintenance of a Contributory Pension Scheme or a Thrift Fund for the benefit of employees of the Authority, and in every such scheme different provisions may be made by different classes of employees.

22. Funds of the Authority

The funds of the Authority shall consist of—

- (a) such amounts as may be voted for the purpose by Parliament;
- (b) amounts payable to the Authority in respect of advertising, promotion, public relations or any other service performed by the Authority;

- (c) all amounts collected under the authority of Regulations made under this Act;
- (d) amounts borrowed by the Authority for the purpose of meeting or discharging any of its obligations;
- (e) any other amounts or property which may in any manner become payable to or vested in the Authority in respect of any matter incidental to its powers and functions; and
- (f) taxes, fees and charges imposed by statute and authorised to be paid to the Authority.

23. Vesting of Crown property in the Authority

(1) The Minister responsible for lands may with the approval of the Cabinet, by Order, vest any land or movable property of the Crown in the Authority if it appears desirable to do so in order to enable the Authority to perform its duties and functions.

(2) Property vested in the Authority under this section may be vested absolutely or subject to such terms and conditions as the Minister may consider appropriate.

(3) Where land is vested in the Authority under this section, the delivery of the Order to the Registrar of the Supreme Court shall without proof thereof be sufficient authority for him to register or record the Authority as the fee simple owner of such land in accordance with the relevant enactment.

24. Application of funds of the Authority

The funds of the Authority shall be applied towards—

- (a) the payment of salaries, wages, fees, allowances, pensions, gratuities or similar benefits of persons employed by the Authority.
- (b) the meeting of obligations and the performance of any of the functions of the Authority and matters incidental thereto.

25. Disposal of capital assets

The Authority shall not, without the prior written approval of the Minister of Finance—

- (a) dispose of any of its capital assets; or
- (b) apply the proceeds of a disposal to any purpose.

26. Borrowing powers of the Authority

(1) Without prejudice to anything contained in any other enactment, the Authority may after obtaining the approval of the Minister responsible for Finance and with the consent of the Cabinet, borrow money from the Government or any other person by way of loan, overdraft or otherwise upon such terms and conditions with respect to the borrowing, issue, transfer and interest as the Minister responsible for Finance approves and the consent of Cabinet is obtained for—

- (a) the provision of working capital
- (b) meeting any of its obligations; or
- (c) the performance of the functions of the Authority under this Act.

27. Guarantee

(1) Without prejudice to anything contained in any other enactment, the Minister responsible for Finance may, with the approval of the Cabinet, guarantee in such manner and on such terms and conditions—

- (a) any loan to the Authority
- (b) interest charges or any other charges in respect of a loan to the Authority.

(2) Subsection (1) does not apply to a loan from the Government of Antigua and Barbuda.

PART V**ACCOUNTS AND AUDIT****28. Accounts and Audit**

(1) The Authority shall keep accounts of its transactions in accordance with general accounting principles and such accounts shall be audited annually by an auditor appointed by the Authority with the approval of the Minister.

(2) The Director of Audit may at any time carry out an investigation or audit of the accounts of the Authority.

29. Access by Director of Audit or auditor

A director, officer or other employee of the Authority shall afford the Director of Audit or other auditor appointed under section 27, access to all books, documents, cash and securities of the Author-

ity and, on request, give to the Director of Audit or auditor any information within the knowledge of that Director or employee that relates to the operation of the Authority.

30. Annual report

(1) The Authority shall as soon as possible after the end of each year and, in any event not later than five months from the end of any year, submit to the Minister a report containing-

- (a) an account of the performance of the activities and operations of the Authority and an analysis of the performance of the tourism industry during the preceding year;
- (b) an assessment of any experience and product development, marketing and advertising programme undertaken; and
- (c) the audited financial statement of the Authority.

(2) A copy of the report shall be laid in Parliament by the Minister within three months after the receipt thereof.

(3) The Minister shall cause a copy of the audited financial statement to be published in the Gazette.

31. Estimates

(1) The Authority shall, not later than three months before the end of the financial year of the Authority submit to the Minister for approval, estimates of the income receivable by the Authority, its capital expenditure and the total of its recurrent expenditure for the next financial year.

(2) As far as is practicable the estimates referred to in subsection 1 shall contain—

- (a) the Authority's projected outputs during the next financial year;
- (b) the Authority's best estimate of the cost of providing those outputs;
- (c) the method (including financial and non- financial performance measures) by which the Authority intends to assess those outputs; and
- (d) any liability the Authority intends to incur during the next financial year

PART VI

MISCELLANEOUS

32. Exemption from taxes

(1) The Authority shall be exempted from taxes on income or any other tax on or in respect of its income, revenue or receipts or any part thereof imposed by or under any law in force in Antigua and Barbuda.

(2) No stamp duty shall be chargeable in respect of any instrument by or on behalf of or in favour of the Authority in cases where, but for this exemption, the Authority would be liable to pay the duty chargeable in respect of such instrument.

33. Fees

(1) The Authority may charge such fees as may be prescribed.

(2) Any fee prescribed for the purpose of subsection (1) shall not exceed two thousand dollars.

34. Regulations

(1) The Authority may with the approval of the Minister make regulations generally for better carrying out the purposes of this Act and in particular but without prejudice to the generality of the foregoing may make regulations providing for—

- (a) the measures and methods to be adopted for the regulation and improvement of the tourism industry in Antigua and Barbuda;
- (b) the registration and grading of hotels;
- (c) the keeping of proper and reliable records, accounts and data necessary for the tourism industry of Antigua and Barbuda;
- (d) the disclosure in full or in part of such records, accounts and data referred to in paragraph(c).

(2) A fine not exceeding five thousand dollars or imprisonment for a period not exceeding six months or both may be attached to regulations made under subsection (1).

35. Commencement

This Act shall come into operation on such date as the Minister may appoint by Order published in the Gazette.

36. Repeal

The Tourism Development Corporation Act 1997 is repealed.

(Section 7(2))

FIRST SCHEDULE

Constitution and procedure of the Board

1. Constitution of Board

(1) The Board shall comprise—

- (a) a Chairman;
- (b) a Deputy Chairman;
- (c) the Financial Secretary of the Ministry of Tourism;
- (d) the Chief Executive Officer (V. C. Bird International Airport);
- (e) the Permanent Secretary of the Ministry of Tourism;
- (f) a representative from the Antigua Hotels and Tourist Association;
- (g) a representative from the Antigua and Barbuda Marine Association;
- (h) a representative from the Antigua and Barbuda Cruise Tourism Association;
- (i) a representative from the Airlines Association;
- (j) a representative from the Trade Union Congress;
- (k) a representative from the Antigua and Barbuda Chamber of Commerce;
- (l) a leading banking and finance professional; and
- (m) the Chief Executive Officer of the Antigua and Barbuda Tourism Authority who shall be a non-voting member.

2. The Chairman and Deputy Chairman shall be appointed by the Cabinet by an instrument in writing.

3. Subject to paragraph 2 the Minister shall by an instrument in writing appoint the members of the Board.

2. Tenure and removal of Directors

(1) A member of the Board shall, subject to this Act, hold office for a period not exceeding two years but the member shall be eligible for re-appointment.

(2) The Cabinet may at any time revoke by instrument in writing the appointment of the Chairman, the Deputy Chairman.

(3) The Minister may remove any member of the Board from office on being satisfied that the member—

- (a) is unable, due to physical or mental impairment, to exercise his functions;
- (b) is guilty of misconduct which, in the opinion of the Minister, is likely to bring the Authority into disrepute;
- (c) is convicted of an offence involving dishonesty or immorality;
- (d) fails to attend three consecutive board meetings without any reasonable excuse to attend and participate in three successive meetings of the Board;
- (e) fails to disclose a personal interest in a matter which is being or has been considered by the Board; or
- (f) is an undischarged bankrupt.

(4) When a vacancy of the Board occurs, the Minister shall appoint a person from the categories of persons at paragraphs 1(f) to 1(l) inclusive as a member of the board to fill the vacancy for the remainder of the period of office of the member whose office ended by virtue of subsection (3).

3. Resignation of Chairman and Deputy Chairman

The Chairman or Deputy Chairman may at any time resign his office by instrument in writing addressed to the Secretary to the Cabinet.

4. Resignation of Director

A director, other than the Chairman or Deputy Chairman may at any time resign his office by instrument in writing address to the Minister and transmit the instrument through the Chairman and, from the date of the receipt by the Minister of the instrument, the Director ceases to be a director.

5. Publication of Board members' names

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

6. Service of documents

Any summons, notice or other document required or authorized to be served upon the Authority under the provisions of this Act or other law may, unless in any case there is express provisions to the contrary, be served by delivering the same to the Chairman or secretary, or by sending it by registered post addressed to the secretary at the principal office of the Authority.

7. Meetings

The Board shall meet at least once a month and at such other times as may be necessary or expedient for the transaction of its business.

8. Presiding at meetings

(1) The Chairman or, in his absence from the State or inability to act as such, the Deputy Chairman, shall preside over all meetings of the Board.

(2) In the absence of both the Chairman and Deputy Chairman, Directors present and constituting a quorum shall elect a temporary Chairman from among their number who shall preside at the meeting.

9. Quorum

A majority of all the Directors of the Board shall constitute a quorum.

10. Decisions

The decisions of the Board shall be a majority of votes and, in any case in which the voting is equal, the Chairman, the Deputy Chairman or temporary Chairman presiding at the meeting has, in addition to an original vote, a second or casting vote.

11. Minutes

(1) The Secretary or such officer as the Authority appoints for that purpose shall keep the minutes of every meeting in proper form and shall be confirmed by the next meeting signed by the Chairman or Deputy Chairman.

(2) Confirmed minutes of meetings shall be submitted to the Minister within one month of the date of the meeting at which they were confirmed.

12. Attendance at meetings of non- members

(1) The Chairman may invite any person to attend a meeting of the Board where the Board considers it necessary to do so.

(2) A person referred to in sub-paragraph (1) may take part in the deliberations of the Board but shall not vote on any issue.

13. Validity of decisions of the Board

Any act done or proceeding taken by the Board under this Act or the Regulations may not be questioned on the ground of—

- (a) the existence of any vacancy in the membership of or of any defect in the constitution of the Board;
- (b) any omission, defect or irregularity that does not affect the merits of the case.

14. Board to regulate its own procedure

Subject to this Schedule, the Board may regulate its own procedure and may delegate to any of its members or to a committee of its members the power and authority to carry out on behalf of the Board such duties as the Board determines.

Section 7(2)

SECOND SCHEDULE

Constitution and procedure of the Advisory Council

1. Composition of the Council

(1) The Council comprises a Chairman and a Deputy Chairman who shall both be appointed by the Minister by an instrument in writing and other persons that the Minister may appoint by instrument in writing including but not limited to the following persons—

- (a) two representatives from each of the following—
 - (i) Hotel and Tourist Association;
 - (ii) Marine Association;
 - (iii) Cruise Association;
 - (iv) Tour Operators Association;
 - (v) Small Hotels Association
 - (vi) Taxi Associations; and

- (vii) Vendors Associations;
- (b) two representatives of a registered trade union representing the majority of employees in the tourism industry;
- (c) a representative of the Airlines Association
- (d) a representative of the Cultural Division;
- (e) a representative of the Chamber of Commerce;
- (f) such other persons as the Minister considers suitable taking into account their qualifications and skills related to travel, the tourism industry, national conservation and environmental protection, education and cultural development.

(2) A reference to any person specified in sub-paragraph (1) includes the nominee of that person where the person specified is unable to attend.

2. Period of office

(1) A member of the Council holds office for such period as the Minister determines unless he resigns or his appointment is revoked before the end of that period.

(2) A member is on the expiration of the period of his appointment eligible for re-appointment for a further period.

3. Removal of Council members

The Minister may at any time revoke by instrument in writing the appointment of the Chairman, the Deputy Chairman or any other member of the Council.

4. Appointment of substitutes

(1) In the absence of a member, or in case of his inability to act, the Minister may appoint another person to act temporarily in the place of that member.

(2) A person appointed to fill a vacancy in the membership of the Council—

- (a) shall be from the same category of persons as the former member or be similarly qualified; and
- (b) holds office only for the unexpired portion of the former member's term..

5. Resignation of Council members

(1) Any member of the Council, other than the Chairman or Deputy Chairman, may at any time resign his office by instrument in writing addressed to the Chairman, who shall forthwith forward the instrument to the Minister.

(2) The Chairman or Deputy Chairman may at any time resign his office by instrument in writing addressed to the Minister and if the instrument so specifies, the Chairman or Deputy Chairman ceases to be a member.

6. Non-attendance to disqualify

Any member of the Council who fails, without reasonable excuse, to attend 3 consecutive meetings of the Council ceases to be a member.

7. Publication of Council members' names

The names of all members of the Council as first constituted and any change in the membership of the Council shall be published in the Official Gazette.

8. Time and place of meetings

The Council shall meet at such times and at such places as the Council considers necessary or expedient for the transaction of the business of the Council.

9. Special meetings

The Chairman may at any time call a special meeting of the Council but shall call a special meeting within fourteen days of the receipt of a request for that purpose addressed to him in writing and signed by any three members of the Council.

10. Quorum

The quorum of the Council at any meeting is the majority of the total membership of the Council.

11. Presiding at meetings

The Chairman or, in his absence, the Deputy Chairman shall preside at meetings of the Council and, in the absence of both the Chairman and the Deputy Chairman, the members present and constituting a quorum shall elect a temporary Chairman from among their number to preside at that meeting.

12. Voting

The decisions of the Council are to be by a majority of votes and, in any case in which the voting is

equal, the Chairman, Deputy Chairman or other member presiding at the meeting has, in addition to an original vote, a second or casting vote.

13. Minutes

(1) Minutes of each meeting are to be recorded and kept by the Secretary.

(2) A copy of the minutes of each meeting signed by the Chairman or Deputy Chairman shall be forwarded to the Minister within fourteen days after the meeting at which they were confirmed.

14. Invited persons may attend meetings

(1) The Chairman of the Council may invite any person to attend the meeting of the Council where the Council considers it necessary to do so.

(2) A person referred to in sub-paragraph (1) may take part in the deliberations of the Council but shall not vote on any matter.

15. Council to regulate its own procedure

Subject to this Schedule, the Council may regulate its own procedure and may delegate to any of its members or to a committee of its members the power and authority to carry out on behalf of the Council such duties as the Council determines.

Passed by the House of Representatives on this 21st day of July, 2008.

Passed by the Senate on this 21st day of August, 2008.

D. Gisele Isaac-Arrindell,
Speaker.

Hazlyn M. Francis,
President.

L. Thomas,
Acting Clerk to the House of Representatives.

L. Thomas,
Acting Clerk to the Senate.