



Ministry of Tourism and Wildlife

**Regulatory Impact Statement for
Proposed Tourism (Tourism Enterprises) Regulations, 2025**

This Regulatory Impact Assessment (RIA) has been prepared by Ministry of Tourism and Wildlife in consultation with the Tourism Regulatory Authority for the proposed Tourism (Tourism Enterprises Regulations) 2025 pursuant to section 6 and 7 of the Statutory Instruments Act (Cap. 2A)

FEBRUARY, 2025

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ABBREVIATIONS

BETA	Bottom-up Economic Transformation
GDP	Gross Domestic Product
KTB	Kenya Tourism Board
MICE	Meetings, Incentives, Conventions and Exhibitions
RIS	Regulatory Impact Statement
SDGs	Sustainable Development Goals
SMEs	Small and Medium Sized Enterprises
TRA	Tourism Regulatory Authority
TRI	Tourism Research Institute
WTTC	The World Travel and Tourism Council

CHAPTER 1

INTRODUCTION AND BACKGROUND

1.0 Introduction

Section 122 of the Tourism Act, (Cap. 381) empowers the Cabinet Secretary on his own motion or on the recommendation of the respective tourism agency to make regulations prescribing all matters which by the Act are required to be prescribed or which are necessary for the better carrying out of, or giving effect to, the provisions of the Act including—

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

Consequently, the Cabinet Secretary on the recommendation of the Tourism Regulatory Authority has formulated Tourism Enterprise Regulations, 2025 to give effect to the Tourism Act (Cap. 381).

1.1 Purpose of the Regulatory Impact Statement

Section 6 and 7(1) and (2) of The *Statutory Instruments Act* (Cap. 2A) requires a Regulatory Impact Statement to be prepared for any proposed statutory rule that imposes a significant economic or social burden on a sector of the public, including any proposed regulations.

Under the *Statutory Instruments Act* (Cap. 2A) a regulatory impact statement shall contain—

- (a) a statement of the objectives of the proposed legislation and the reasons for them;
- (b) a statement explaining the effect of the proposed legislation, including in the case of a proposed legislation which is to amend an existing statutory instrument the effect on the operation of the existing statutory instrument;
- (c) a statement of other practicable, means of achieving those objectives, including other regulatory as well as non-regulatory options;
- (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives;
- (e) the reasons why the other means are not appropriate;
- (f) any other matters specified by the guidelines;
- (g) a draft copy of the proposed statutory rule

The Regulatory Impact Statement process is intended to ensure regulation is only implemented when there is a justified need, only the most efficient forms of regulation are adopted and that there is a process of public consultation in developing the proposed regulatory measures. The Regulatory Impact Statement (RIS) process involves an assessment of regulatory proposals and allows members of the public to comment on proposed regulations before they are

finalized. Such public input provides valuable information and perspectives, and improves the overall quality of regulations.

Section 5 of the *Statutory Instruments Act (Cap. 2A)* requires that a regulation-making authority conducts public consultations drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and ensuring that persons likely to be affected by the proposed statutory instrument are given an adequate opportunity to comment on its proposed content.

1.2 Scope of the Regulatory Framework

Tourism is one of the Key Sectors under the Economic Pillar of the Kenya Vision 2030 and is geared towards ensuring the country attains the status of “*a top 10 long haul tourist destination offering a high-end diverse and distinctive visitor experience*”. The Sector, on average, contributes 9.3% to the Gross Domestic Product (GDP) and accounts for 9% of the total employment. Owing to this, the Government has placed tourism as a focus area of its trickledown development approach.

The proposed Regulations seek to give full effect to the Tourism Act (Cap 381). In particular, these Regulations have given a focus on key areas under the Act that must be operationalized as a matter of priority to facilitate the growth of Kenya’s GDP through tourism.

Specifically, these Regulations is to provide for—

- (a) procedures relating to the manner of conducting tourism activities;
- (b) standards and licencing procedures for tourism enterprises;
- (c) Provide a framework accreditation, classification and grading of tourism enterprises; and
- (d) procedures for undertaking quality assurance audits and assessment of tourism enterprises.

CHAPTER 2

BACKGROUND AND CONTEXT

2.0 Introduction

The tourism sector is an important contributor to global economies constituting 3.1% of the global Gross Domestic Product (GDP). In fact, prior to the pandemic, Travel & Tourism (including its direct, indirect, and induced impacts) was one of the world's largest sectors, accounting for 1 in 4 of all new jobs created in the world, 10.5% of all jobs (334 million) and 10.4% of global GDP (USD 10.3 trillion) (WTTC, 2020).

The World Travel and Tourism Council (WTTC) reports that the effect of Covid-19 emphasized the tremendous importance and positive contribution of Travel & Tourism. For instance, in 2020, 62 million jobs were lost, leaving just 271 million employed across the sector globally. This 18.6% decrease was felt across the entire sector, with Small and Medium Sized Enterprises (SMEs), which make up around 80% of all global businesses in the sector— being particularly affected alongside women, the young and minorities. As such, the sector suffered losses of almost USD 4.9 trillion, with its global contribution to GDP declining by 50.4% year-on-year, compared to a 3.3% decline of the global economy.

Nevertheless, the year 2021 saw the beginning of the recovery for the sector. As such, the sector continues to show signs of a strong and steady recovery from the impacts of the covid-19 pandemic against a backdrop of mounting economic and geopolitical challenges.

The United Nations Tourism (UN, Tourism) reports that international tourism saw a strong rebound in the first five months of 2022 with almost 250 million international arrivals recorded. Clearly, the future outlook is positive, and the sector is once again showing its resilience and ability to bounce back. Despite the difficulties the sector has been facing, WTTC's projections point to a strong

decade of growth. As such, Travel & Tourism GDP is set to grow on average by 5.8% annually between 2022 and 2032, outpacing the growth of the overall economy (2.7% per year).

The tourism sector plays a vital role in the global and local economy, contributing significantly in various ways:

1. Economic Contribution

GDP Impact: Tourism often represents a substantial portion of a country's Gross Domestic Product (GDP). In many nations, it can account for 10% or more of the total GDP.

Job Creation: The sector is a major employer, providing millions of jobs in various fields, including hospitality, transportation, and entertainment. It often supports both direct and indirect employment.

2. Foreign Exchange Earnings

Tourism is a key source of foreign exchange, helping to stabilize economies and fund public services. International visitors bring in capital, which can support local businesses and contribute to overall economic health.

3. Infrastructure Development

Investment in tourism often leads to improvements in infrastructure, such as roads, airports, and public facilities, benefiting local communities and enhancing quality of life.

4. Regional Development

Tourism can promote development in rural and underserved areas, helping to diversify local economies and reduce regional disparities. It encourages the preservation of local culture and heritage, contributing to community identity.

5. Small and Medium Enterprises (SMEs)

The tourism sector supports a wide range of SMEs, including hotels, restaurants, tour operators and local artisans in fostering entrepreneurship and innovation.

6. Multiplier Effect

Spending by tourists generates additional economic activity. Money spent in the tourism sector circulates through the economy, benefiting other sectors such as retail, agriculture, and transportation.

7. Cultural Exchange and Education

Tourism fosters cultural exchange, promoting understanding and appreciation among diverse populations. It also provides opportunities for education and skill development within the hospitality and service industries.

8. Sustainability and Conservation

A growing focus on sustainable tourism practices can promote conservation efforts and responsible resource management, benefiting both the environment and local communities.

9. Resilience and Recovery

The tourism sector has shown resilience in the face of global challenges, adapting to changes such as health crises and shifts in consumer preferences. Its recovery is often crucial for broader economic recovery.

2.1 History of Tourism in Kenya

In Kenya, in 1964, the government adopted a Tourism Master Plan with the assistance of the Japan International Development Agency (JICA) through the funding from the government of Japan. The Plan stated that although the tourism sector in Kenya was expected to expand, there was need to ensure sustainable development. Therefore, the recommended strategy for tourism

development had five (5) objectives namely; diversify tourism demand; increase tourism spending by developing new tourism products; put increased emphasis on cultural, natural and other tourism attractions; create a positive image for Kenya as an ideal tourist destination and upgrade tourism facilities and travel conditions. The Master Plan also envisaged that the recommended strategy would be implemented through careful planning approaches to maximize economic impacts while minimizing the negative impacts of tourism on the natural and cultural environment.

In 1969, the government's attempt to manage and regulate the tourism sector in Kenya, saw the formulation of the first National Tourism Policy dubbed "*Sessional paper No. 8 of 1969, on Tourism Development in Kenya*". This Policy set growth targets and spelt out strategies on how the government and private sector would develop tourism so that it became one of this nation's leading economic activities. Subsequently, the government enacted legislation i.e. the Hotels and Restaurants Act, Cap. 494 in 1986 to provide for the licensing of hotels, hotel managers, and restaurants; for the regulation of hotels and restaurants; and for the imposition of a levy for training persons to be employed in hotels and restaurants. This Act, was implemented by the Hotels and Restaurants Authority (HRA) which was then running as a department under the Ministry of Tourism and Wildlife. This was later followed by enactment of the Tourist Industry Licensing Act, Cap. 381 (1998) which provided for regulation of the tourist industry with a view to promoting its well-being and development. It encompassed regulation of tour operations, travel agents, and other business in the tourism industry.

It is clear from this chronology of events that since Kenya's independence until the year 2010, the tourism sector was developed under fragmented legislation which brought about overlap, duplication and conflicts that threatened the very existence of this important economic powerhouse. This necessitated the

development of the second National Tourism Policy i.e. the *Sessional Paper No. 1 of 2010 on Enhancing Sustainable Tourism in Kenya* which sought to mainstream tourism concerns throughout the country. Of importance, the Policy provided an institutional and legal framework within which tourism was to be developed thus set the stage for the enactment of the Tourism Act, No. 28 of 2011. Implementation of the Tourism Act, 2011 brought into existence of the Tourism Regulatory Authority (TRA) which was operationalized in April, 2014 with the mandate of the regulating the tourism sector. Consequently, the established legal and institutional framework has seen the tourism sector make major strides towards its contribution to the Gross Domestic Product besides supporting other sectors of the economy through its forward and backward linkages.

2.2 The Tourism Sector in Kenya

The tourism sector plays a significant role in the economy, contributing 10.4% to the GDP, providing 5.5% of formal employment, and constituting 4.2% of the National Gross Fixed Capital Formation (TRI, 2020). In the Vision 2030, the tourism sector is recognized as one of the lead sectors to achieve the goals of the Vision through its ability to foster economic development, employment creation and income generation due to its multiplier effect throughout the economy. The Tourism Sector Performance Report projected a remarkable growth of 58% in tourist arrivals in 2023 totaling an estimated 2,354.30 Thousand visitors with an increase in inbound receipts from Ksh 268.1 billion to Ksh 425.4 billion (TRI, 2023).

Conclusion

Overall, the tourism sector is a cornerstone of many economies worldwide, driving growth, job creation, and cultural exchange. Its significance extends beyond mere economic figures, influencing social and environmental aspects of

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life in numerous communities. Investing in and supporting this sector can yield long-term benefits for both local populations and the global economy.

CHAPTER 3

PROBLEM DEFINITION

3.0. Introduction

The following are some of the specific regulatory issues affecting tourism enterprises in Kenya:-

1. Low uptake of quality standards and accreditation

Regulation of the sector entails among other roles development of quality standards and implementation thereof. Currently, the Authority has developed sixteen (16) standards, conducts quality assurance audits to ascertain whether new facilities meet the required minimum standards and existing regulated tourism enterprises maintain the set standards. Over the ten (10) year period the Authority has been in existence; the Authority has been able to register approximately 17,000 regulated tourism enterprises. Despite this achievement, there is still low uptake of standards across the country largely due to lack of a compliance and enforcement framework for the developed standards and gaps in the existing legislation.

The regulations therefore aim at developing and implementing three level of standards i.e. the national minimum standards, accreditation standards and classification criteria. This will ensure close monitoring of the facilities over a continuous five-year cycle. The regulations also allow withdrawal of quality marks or classification plaques in the event of non-compliance.

2. Increased unprofessionalism in the sector

The Authority has noted with concern the rising complaints of unprofessionalism in the sector which in turn affect the overall quality of the destination. To cure this, the Authority introduces a mandatory requirement for a licensee to present relevant professional certificates either for the proprietor or an agent of a tourism activity or service with respect to which the license is issued. The regulations also allow for suspension, cancellation and revocation in the event of breach of

set requirements. The regulations bar a licensed entity from engaging the services of an unlicensed entity and advertisement of an unlicensed facility in any form or manner. Lastly, the regulation reintroduces the tourist service vehicle sticker to enable the on-site verification of licensed tour vehicles and tour operators.

The Authority will also develop regulations for tourism training institutions and registration of the tourism sector workforce.

3. Weak Compliance and Enforcement Mechanisms

In the course of implementation of its mandate, the Authority has noted the need to strengthen its compliance and enforcement mechanisms to ensure compliance with set standards, maintenance of said standards and licensing of all tourism establishments listed under the ninth schedule of the Act. The regulations therefore have enhanced the compliance and enforcement measures to include penalizing false advertisement of awarded marks or plaques by the Authority, power to withdraw quality marks/plaques in the event of lowered standards by the facility, conduct of quality audits and power to close facilities that are in breach of any requirements set by the Authority. Some violations include-

- (a) non-compliance with health requirements for food handling in restaurants and catering services;
- (b) failure to adhere to health and safety standards to protect workers in hospitality and tourism from workplace hazards.

4. Rapid changes relating to Environmental Regulations and Control

Tourism Enterprises ought to comply with all environmental regulations in order to promote sustainability practices. Kenya has put in place measures promote eco-friendly practices, waste management, and conservation efforts. There are land use and zoning laws which place restrictions on development in sensitive ecological areas, including national parks and coastal regions. Moreover, wildlife

protection is aimed at protecting local wildlife and habitats from tourism-related impacts. Tourism Enterprises experience high compliance costs to ensure compliance with changes in environmental regulations and control.

5 Emerging digital and online platforms for tourism activities and services

Since the enactment of the Tourism Act and the enabling regulations, there have been emergence of new ways of operations in the tourism sector for example there currently exists online digital platforms such as Airbnb, booking.com, safaribookings.com and others which link travellers with different types of tourism establishments in the country.

The challenge arises when such facilities are not recognized by the Authority and they are easily accessible to the travellers. This has led to issues such as defrauding of tourists and breach of agreed upon itineraries. The Authority through the proposed regulations restricts any person from advertising of tourism establishments digitally or otherwise without a license from the Authority.

The Authority also intends to develop further measures to engage online booking platforms to ensure that they verify the licensing status of any tourism establishment that seeks to be listed on their respective platform.

Conclusion

Addressing these regulatory issues is essential for promoting a sustainable and vibrant tourism sector. Effective regulation can help ensure the safety of tourists, protect the environment, and support the local economy while balancing the interests of various stakeholders.

CHAPTER 4

POLICY, LEGAL AND INSTITUTIONAL FRAMEWORK

4.0 Introduction

An evaluation of the legal and policy frameworks related to the proposed Regulations is intended to bring out the context and legal environment within which the proposed Regulations, 2025 are being developed. Regulatory processes should be structured so that all regulatory decisions rigorously respect the principles of 'rule of law'. This means that there should be explicit responsibility for ensuring that all regulations are authorized by higher-level regulations and are consistent with the supreme law and treaty obligations. In addition, they should complement other legal requirements and ensure statutory harmony of the entire statute book.

4.1 The Constitution of Kenya, 2010

The Constitution of Kenya, 2010 provides the overarching legal framework to ensure that the tourism sector is properly managed. The Constitution further acknowledges that tourism is a shared resource between the National government and the County Government and both levels of government have a role to play in management to the sector. More specifically, the National government is tasked with the role of tourism policy and development and the County Government the role of trade development and regulation including local tourism¹.

4.2 The Tourism Act (Cap. 381)

The principal statute that governs tourism sector and specifically the regulation of the same is the Tourism Act. The Act establishes the Tourism Regulatory Authority whose object and purpose are to regulate the tourism sector². The Act further provides that the Cabinet Secretary on his own motion or on the recommendation from the respective tourism agency, make regulations

¹Constitution of Kenya, 2010 Fourth Schedule

²Section 4, Tourism Act (Cap. 381)

prescribing all matters which by the Act is are required to be prescribed or which are necessary to for the better carrying out of, or giving effect to, the provisions of the Act. Section 122(2) sets out the matters that may require Regulations. The Cabinet Secretary therefore gazetted the Tourism Regulatory Authority Regulations in 2014.

The Tourism Enterprises Regulations developed by the Authority reviews the existing regulations and sets out matters relating to conditions and requirements of licensing, procedures for application of a license, the development and implementation of the national minimum standards, accreditation and classification of tourism facilities and services and prescribes the relevant fees for the licensing, accreditation and classification processes.

4.3 The Data Protection Act (Cap. 411C)

The Act and its enabling regulations put in place provisions regarding the collection, storage, and use of customer data. It is acknowledged that Tourism enterprises interact with personal data of their guests and are bound by the provisions of the Act

4.4 The Persons with Disability Act

Tourism Enterprises need to ensure that there is disability access. The Persons with Disability Act seeks to ensure that tourism facilities are accessible to individuals with disabilities, including accommodations and transportation.

4.5 Policy Framework

The following key policies guide the development of these Regulations. These include the following:-

- (a) The Kenya Vision 2030;
- (b) The National Tourism Policy, Sessional Paper No. 1 of 2010 on enhancing sustainable tourism in Kenya;
- (c) East African Community Treaty and EAC Vision 2050;

- (d) The Africa Agenda, 2063; and
- (e) The United Nations 2030 Agenda for Sustainable Development.

4.5.1 The Vision 2030 and Bottom Up Economic Transformation agenda for Inclusive Growth 2023-2027

The Kenya Vision 2030 is the country's long-term development blueprint which aims to create a globally competitive and prosperous country providing a high quality of life for all its citizens. It aspires to transform Kenya into a newly industrializing, middle-income country by 2030. The vision is implemented through successive five-year Medium-Term Plans (MTPs).

The 4th MTP under the theme "*Bottom-Up economic Transformation Agenda (BETA) for inclusive growth*" envisage focusing on projects and programmes aimed at ensuring tourism quality and service excellence to improve destination competitiveness and appeal. Through this legislation, the Authority will give greater focus to these projects to support attainment of the aspirations contained in the Vision 2030, and the fourth Medium Term Plan (MTP 4). As such, this legislation provides a framework for maintenance of national minimum standards through quality assurance audits, accreditation, classification and grading of tourism enterprises countrywide. This will lead to overall improved destination competitiveness and appeal.

4.5.2 The National Tourism Policy, Sessional Paper No. 1 of 2010 on enhancing sustainable tourism in Kenya

The National Tourism Policy i.e. *The Sessional Paper No.1 of 2010 on “Enhancing Sustainable Tourism in Kenya”* seeks to mainstream tourism concerns into all sectors of society throughout the country. Explicitly, in section 6.2 on Institutional Framework, the Policy stipulates “...to avoid overlapping, duplication and conflicting mandates and responsibilities, it is imperative to streamline the institutional arrangement within the tourism sector through the establishment of a National Tourism Regulatory Agency with overall responsibility of regulating the tourism sector...” It is against this backdrop that the Tourism Regulatory Authority exists and regulates the tourism sector in Kenya.

4.5.3 East African Community Treaty and EAC Vision 2050

The East African Community Treaty provides for corporation of Partner States on tourism matters. Article 115 of the Treaty provides that in order to promote the achievement of the objectives of the Community as set out in Article 5 of the Treaty, *the Partner States undertake to develop a collective and coordinated approach to the promotion and marketing of quality tourism into and within the Community. To this end, the Partner States shall co-ordinate their policies in the tourism industry and undertake to establish a framework of co-operation in the sector that will ensure equitable distribution of benefits. As such, the Partner States shall establish a common code of conduct for private and public tour and travel operators, standardize hotel classifications and harmonize the professional standards of agents in the tourism and travel industry within the Community.*

To facilitate implementation of the treaty, the EAC partner states developed an EAC Vision 2050 which contains aspirations as espoused in the Treaty. The rationale for the EAC Vision 2050 is to provide a catalyst for the region to enhance transformation for growth and development and move the community to a higher income cohort and subsequently achieve an upper middle-income status. In this long-term agenda, it is envisaged that East African Community will be transformed into an upper – middle income region within a secure and

politically united East Africa based on the principles of inclusiveness and accountability. On matters tourism, the Vision prioritizes joint interventions in tourism products that are competitively priced, cost-effective and have a high return on investment. Through this legislation therefore, the Authority will be able to enhance quality standards of regulated tourism enterprises. In addition, given that this legislation provides a framework for monitoring and assessment of tourist activities and services for continuous improvement and adherence to sound principles and practices of sustainable tourism, the Authority will be in a position to support evidence-based decision making for betterment of the tourism sector.

4.5.4 The Africa Agenda, 2063

Agenda 2063 is a shared strategic framework for inclusive growth and sustainable development which was developed through a people-driven process and adopted in January 2015 in Addis Ababa by the 24th African Union Assembly of Heads of state and Government. The agenda is anchored on the African Union (AU) vision and is based on seven (7) aspirations. It is envisaged that execution of TRA's mandate during the plan period will contribute to the first aspiration i.e. "A prosperous Africa based on inclusive growth and sustainable Development".

Inclusive growth is all about raising the growth rate and broadening the size of the economy while levelling the playing field for investment and increasing opportunities for productive employment. As noted by the Commission on Growth and Development, inclusive growth as a concept encompasses equity and equality of opportunity in terms of access to markets, resources and unbiased regulatory frameworks for businesses and individuals. Thus, a conducive regulatory environment represents an important condition for ensuring business viability over time with implications for jobs, investments and growth. It is envisaged that this legislation will not only create an enabling

regulatory environment but also provide a level playing ground for all operators in the sector by bringing all tourism enterprises into the regulatory regime thus facilitate fair competition.

4.5.5 The United Nations 2030 Agenda for Sustainable Development

The historic agreement among world leaders at the United Nations in 2015 on a universal 2030 Agenda for sustainable Development committed all countries to pursue a set of 17 Sustainable Development Goals (SDGs) that would lead to a better future for all. The bold agenda sets out a global framework to end extreme poverty, fight inequality and injustice, and fix climate change, laying the foundation for the betterment of people, the planet, prosperity and peace through partnerships by 2030. Tourism is not only a driver but also an accelerator of the SDG's due to its crosscutting and multiplier effect on other sectors and industries. Although tourism has the ability to contribute to the attainment of all the goals, this legislation will facilitate the Authority to contribute to the attainment of the targets in six (6) goals namely decent work and economic growth, sustainable cities and communities, responsible consumption and production patterns, climate action, life below water and life on land.

4.6 Institutional Framework

4.6.1 Tourism Regulatory Authority

The Tourism Regulatory Authority conducts quality assurance audits to ascertain whether new facilities meet the required minimum standards and routine audits in existing regulated tourism enterprises.

Over the last ten (10) year period the Authority has been in existence, it has been able to register approximately 17,000 regulated tourism enterprises across the country. The proposed regulations intend to regulate all tourism enterprises in Kenya and also providing a framework for identification and regulation of emergence business models.

4.6.2 Ministry of Tourism and Wildlife

The Ministry of Tourism and Wildlife was established in 1966 as the main policy making organ of the government on matters tourism and wildlife. In this initial plan, Kenya's tourism development objectives were to: increase tourism's contribution to the growth of GDP; raise foreign exchange earnings capacity; create more employment opportunities; increase Kenyan ownership and management of the sector; reduce any undesirable social or environmental consequences and improve the environment and wildlife conservation.

CHAPTER 5

PUBLIC PARTICIPATION AND CONSULTATION

5.0 Legal requirements relating to public participation and consultation

It is a constitutional requirement to carry out public participation whenever a state or public officer enacts any law or makes or implements a public policy. This requirement is based on Article 1 of the Constitution on the sovereignty principle which vests all sovereign power to the people of Kenya. This power entitles the people access to the process of making public decisions through their involvement. Public participation ought to be inclusive, transparent and accountable.

Article 174 gives powers of self-governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them and recognize the rights of communities to manage their own affairs and to further their development. The values and principles of public service require the involvement of the people in the process of policy making through provision of timely and accurate information to the public.

The Statutory Instruments Act obligates a regulation making authority to carry out appropriate consultations before making statutory instruments (Regulations) where the proposed regulations are likely to have a direct, or a substantial indirect effect on business or restrict competition. It further provides that in determining whether any consultation that was undertaken is appropriate, the regulation making authority shall have regard to all relevant matters, including the extent to which the consultation:

- (a) drew on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and
- (b) ensured that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content.

The Statutory Instruments Act also states that the persons to be consulted should be notified either directly or by advertisement through representative organizations. They shall also be invited to make submissions by a specified date, which should not be less than 14 days or be invited to participate in public hearings concerning the proposed instrument.

5.1 Initial participation of the stakeholders

To ensure nationwide public participation, the Authority carried out consultations and stakeholder engagement forums. The Authority undertook extensive stakeholders mapping. Stakeholders were invited to submit comments on the zero draft regulations within a specified time through letters and emails. They were also invited to attend public fora to afford them an opportunity to comment on the draft regulations. The stakeholder consultations were undertaken during the month of April to May 2024.

The public participation forums were conducted in select regions across the Kenya by members of the committee. The Forums were held in venues that were publicized in The Standard Newspaper on 26th March, 2024 at page 11. The session comprised of presentations on the Draft Tourism (Tourism Enterprise) regulations. Subsequently, the committee collated all the feedback obtained from the forums and all the written comments, analysed and the insights gathered were incorporated in the regulatory framework.

The public and stakeholders turned out in good numbers including the regulated tourism enterprises, tourism training institutions, county governments and sector associations.

5.2 Approach and Methodologies

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The stakeholders were invited to submit comments on the zero draft regulations within a specified time through letters and emails. They were also invited to attend public participation forums organized by the Authority.

CHAPTER 6

AN OVERVIEW OF THE PROPOSED TOURISM ENTERPRISES

REGULATIONS

6.0 Proposed Regulations

The proposed regulations provide for the following salient features: -

6.0.1 Mark of Quality and Accreditation & Classification Committee

The proposed Regulations provide for the development of minimum standards covering hygiene, safety, and security under Regulation 4. This is aimed at promoting quality service delivery in the tourism sector. Under Regulation 6 of the regulations, the Authority plans to conduct mandatory accreditation of licensed tourism enterprises every two years to enhance continuous quality improvement in the tourism sector. This will result in an award of the mark of quality to various licensed enterprises upon completion of accreditation to denote the level of implementation of set standards as captured under Regulation 6 (4). Accreditation will also be a precursor for classifying Class A and B enterprises. Regulation 9 (1) also provides for the establishment of an Accreditation & Classification Committee whose role is to oversee accreditation and classification implementation process to promote fairness and credibility.

6.0.2 Adoption of Quality Audits

The proposed regulation has adopted quality audit instead of inspection in Regulation 26. A quality audit is a continuous quality assessment geared towards establishing the level of adherence to national minimum standards while inspection is about checking for mistakes without providing mitigation measures.

6.0.3 Free National Accreditation and Classification Exercises

The proposed regulation under Regulation 6 (1) has made it mandatory for every licensed enterprise under Classes A and B to subject themselves to the national accreditation and classification exercises at no cost. This is aimed at promoting

quality service delivery in the sector for destination competitiveness. The same proposed regulation also proposes fees under the 1st Schedule for entities that may fail to adhere to the above provisions to discourage bad practices exhibited by some operators in the sector occasionally contributing to poor quality of service delivery.

6.0.4 Submission of Monthly returns

The proposed regulations require filing of monthly returns by tourism enterprises in relation to bed occupancy, number of visitors by country of origin and revenue earnings under Regulation 26. The Authority will provide an automated platform for submission of said data.

6.0.5 Professional Certificate

The proposed regulation makes it mandatory for either the proprietor or agent of a tourism enterprise to have a relevant professional certificate in relation to the license being sought. This aims at ensuring tourism establishments engage professionals. In the same breath, the regulator recognizes experiential learning and has provided for recognition of prior learning certificates from Kenya National Qualifications Authority (KNQA) for sector operators who may have failed to go through the formal education but have acquired the requisite skills and knowledge in their areas of trading or business through experience. This is in line with the requirement under Regulation 17 (b).

6.0.6 Criminalizing Digital Listing without a License

The proposed regulation has made it an offence for unlicensed enterprises to list themselves on any digital marketing or booking platform under Regulation 21 (3). This is to ensure that only facilities that have met the required minimum standards are allowed to operate in the sector. Additionally, this is also to promote fair business practices.

6.0.7 Introduction of a Tourist Service Vehicle Sticker (TSV)

The proposed regulation introduces Tourist Service Vehicle (TSV) Sticker under Regulation 22 (1). This should be displayed conspicuously on vehicles for them to access natural and protected areas. TSV aims to control the menace of unlicensed vehicles getting access to parks, reserves and conservancies. These vehicles end up destroying the fragile environment within these protected areas and creating unfair competition for licensed vehicles.

6.0.8 Categorization of Serviced Apartments

The proposed regulation has categorized serviced apartments under the 1st schedule based on the number of units to address the interests of small and medium enterprises (SMEs) and to ensure that they also comply with the law and benefit from incentives in the sector.

6.0.9 Enhanced License Band Limits for Class B (Restaurants)

The proposed regulation has enhanced license band limits from 3-6 million to 5-25 million. This is to reduce the cost of operations for small and medium enterprises (SMEs) in the country.

6.0.10 Introduction of Provisional License

The proposed regulation has introduced a conditional provisional license under regulation 18 (3). This is to give operators time to comply with minimum requirements as set in regulation 17 (c) on minimum standards.

6.0.11 Power to Close Non-Compliant Enterprises

The proposed Regulation gives the Authority the ability to order closure of an enterprise that fails to comply with a notice or whose license has been suspended, cancelled or revoked under regulation 27. This will promote adherence to minimum standards by operators in the sector.

6.0.12 Partnerships and Linkages

The proposed regulations empower the Authority to enter into any partnerships whether local or international to give effect to the regulations.

6.1 License Fees and Administrative Costs

The Authority intends to collect fees to minimize administration costs. Such costs include fees for accreditation and classification beyond the national exercise, license fees, variation fees and register inspection fees.

The Authority proposes to charge fees as prescribed in the 1st schedule of the regulations.

6.2 Administrative Measures

The Authority will continue to enhance all its digital processes including payment of license fees, accreditation and classification fees, quality audit and accreditation processes, and monthly data submission so as to enhance its efficiency, make processes verifiable and minimize administrative costs.

6.3 Justification for The Regulations

The Proposed Regulations will:-

- I. ensure compliance of Section 7(b) regulating tourism activities and services in accordance with the National Tourism Strategy;
- II. promote compliance with quality tourism standards by tourism enterprises;
- III. provide a framework on the conduct of quality assurance audits;
- IV. provide a framework for monitoring and assessment of tourism activities and services for continuous improvement and adherence to sound principles and practices of sustainable tourism;
- V. provide a framework for partnerships and linkages in regulation of the tourism sector to enhance destination competitiveness and appeal.

CHAPTER 7

THE COST-BENEFIT ANALYSIS FOR THE PROPOSED TOURISM ENTERPRISES REGULATIONS

7.0 Introduction

The chapter seeks to evaluate the cost and benefits of the changes proposed the regulations to justify the proposals pursuant to Section 7(1d) and (2) of the Statutory Instruments Act. The cost-benefit analysis will enable the Authority to approximate the total expected costs and benefits of the provision of the Regulations. The objective of the Regulations is to create a framework for enhanced quality service delivery in the tourism sector for an overall competitive destination, promote co-regulation and financial sustainability of the Authority.

7.1 Benefits and Costs of the Regulations

Table 1 below illustrates benefits and costs attached to the regulations;

TABLE 1: COST-BENEFIT ANALYSIS

Category A: License Fees				
Class of Tourism Enterprises & Services	License Fee Determinants	License Fee per Year	Maximum Penalty (Per month)	Net Benefit
Class "A" Enterprises	• Bed capacity • Number of restaurants • Number of units • Other amenities	Ksh 1,500- Ksh 72,000	10% of license fee for each month defaulted.	• Promoting quality and standards through periodic of quality audits. • Accreditation and Classification

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Class “B” Enterprises	Gross receipts	Ksh 9,000-Ksh 50,000	10% of licence fee for each month defaulted	Ease of doing business by benefiting from government incentives issued time to time including duty/vat waivers and participation in government procurement opportunities.
Class “C” Enterprises	Nationality of the investor	- Local Enterprises: Ksh 21,500-Ksh 49,500 - Foreign-owned Enterprises: USD 1,500	10% of licence fee for each month defaulted	Consumer protection for tourists consuming the services.
Class “D” Enterprises	Nationality of the investor	- Local Enterprises: Ksh 8,500-Ksh 106,000 - Foreign-owned Enterprises: USD 1,000-USD 2,000	10% of licence fee for each month defaulted	- Entitlement to capacity building and training by the Authority or other government agencies - Access to marketing opportunities offered

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				by government agencies and online booking platform.
Class “E” Enterprises	Nationality of the stakeholder	- Local operator : Ksh 3,000-20,000 - Foreign operator : USD 200-500	10% of licence fee for each month defaulted	- Enhanced professionalism - Quality Service delivery - Fair trade and protection of the local businesses - Entitlement to capacity building and training by the Authority and other government agencies - Access to marketing opportunities offered by government agencies and online booking platform.
Class “F” Enterprises	N/A	Ksh 30,000	10% of licence fee for each month defaulted	Promoting quality and standards through periodic of quality audits.
Class “G” Enterprises	N/A	Ksh 30,000	10% of licence fee for each month defaulted	

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				• Accreditation and Classification • Ease of doing business by benefiting from government incentives issued time to time including duty/vat waivers and participation in government procurement opportunities. • Consumer protection for tourists consuming the services. • Entitlement to capacity building and training by the Authority or other government agencies
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				• Access to marketing opportunities offered by government agencies and online booking platform.
Category B: Other Fees				
Activity	Targeted Enterprises	Fee Charged (Ksh)	Maximum Penalty	Net Benefit
Accreditation	Class A and B	• Free if done within the national exercise	• Facility is charged Ksh 100,000 if accreditation is done off the national exercise for existing facilities	• Promoting and guaranteeing Quality service delivery • As a marketing tool locally and internationally
	Other Tourism Enterprises	• Free if done within the national exercise.	• Facility is charged Ksh 100,000 if accreditation is done off the national exercise for existing facilities	
Classification	Class A and B	• Free if done withing the national exercise.	• Facility is charged Ksh 250,000 if classifica	

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			tion is done off the national exercise for existing facilities	
Tourist Service Vehicle Stickers	Tourist Vehicles	• Ksh 1,000 per vehicle for locally registered vehicle • USD 500 per vehicle for foreign registered vehicle valid for 6 months.	N/A	• Fair trade • Control access to protected areas • Manage influx of unregistered operators in the sector.

The cost-benefit analysis indicates that adoption of the Regulations is expected to create a positive impact to the sector by enhancing quality service delivery, promoting consumer protection by protecting consumers from unscrupulous operators, encouraging fair trade among operators and advancing partnerships and collaborations among sector players. Additionally, the Regulations has unbundled some classes for instance serviced apartments by providing bands to encourage small and medium enterprises (SMEs).

Overall, it is expected the regulation will encourage entry of new tourism and hospitality related businesses in the Kenya thus creating quality jobs and improving the growth of Kenyan economy. Lastly, the Regulations is expected to boost the reputation of Kenya as the most attractive quality destination that promotes a sustainable tourism sector.

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CHAPTER 8

SOCIAL ECONOMIC IMPACTS

8.0 Introduction

Article 42 of the Constitution of Kenya guarantees every person the right to a clean and healthy environment which includes under Article 42 (a) the right to have the environment protected for the benefit of present and future generations through legislative and other measures. The proposed regulation is such a legislative framework that will allow the Authority to contribute towards the prudent utilization of environmental resources for sustainable development. The Fourth Schedule of the Constitution of Kenya states that Tourism Policy and Development is a role of the National Government which calls for the development of regulations and other relevant laws for sustainable tourism development.

8.1 Impact of the Regulation on Private Sector

- An opportunity to offer quality service delivery due to the extensive continuous quality improvement mechanism set by the authority including the national minimum standards, accreditation criteria and classification guidelines.
- Opportunity to attract more tourists and visitors due to the enhanced service delivery and improved destination attractiveness/competitiveness.
- **A differentiation indicator:** Hospitality establishments differentiate themselves based on the services and facilities they offer. This allows the establishments to showcase their unique features and target specific markets. It also encourages competition amongst the hospitality establishments. Classification and grading is a key business differentiator as the quality of services offered is a determinant of consumer choice.
- **Promotion of Sustainable Tourism:** Through licensing and classification, TRA encourages sustainable practices within the tourism industry. This includes promoting eco-friendly initiatives, responsible tourism practices,

and adherence to environmental regulations. Sustainable tourism practices help preserve Kenya's natural and cultural heritage for future generations and appeal to environmentally conscious travelers.

- **Encourages employment of Professionals within the Hotels–** Classification and Quality Audits encourage the absorption of professionals and qualified staff in hospitality facilities hence encouraging uptake.
- **Marketing tool:** Classification and grading contributes to hotel marketing efforts and reputation; it is used as a marketing tool to attract customers.
- **Provision of Consumer Information:** High rated hospitality establishments command higher prices reflecting the quality and level of services provided. Classification and grading indicate value of money when comparing hotels and booking decision making.
- **A Quality Benchmark:** Classification and grading provide a common framework for benchmarking and standardization within the hospitality industry. This allows hoteliers, travel agencies and other industry stakeholders to have a shared understanding of different hotel categories, facilitating communication and business operations.
- **Enhanced Industry Competitiveness:** Classification and licensing create a benchmark for tourism businesses to strive towards higher standards. This promotes healthy competition among operators, leading to innovation, improved service delivery, and diversification of tourism products. Ultimately, this enhances Kenya's competitiveness as a tourist destination in the global market.

8.2 Impact of the Regulation on Individuals

- Better quality service delivery in the tourism sector
- Increased options since there will be unlimited choices of tourism enterprises offering quality service to clients. Spoilt for choice.

- **Consumer Protection:** Audits and classifications by TRA provide consumers (tourists) with assurance regarding the quality and safety of tourism services and facilities. This contributes to consumer confidence and satisfaction, reducing risks associated with safety and security, pricing, substandard services or misleading advertising.

TABLE 2: IMPACTS

Impact on sectors	Option one: Maintaining the Status quo	Option two: Administrative measures	Option three: Developing Tourism (Tourism Enterprises) Regulations, 2025
Impact on Public Sector	Declining quality of service delivery. Lack of competitiveness of Kenya as a destination. Low revenue from tourism.	Cumbersome to enforce	• Quality Assurance and Standards Compliance: This helps in maintaining high-quality offerings, which enhances the overall visitor experience. Tourists are more likely to return and recommend Kenya as a destination if they have positive experiences, thereby boosting tourism revenue.

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			• Enhanced service quality • Improved destination competitiveness • Improved preference of Kenya as a destination thus attracting more tourists earning the country more revenue • Better facilities contribute to sustainability of the tourism sector with counties which guarantee revenue for the counties • Provides for an opportunity for public-public partnership in tourism promotion
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Private Sector	Limited effect to private sector	It is not guaranteed that administrative measures will result to substantial impact to the private sector	• International Best Practice– Classification, Quality Audits ensures hotels engage in Global Best practices in order to ably compete with peers and get the desired rating. • Marketing tool: Classification and grading contributes to hotel marketing efforts and reputation • A Quality Benchmark: Classification and grading provide a common framework for benchmarking and standardization within the hospitality industry.
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			• Enhanced Industry Competitiveness : Classification and licensing create a benchmark for tourism businesses to strive towards higher standards. This promotes healthy competition among operators. • Promotion of professionalism resulting to better rating by clients • Enhanced continuous improvement program promote sector sustainability • Better quality results to improved revenues for investors
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			• Provide for private-public partnership to help improve tourism sector • Regulatory compliance by private sector to the new provisions as set TRA Regulations 2025.
Economic Impact	Cost of doing business will continue to scale up due to internal and external factors	Administrative measures are not sufficient to contain the rising cost	• Economic Development: A well-regulated tourism industry supported by quality audits and licensing contributes significantly to economic development. It generates employment opportunities across various sectors, including hospitality, transportation,

			and local handicrafts. • Government Revenue: Licensing fees and taxes levied on tourism businesses generate revenue for the government. • Enhanced revenue base for financial sustainability of the Authority • It enhances the ease of doing business by reducing cost through digitisation of processes promoting efficiency. • It opens opportunity for tourism development, job creation and
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			sustainable development • It promotes an enabling business environment for investors. Regulations enhances fairness. • Supports the government policy objectives of the need for financial independency of SAGAs.
Social impact	Tourism potential in promoting equity, reducing poverty may not be realized	Administrative measures not adequate in addressing social impacts	• Consumer Protection: Audits and classifications by TRA provide consumers (tourists) with assurance regarding the quality and safety of tourism services and facilities. • Encourages hotels to

			promote host community business - Practicing local purchases of both goods and services. • Cultural Preservation: By promoting classification that respects cultural authenticity and heritage, TRA helps preserve traditional practices and cultural identities. • Inculcate best practices for sustainable tourism. • Advances public participation, social acceptability, accountability and transparency.
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			• Promotes social equity and equality in utilization of tourism resources. • Promotes quality service delivery in the tourism sector. • Contributes to safety and security of guests while in the country. • A key tool for decent work and economic growth as described in SDG8. • Advances greater emphasis on safety and hygiene through national minimum standards for tourism enterprises,
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			activities and services.
Impact on Business	Continued unprofessionalism by some operators	Administrative measures lack the force of the law to fully implement the regulations	• A differentiation indicator: hospitality establishments differentiate themselves based on the services and facilities they offer. • Encourages employment of Professionals within the sector– Classification and Quality Audits encourage the absorption of professionals and qualified staff in hospitality facilities hence encouraging uptake. • Provision of Consumer Information: High rated

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			hospitality establishments command higher prices reflecting the quality and level of services provided. Creates a framework for businesses to contribute towards quality service delivery e.g., by engaging professionals in the sector
Impact on Environment	Fragile ecosystems will continue to be affected by inaction	Administrative measures are not adequate to address environmental matters	Promotion of Sustainable Tourism: Through licensing and classification, TRA encourages sustainable practices within the tourism industry. This includes promoting eco-friendly initiatives,

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			responsible tourism practices, and adherence to environmental regulations. • It ensures that fragile environment is protected for sustainable development. • Fosters domestication of relevant international tourism treaties, protocols and Conventions. • Creates incentives for sustainable resource utilization and environmental protection. • Provide measures against environmental mismanagement through quality audits. This is
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REGULATORY IMPACT STATEMENT FOR THE PROPOSED TOURISM (TOURISM ENTERPRISES) REGULATIONS, 2025

			through advocating for circular economy for climate Action SDG 13. • Through circular economy, the regulation is set to reduce the degradation of natural habitats, halt loss of biodiversity and protect threatened species.
Impact on Taxes	No impact	No impact	• No impact as licence fees are not taxes.
Impact on Existing Legal Framework	The existing legal gaps will not be resolved	Regulatory issues will remain unresolved	• Addresses the identified existing gaps and inadequacies in the current regulation. • Enhances enforcement for better compliance with regulations

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			• The substantive legislation Tourism Act 2011 provides for the development of regulations for its implementation. • Creates harmony with relevant legal frameworks
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CHAPTER 9

CONSIDERATION OF ALTERNATIVES FOR THE PROPOSED TOURISM ENTERPRISES REGULATIONS

9.0 The Proposed tourism Enterprises Regulations

The Statutory Instruments Act requires a regulator to carry out an informed evaluation of a variety of regulatory and non-regulatory policy measures by considering relevant issues such as costs, benefits, distributional effects and administrative requirements. Regulations or regulations should be the last resort in realizing policy objectives. The options considered under this part are: maintenance of the status quo, administrative measures and developing the proposed Tourism Enterprises Regulations, 2025.

9.1 Option one: Maintenance of the Status Quo

Maintaining the status quo means that existing regulations of 2014 will continue to operate despite the identified gaps.

Effect of status quo will result in continuation of gaps identified while implementing the existing regulations including weak enforcement mechanisms resulting in increase of unlicensed tourism activities and services, continued unprofessionalism and reduced quality of service in the sector hence reducing Kenya's overall appeal as tourist destination.

9.2 Option two: Administrative measures

This is a non-regulatory measure which, if applied, will depend on the good will of public officers to implement the provision of the new Act. Administrative measures involve issuance of directives and circulars to the various departments hoping that they will be implemented. Administrative measures do not have the force of law and may be challenged in court of law. These Regulations seek to impose payment of mandatory fees and this must be done in law.

Furthermore, changes to the fees payable cannot be done administratively as the stakeholders have a legitimate right to incorporate their views on the same and to give their recommendations since they will be affected by these changes.

9.3 Option three: Developing the Tourism Enterprises Regulations, 2025

The development of these Regulations is a requirement of the Act which seeks to address the problems and challenges that have faced the sector since inception. These Regulations when published will ensure full implementation of the Act.

9.4 Preferred Option

The preferred option would be the implementation of the drafted regulations with a view to ensure that identified gaps are filled.

CHAPTER 10

COMPLIANCE AND IMPLEMENTATION

10.0 Institutions

It is the duty of the regulator to assess the adequacy of the institutional framework and other incentives through which the regulations will take effect and design responsive implementation strategies that make the best use of them³.

The implementation and enforcement of these proposed regulations will be undertaken through the existing institutional framework at National level (Ministry of Tourism and Wildlife) and the County level (County Governments).

10.1 Conclusion

Based on the analysis in this report, the proposed Tourism Enterprises Regulations, 2025 are extremely necessary.

10.2 Recommendation

In view of the above conclusion, it is recommended that the proposed Tourism (Tourism Enterprises) Regulations, 2025 be adopted.

³ OECD (1995), the 1995 Recommendation of the Council of the OECD on Improving the Quality of Government Regulation, Paris.