



Services Regulation in the Caribbean

Tourism Services

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Abstract

CARIFORUM States have generally taken a cautious approach in adopting commitments under the Economic Partnership Agreement by having them reflect their World Trade Organization commitments, excluding sensitive subsectors, and inscribing broad horizontal reservations. This report assesses the regulatory framework for trade and investment in five areas – horizontal measures, information and communications technologies, transport services, professional services, and tourism services in Barbados, Belize, Guyana, Jamaica, and Trinidad and Tobago under the CARIFORUM – European Union Economic Partnership Agreement. The analysis concludes that of the five areas reviewed, adjustments are recommended principally to legislation covering information and communications technologies, professional services, and transport services.

The report is part of the series: SERVICES REGULATION IN THE CARIBBEAN, which includes the present technical note of Tourism services as well as a Summary Report and 4 technical notes. To access them, you may either go to the web page www.iadb.org/publications or use the links below:

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TOURISM SERVICES

The services listed under “Tourism and Travel Related Services” in the EPA follows the WTO Services Sectorial Classification List (WTO document MTN.GNS/W/120; hereinafter “W/120”). This approach has been criticized as limited in scope, comprising only hotels and restaurants, travel agencies and tour operators, and tourist guide services (in addition to an "Other" category).¹ Numerous services not classified as “tourism services” that are commonly associated with the industry, most notably, cruise ships, car rentals, computer reservation systems, hotel construction, duty free shops, certain business and financial services, and entertainment services, are found in other W/120 sectorial categories.² The approach to scheduling commitments in the GATS and the EPA does not take into account the highly fragmented nature of the tourism industry and the important linkages to transportation, construction, distribution, finance, business and recreational, cultural, and sporting services.

The GATS contains no sector-specific disciplines for tourism services.³ The additional disciplines prescribed by the EPA are largely “soft law”, i.e., best endeavour undertakings, save for Article 111, on the prevention of anti-competitive practices, which is to be implemented in accordance with Chapter 1 of Title IV on competition policy.

The EPA imposes best endeavour obligations on the parties to facilitate the transfer of technology, SME participation, and the mutual recognition of qualifications and experience; to encourage the sustainable development of tourism and compliance with environmental and quality standards; and to provide development cooperation in certain priority areas (i.e., national accounting systems,⁴ environmental management, marketing strategies, effective participation in standard setting bodies, and training program) and information exchange.⁵

Article 111 requires all State parties to maintain or introduce appropriate measures to prevent suppliers from affecting materially the terms of participation in their respective tourism

¹ E.g., “Tourism Services: Background Note by the Secretariat,” WTO doc. S/C/W/298 (June 8, 2009), paragraph 7.

² E.g., Communication from the Dominican Republic, El Salvador, and Honduras, “The Cluster of Tourism Industries,” S/CSS/W/19, 5 December 2000.

³ Note that certain CARIFORUM countries, most notably the Dominican Republic, have sought to introduce sector-specific disciplines in proposing a draft annex on tourism in the WTO Doha Development Round, e.g., Communication by Bolivia, Dominican Republic, Ecuador, El Salvador, Honduras, Nicaragua, Panama, Peru, and Venezuela, S/CSS/W/107, 26 September 2001.

⁴ Note that development cooperation with respect to national accounting systems is designed towards the introduction of tourism satellite accounts, which are essentially statistical instruments that allow a country to analyze the importance of tourism in the economy.

⁵ See EPA, Article 112-118.

markets through various anticompetitive activities, including abuse of dominance, exclusivity clauses, refusal to deal, tied sales, quantity restrictions, or vertical integration. The provision is aimed particularly at tour operators and other tourism wholesalers, travel agencies, and other distributors of tourism services.⁶

Anti-competitive practices can occur both between and within countries, and can involve abuses by developed and developing trading partners.⁷ Anti-competitive behaviour in non-tourism sectors, such as cement (essential for building hotels), computer software, shipping and air freight, may directly affect tourism. The concerns about anti-competitive conduct were a major impetus for the proposed GATS Annex on Tourism sponsored by the Dominican Republic (which is party to the EPA) and other developing countries. The proposal listed as examples of common anti-competitive practices in tourism the following: "1. Competitive exclusion through the discriminatory use of information networks, predatory pricing, allocation of scarce resources, and ancillary services to air transport; 2. Abuse of dominance through exclusivity clauses, refusal to deal, tied sales, quantity restrictions, or vertical integration; and 3. Misleading or discriminatory use of information by any juridical person."⁸

As noted in the discussion on competition disciplines in previous chapters, Title IV, Chapter 1 of the EPA requires States to implement national competition legislation. Article 125(3) (b) of the EPA affirms the obligation of CARICOM Member States to comply with Chapter 8 of the Revised Treaty of Chaguaramas (CARICOM Treaty). States currently without national competition authorities, most notably for present purposes, Belize and Guyana, will have to establish agencies to address competition concerns and cooperate with the regional Competition Commission, which has jurisdiction to apply the rules of competition in respect of anti-competitive cross-border business conduct.⁹

All five countries included in this review have undertaken commitments on tourism and travel-related services. All have made commitments on hotels and restaurants (including

⁶ See EPA, Article 111, footnote 1.

⁷ E.g., A. E. Rodriguez & James Murdy, "Anti-Competitive Practices in the Tourism Industry: The case of small economies," *J.Bus. & Econ. Res.*, October 2006.

⁸ Communication from the Dominican Republic, El Salvador, and Honduras – "Preparations for the 1999 Ministerial Conference", S/C/W/127, 14 October 1999, p.14; see also S/CSS/W/107, 26 September 2001 - i.e., the revised proposal that sought to address other WTO members' concerns about the overly broad scope of the proposed cluster of services.

⁹ See CARICOM Treaty, Articles 168 and 173. See also Chapter 3, Telecommunications, discussion on competitive safeguards on major suppliers.

catering) CPC 641-643; as regards Barbados, these exclude restaurants, and as regards Belize and Trinidad and Tobago, they vary depending on the subcategory. The following relate to hotel lodging services: CPC 64110, i.e., excluding motels and other lodging such as camp services, youth hostels and holiday home services as well as food and beverage services. All five countries have left mode 1 unbound due to lack of technical feasibility and have bound mode 2; Barbados, Guyana, and Jamaica have bound mode 3;¹⁰ Belize has bound mode 3 national treatment, but for market access includes the following notation, “for hotels in excess of 50 rooms; hotels of less than 50 rooms may be subject to an economic needs test”; Trinidad and Tobago qualifies mode 3 market access with the notation that “Hotels of less than 21 rooms are reserved for nationals,” and has left mode 3 national treatment unbound; all five countries have left mode 4 unbound save as indicated in the horizontal commitments.

The limitations placed on market access are similar to those generally found in WTO members GATS commitments;¹¹ reference is made, in particular, to the distinct treatment of restaurants, reservations with respect to the size of hotels, and the general recognition of the lack of technical feasibility in relation to mode 1 supply.

On the subset of services excluded from the above, Trinidad and Tobago has undertaken commitments on CPC 64193-64196 (i.e., letting services of furnished accommodation; youth hostel and mountain shelter services; camping and caravanning site services; and sleeping car services and sleeping services in other transport media); these are bound for modes 1, 2 and 3, and unbound for mode 4 except as indicated in the horizontal commitments. Trinidad and Tobago has also undertaken similar bound commitments on meal serving with full restaurant services (CPC 64210); meal serving services in self-service facilities (CPC 64220, except for institutionalized cafeteria services such as schools, hospitals, and other public institutions); and beverage serving services with entertainment (CPC 64310 and 64320).

¹⁰ Note that Jamaica includes the notation that “registration, licensing required.” Registration and licensing are, however, permissible measures irrespective of whether or not so inscribed.

¹¹ E.g., “Tourism Services: Background Note by the Secretariat,” WTO doc. S/C/W/298 (8 June 2009), paragraph 46, which reports that among the most common restrictions appearing in schedules, the cross-border supply of hotel and restaurant services is often indicated as unbound due to lack of technical feasibility. An economic needs test is frequently required for opening new bars or restaurants; citizenship requirements are sometimes imposed for liquor licenses and tourist guide licenses. In regard to commercial presence, market access is often guaranteed only to hotels in excess of a certain size, e.g., 50 or 100 rooms, with access for hotels below that size subject to an economic needs test. In some cases licenses are required for commercial presence, and in other cases commercial presence is subject to foreign equity ceilings. Note also that more WTO members have made GATS commitments in tourism and travel-related services as defined in W/120 than for any other sector.

On the subset of services excluded from the above, Belize has undertaken commitments on letting services of furnished accommodation, and camping and caravanning site services (CPC 64193 & 64195); these are bound for modes 1, 2, and 3, and unbound for mode 4 except as indicated in the horizontal commitments. Belize has also undertaken commitments on meal serving with full restaurant services (CPC 64210); these are bound for modes 1 and 2, and mode 3 National Treatment; left unbound is mode 3 market access and mode 4 except as indicated in the horizontal commitments. Belize has undertaken similar bound commitments on meal serving services in self-service facilities (CPC 64220, except for institutionalized cafeteria services such as schools, hospitals and other public institutions).

Only Guyana, Jamaica, and Trinidad and Tobago have undertaken commitments on travel agencies and tour operator services (CPC 7471).¹² Commitments are bound for all three countries on modes 1, 2, and 3, except that for Trinidad and Tobago, mode 3 market access is bound for in-bound passengers only (whereas disciplines are most commonly focused on services for out-bound passengers); mode 4 is unbound except as indicated in the horizontal commitments for all three countries. None of the countries reviewed have undertaken commitments on tourist guide services (CPC 7472), where it is common for citizen requirements to be made a condition for granting licenses.

All five countries under review have undertaken commitments on marina services. These are bound for modes 1, and 2, and unbound for mode 4 except as indicated in the horizontal commitments; Barbados, Guyana, and Jamaica have also bound mode 3, while Belize has left mode 3 unbound. Trinidad and Tobago has conditioned mode 3 Market Access as follows, “For vessels 30-100 feet, marinas with more than 100 slips. For vessels over 100 feet, marinas with less than 100 slips”; and included a notation on mode 3 national treatment to the effect that “Government subsidies may be limited to nationals.”¹³

Four of the five countries under review (except for Guyana) have undertaken commitments on spa services. Barbados, Belize, and Jamaica have bound commitments on

¹² Note that CPC 7471 is limited to services rendered for passenger travel by travel agencies, tour operators, and similar services; travel information, advice and planning services; services related to arrangement of tours, accommodation, passenger and baggage transportation; and ticket issuance services. These services are provided on a fee or contract basis. These services may be contrasted with tourist guide services provided by tourist guide agencies.

¹³ It may be recalled that the EPA excludes subsidies for services from the scope of the disciplines imposed. As such, States may limit subsidies to nationals consistent with their bound commitments even where this is not inscribed in their schedules.

TDC relate to Tobago, all activities are planned and accomplished in consultation with the Tobago House of Assembly.¹⁵

The Tourism Development Act CAP 87:22, which repeals and replaces the Hotel Development Act¹⁶, is designed to facilitate the development of the tourism industry in Trinidad and Tobago by providing incentives and concessions to investors. The minister is authorized to confer tax benefits on owners or operators,¹⁷ having regard to the amount of capital invested and consequential financial risk (minimum capital expenditures are established for international investors),¹⁸ as well as the contribution likely to be made to the sustainable development of the tourism industry in Trinidad and Tobago and the achievement of national tourism objectives.¹⁹ Tax benefits are conferred when an approved tourism project results in the creation of a new tourism project or the expansion of an existing tourism project.

The basic package of tax benefits includes a tax exemption for a period not exceeding seven years from gains or profits from an approved tourism project (including sale of a villa, condominium, or site, depending on the circumstances); accelerated depreciation; certain capital allowances in respect to approved capital expenditures;²⁰ and the possibility to carry over from the tax exemption period any losses arising out of the operation or rental of an approved tourism project. Where the owner or operator is a company and pays a dividend out of the gains or profits, the dividend is also exempt from tax if the recipient is a non-resident shareholder who is a national; if a non-national, the recipient is not liable to tax in respect to that dividend in the country in which he/she is a resident.²¹ Provision is made for the importation of vehicles at

¹⁵ See also Tobago House of Assembly Act, 1996, section 25(1), which confers on the Tobago House of Assembly Division of Tourism and Transportation responsibility for the formulation and implementation of tourism policy for Tobago; as such, the Tobago House of Assembly is responsible for tourism promotion and development and the overseas marketing of Tobago in collaboration with the TDC. See also Trinidad and Tobago Constitution, section 141A.

¹⁶ See Tourism Development Act, section 45.

¹⁷ See Tourism Development Act, section 2, which defines an “operator” as an individual, a partnership or a company that operates an approved tourism project owned by or leased to the individual, partnership or company and includes their respective successors in title; and “owner” as an individual, partnership or a company that owns or owns and develops an approved tourism project but that is not an operator in respect of that tourism project and includes their respective successors in title.

¹⁸ See Tourism Development Act, section 8 and Schedule 9.

¹⁹ See Tourism Development Act, sections 3 and 8, which also expressly requires that the project be constructed or undertaken primarily for use in the tourism industry, and be available on a continuing basis for use in the promotion of Trinidad and Tobago as a tourist destination.

²⁰ See also Tourism Development Act, section 15 on determining approved capital expenditure for a project as including the construction of a new tourism project; the expansion or addition to an approved tourism project; the furnishing and equipping thereof; and certain advertising and promotional expenses.

²¹ See Tourism Development Act, sections 3 and 34-37.

reduced duty rates in certain circumstances.²² Additionally, a special transfer tax is payable in lieu of stamp duty on the sale of an approved tourism project.²³

In order to access benefits under the Tourism Development Act, the tourism project must be registered with the TDC as the state authority responsible for tourism, or the Tobago House of Assembly. The act provides for the issuance of an interim certificate of approval, and following the completion of the project substantially in accordance with the conditions of the interim approval, an approved tourism project order specifying the tax benefits granted to the owner or to the operator that may impose continuing conditions, as considered appropriate.²⁴ The minister may also grant an additional interim approval where further work is undertaken on a tourism project during the tax exemption period, and upon completion of that project, may extend the period of tax exemption to the maximum seven- year period where the full concession period was not initially granted.²⁵ Where a person has been granted an interim approval or an additional interim approval, the operator or owner is also eligible to receive a permit for the importation of building materials and articles of tourism equipment free of customs duty.²⁶

Tourism projects are subject to annual inspection and the submission of relevant statistics/economic data at intervals as required by the TDC or Tobago Assembly. Trade conditionalities linked to the grant of incentives include an undertaking that the tourism project, as far as possible, will engage the human resources of Trinidad and Tobago or a CARICOM Member State, and show linkages to the agricultural, construction, and furniture industries, and other manufactured goods and services, of Trinidad and Tobago.²⁷ Such linkages are not *per se* a violation of EPA commitments or WTO rules on non-discrimination. This would depend on the extent to which the measure affects trade in goods (through local sourcing or domestic content requirements) or discriminates against Foreign Service suppliers in sectors and modes of supply where national treatment commitments have been undertaken.

²² See Tourism Development Act, sections 4 and 4A.

²³ See Tourism Development Act, section 6.

²⁴ See Tourism Development Act, sections 13, 14 and 16. Note that where there is a failure by the owner or the operator to observe the continuing conditions, the order becomes inoperative with effect from such date as may be fixed by the minister by notification; see *ibid*, section 16.

²⁵ See Tourism Development Act, sections 19-21.

²⁶ See Tourism Development Act, section 22, which also provides for the purchase in Trinidad and Tobago with the privilege of a drawback of customs duties or excise duties of such items which are not already duty free.

²⁷ See Tourism Development Act, section 7.

It should be noted that certain incentives that benefit tourism projects are reserved solely for nationals of Trinidad and Tobago and other CARICOM Member States. The term “national” is defined as a person who is a citizen or legal resident²⁸ of Trinidad and Tobago or of another Member State, and includes a company or other legal entity incorporated or constituted in a CARICOM Member State in conformity with the relevant laws, formed for gainful purposes, having its registered office and central administration and carrying on substantial activity within the community, and which is substantially owned and effectively controlled by persons who are CARICOM citizens or residents.²⁹ The incentives limited to nationals as defined under the act relate to accommodation facilities under 21 rooms; certain transportation services; ground tour operations or destination management companies; and dive operations.³⁰

It may be recalled that subsidies in services are excluded from the scope of the EPA. Additionally, Trinidad and Tobago has entered a reservation on mode 3 Market Access for hotel lodging services restricting facilities under 21 rooms to nationals only, and has not made any commitments on tourist guide services. Trinidad and Tobago has also undertaken limited commitments on sporting and other recreational services (CPC 964); these are bound only for mode 2, mode 1 National Treatment, and mode 4 market access; mode 1 Market Access and mode 3 are unbound; mode 4 National Treatment is also unbound except as indicated in the horizontal commitments.

As previously noted, numerous services, not classified within “tourism services” in the CPC provisional code are commonly associated with the industry, including sporting and other recreational services, above-mentioned, which is classified under recreational, cultural, and sporting services (CPC 96). Other commitments undertaken by Trinidad and Tobago within this

²⁸ See Tourism Development Act, section 2, which defines the concept of resident in terms of having a connection with Trinidad and Tobago of a kind which entitles the person to be regarded as a resident of Trinidad and Tobago within the meaning of the Immigration Act; or another Member State of a kind which entitles the person to be regarded as belonging to it for the purposes of the laws of that State relating to immigration or if it be so expressed in those laws, as being a native or resident of that Member State.

²⁹ See Tourism Development Act, section 2(2), which further clarifies that a company or other legal entity is substantially owned if more than 50 percent of the equity interest therein, is beneficially owned by CARICOM citizens or residents; and effectively controlled if those CARICOM citizens or residents have the power to name a majority of its directors or otherwise legally, to direct its actions. Note that EPA, Article 65(a) (i) defines commercial presence in terms of the constitution, acquisition, or maintenance of a juridical person. The terms "constitution" and "acquisition" of a juridical person are understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links. When the juridical person has the status of a company limited by shares, there is a lasting economic link where the block of shares held enables the shareholder, either pursuant to the provisions of national laws relating to companies limited by shares or otherwise, to participate effectively in the management of the company or in its control.

³⁰ See Tourism Development Act, section 9.

category include entertainment services (including theatre, live bands, and circus services) (CPC 9616) where modes 1 and 2 are bound, and mode 3 is unbound; news agency services (CPC 962), which are bound for modes 1, 2, and 3 with the proviso that the establishment of press agencies by foreign investors is subject to reciprocity for mode 3 market access; and the rental and leasing of yachts (CPC 96499**, 83103**) where mode 2 is bound, mode 1 and mode 3 national treatment are unbound, and mode 3 market access is subject to a joint venture requirement.

The legislation relevant to recreational, cultural, and sporting services appears to be fairly standard; reference may be made in this regard, for example, to the Newspapers Act CAP 20:01,³¹ and the Theatres and Dance Halls Act CAP 21:03.³² The regulatory framework, in so far as it exists, appears to facilitate trade in services rather than to restrict or distort supply.

Barbados

The Barbados Tourism Authority Act CAP 342 establishes the Barbados Tourism Authority, which is tasked with, *inter alia*, registering, licensing, and classifying tourist accommodation according to the standard of amenities provided; registering and classifying restaurants catering primarily to tourists according to the standard of cuisine and amenities provided; and registering and regulating other tourist services as determined by the minister.³³ The act prohibits the operation of any tourist accommodation without a license, which may be subject to conditions and must be renewed annually; this includes any apartment, hotel, guest

³¹ Note that the act requires any person wishing to be a proprietor, printer or publisher of a newspaper to file with and register at the office of the registrar general a statutory declaration setting out certain particulars; see Newspaper Act, sections 3 and 4; see also *ibid*, section 2, which defines “newspaper” as including every paper or pamphlet containing any public news, intelligence or report of any occurrence or any remarks or observations thereon or upon any political matter, published for sale, distribution or other purpose in parts or numbers at intervals not exceeding one hundred days, but does not include the *Gazette* or any paper, report, matter or thing printed by the Government Printer or published by government authority, or program, notices or printed matter containing only or principally *bona fide* advertisements.

³² The act regulates the use of theatres, dance halls, and other places of entertainment through a system of licensing; see Theatres and Dance Halls Act, sections 3, 4D and 7; licenses are granted by any magistrate assigned for duty in the magisterial district in which a theatre or dance hall is situated. The magistrate, acting as a licensing authority, may grant licenses for any period not exceeding 12 months to fit persons seeking to use places as theatres or dance halls on such conditions as deemed appropriate and subject to the fees provided in the act. Any person aggrieved by a decision of a licensing authority may appeal from the decision to the Court of Appeal. See also Theatres and Dance Hall Regulations providing for safety measures and defining appropriate conduct.

³³ See Barbados Tourism Authority Act CAP 342, sections 3-5. Note that the Board of Directors of the authority is responsible for the execution of policy and the general administration of the authority.

house, villa, or any other premises or place where accommodation is provided for tourists for reward.³⁴

The Travel Services Act CAP 373A requires any person wishing to carry on business as a travel agent to obtain a license and prohibits a non-resident tour operator (as regards a company, i.e., one not originally incorporated in Barbados) from offering its services in Barbados except through a licensed travel agent.³⁵ A license to operate as a travel agent may only be granted to a citizen or permanent resident of Barbados or a person meeting the definition of an immigrant within the meaning of the Immigration Act.³⁶ Where the applicant is a company, this requirement is deemed to be met if 75 per cent of the issued share capital carrying voting rights are owned by citizens of Barbados, permanent residents, or immigrants.³⁷ It may be recalled that Barbados has not undertaken any commitments on travel agencies and tour operator services or tourist guide services.

Barbados maintains a comprehensive incentive regime for tourism projects and products which include recreational, cultural, and sporting services.³⁸ Barbados has undertaken bound EPA commitments on entertainment services (limited to theatrical producer, singer group, band

³⁴ Note that tourist accommodation are classified under the act based on the following criteria: the number of bedrooms (or self-contained units in the case of apartments) and the provision of meals (in the case of hotels and guest houses), or the number of employees and months open to business, the value of the property, and registration with the Tourism Authority (in the case of villas; see Barbados Tourism Authority Act CAP 342, sections 2 and 25. See also Hotels, Apartments and Guest Houses (Registration and Classification) Regulations, 1982. S.I. 1982 No. 160. Note that the act provides for the suspension or cancellation of a license based primarily on concerns relating to sanitation, safety, health and wellbeing provides for the suspension or cancellation of a license based primarily on concerns relating to sanitation, safety, health, and wellbeing; see Barbados Tourism Authority Act CAP 342, sections 26 and 27, which also addresses rules of procedural fairness, including a statement of reasons, provision for a written response, a review by the minister, and possible appeal to a judge in chambers whose decision is final.

³⁵ See Travel Services Act CAP 373A, sections 2 and 3, which also defines a “travel agent” as a person who carries on the business of selling to the public travel services provided by another person; and “tour operator” as a person who in the course of business, supplies his own non-scheduled travel transportation to the public, purchases or acquires from another person rights to travel services for the purpose of resale, or deals with travel agents or other tour operators for the sale of travel services supplied by another.

³⁶ See Travel services Act CAP 373A, section 5; see also Immigration Act CAP 190, section 2, which defines “immigrant” as a person who seeks to enter, or is within, Barbados for the purpose of permanent residence.

³⁷ See Travel Services Act CAP 373A, sections 5 and 6. Note that other considerations are also taken into account in granting a license, including the applicant’s good character, the need for the persons entrusted with the day-to-day management and control of the travel agency to possess a working knowledge of the business, and the adequacy of the premises and the resources for the efficient running of the travel services to which the license relates. Where the applicant is a body corporate these considerations are applied to the directors and partners of a firm of travel agents. A license is issued by the registrar of travel services. Registration under the act operates as exemption from the operation of the Profession, Trade and Business Registration Act. Provision is made for a person aggrieved by a decision of the registrar to appeal to a committee appointed by the minister for the purpose or to a tribunal established by law to hear appeals; see *ibid*, sections 7, 25 and 29.

³⁸ E.g., Tourism Development Act CAP 341, sections 2 and 3.

and orchestra entertainment services, and circus amusement park and similar attraction services, CPC 96191), as well as news agency services (limited to newspapers and periodicals, CPC 9621) which are bound for modes 1, 2, and 3. Barbados has also undertaken commitments on sporting services (CPC 9641), but not other recreational services, which are bound for modes 1, 2, and 3, save for mode 1 market access which is unbound.

The legislation relevant to recreational, cultural and sporting services appears to be fairly standard; reference may be made in this regard, for example, to the Public Entertainment Act CAP 85A;³⁹ the Publications (Legal Deposit) Act CAP 301A, and the Registration of Newspapers Act CAP 302.⁴⁰ The regulatory framework, in so far as it exists, appears to facilitate trade in services rather than to restrict or distort supply.

The Tourism Development Act CAP 341 is designed to encourage the sustainable development of the tourism industry by providing income tax and duty-free concessions to approved tourism projects. The act expands the incentive package beyond that previously made available under the Hotels Aids Act, which it repeals and replaces. The tourism projects that may be approved under the act include the construction or remodelling of a new or existing hotel or of any building into a hotel; the furnishing and equipping of such a building; the construction

³⁹ Note that the Act requires a person to obtain a license in order to keep a place of public entertainment; see Public Entertainment Act CAP 85A, sections 2 and 3, which further defines a "place of public entertainment" as any premises kept habitually or used for entertainment, whether or not at stated intervals, in which the public may join, or at which members of the public may be entertained for payment, directly or indirectly, of money. An applicant must submit documentation demonstrating that planning permission has been obtained, that the premises is safe, and that the applicant is a fit and proper person to keep a place of public entertainment. Failing the lodging of an objection by a member of the public (upon publication of the applicant in accordance with the act) and payment of the prescribed fee, the comptroller must grant the license, but may impose such conditions in the public interest as he/she thinks fit. An aggrieved applicant may appeal the decision of the comptroller to a magistrate whose decision is final. Where an objection is made, a magistrate hears and determines the objection, and an appeal may lie from the decision of the magistrate to a judge in chambers. A license must be renewed annually but may be revoked by the comptroller subject to an appeal to a judge in chambers; see Public Entertainment Act CAP 85A, sections 4-8 and Schedule, which prescribes, *inter alia*, annual fees for amusement parks, discos, concert halls, cinemas, theatres, roller skating halls, places for vehicle racing, bingo halls, and public dance halls.

⁴⁰The Publications (Legal Deposit) Act CAP 301A requires printers and publishers who are permanently resident in Barbados within the meaning of the Immigration Act to deposit a copy of any audio-visual, literary or musical work or of any sound recording that is published, or a list of all such materials printed in Barbados, as the case may be, with the legal depositary; see Publications (Legal Deposit) Act CAP 301A, sections 2-5. The Registration of Newspapers Act CAP 302 imposes a duty on the printers and publishers of any newspaper to file with the Corporate Affairs and Intellectual Property Office a return providing the names of all the proprietors of the newspaper together with their respective occupations, places of business (if any) and places of residence, which is included in the Register of Newspaper Proprietors. A copy of all published newspapers must also be sent to the librarian of the Public Library; see Registration of Newspapers Act CAP 302, sections 3, 7 and 9. Note that the provisions as to the registration of newspaper proprietors do not apply to a newspaper that belongs to a joint stock company duly incorporated under the Companies Act; see *ibid*, section 11. See also the Broadcasting Act CAP 274B & Broadcasting Corporation Act CAP 276.

and furnishing of villas and timeshare properties; the construction and/or equipping of a new or existing restaurant; the construction of a new or existing attraction; the establishment, restoration, preservation and conservation, as appropriate, of natural sites, monuments, museums and other historical structures and sites; the provision of tourist recreational facilities and tourism related services; and the addition to a tourism product of any facilities or services intended to increase or improve the amenities that the tourism product provides.⁴¹

Approval of any tourism project is discretionary. The act provides that where the minister is satisfied that the tourism project is practical and that it would assist the development of tourism, the minister may, with the approval of the Cabinet, grant to the applicant an interim approval of the tourism project as the first stage in a three-stage authorization procedure; from interim to final approval (based on the completion of the project in accordance with any stated conditions) and the issuance of a license when the tourism product has met the standards and requirements of all the authorities in order to commence operations. Ownership of the tourism project and of the completed tourism product is a matter on which the minister may require further information.⁴² The legislation, however, does not purport to restrict benefits based on nationality or residence. The minister is given 90 days from the receipt of an application with all necessary information to notify the applicant of approval or refusal, and if interim approval is granted, it must specify the benefits to be granted to either the operator or owner subject to any conditions as may be attached. Failure to comply with any stated conditions may lead to the

⁴¹ See Tourism Development Act CAP 341, sections 2 and 3, which further clarify that the term “construction” includes erection, alteration, renovation, refurbishment, reconstruction, extension, conversion, and upgrading of a tourism product; “hotel” means any building containing not less than 10 bedrooms each of which is valued at not less than \$175,000, or any group of buildings, whether cottages, bungalows, or otherwise, situated within the same precincts, served by a common maid service, and together containing not less than 10 bedrooms, each of which is valued at not less than \$175,000, for the accommodation of guests for reward and available for letting for at least nine months in each year; “villa” means a house that has at least three bedrooms and is valued at not less than \$525,000, is managed by a company or real estate agent, and employs no less than three persons, is registered with the Barbados Tourism Authority, and is available for the accommodation of guests for reward for at least nine months in every year; “timeshare property” means a complex of at least 10 rooms that offers advanced purchase of vacation time for a particular period or interval, thereby affording the purchaser the right to enjoy a variety of services and facilities, subject only to a further payment of an annual contribution towards the maintenance of the property, where the property is registered with the Barbados Tourism Authority; “restaurant” means an establishment registered with the Barbados Tourism Authority that offers for sale an à la carte or a table d’hôte food menu, a wine and bar menu that includes a selection of at least six wines of both red and white; and table service provided by uniformed staff; “attraction” means a site that locals and overseas visitors visit that has an identifiable operation and management structure and can be characterized as natural, historical, cultural, or manmade; “recreational facilities” includes water parks, theme parks and golf courses but does not include any project that does not accord with public policy; and “facility” includes buildings, swimming pools, game areas, playing fields, spas, equipment, and furniture provided for the recreation of guests for reward.

⁴² See Tourism Development Act CAP 341, sections 4, 5, 9 and 10.

suspension or revocation of interim approval.⁴³ Where an application is not approved or an interim approval is suspended or revoked or a license is revoked, the applicant or owner or operator of the tourism project or product may appeal to a tribunal constituted under the act; the decision of the tribunal is final.⁴⁴

The act provides for customs duty concessions, including import duty, environmental levy, excise tax, and value-added tax (VAT) concessions on the importation of building materials and supplies, including services that directly relate to the construction of the project; similar concessions (as regards internal taxes) may be made on locally manufactured goods. An exemption period of up to 15 years is contemplated.⁴⁵ Income tax concessions are provided to owners or operators of an approved tourism product as well as investors (excluding commercial banks) assisting in funding the development of a tourism project. These include:⁴⁶

- Deductions from assessable income of an owner or operator of a tourism project of 150 per cent of interest paid on loans for up to \$7.5 million used to refurbish and upgrade a hotel or restaurant valued at more than \$1.75 million.
- Deductions of 150 per cent of the interest paid on a loan up to \$40 million to construct a new hotel of not less than two 250 rooms and conference facilities that can seat 500 persons, or a loan for up to \$15 million for purchasing for the consolidation of two or more hotels, each of which has 50 rooms or less, or a loan for up to \$3 million for refurbishing, upgrading, or constructing an attraction, in the case of an investor who secures a loan from a private sector lending institution; and as regards the refurbishing of an attraction, an investor may also claim an investment tax credit equal to 30 percent of the initial capital expenditure incurred in respect of any plant and equipment purchased and used in the process where this is in excess of \$100,000, with provision for carry forward for a period of 15 years.
- Deductions of 150 per cent of interest paid on an amount of a loan for up to \$20 million secured by an owner or operator for the purpose of constructing a new hotel in an inland area.

⁴³ See Tourism Development Act CAP 341, sections 6-8.

⁴⁴ See Tourism Development Act CAP 341, section 36 and Fourth Schedule.

⁴⁵ See Tourism Development Act CAP 341, sections 12-18; note that provision is also made for a refund of customs duties where imported products are purchased from local suppliers.

⁴⁶ See Tourism Development Act CAP 341, sections 20-35.

- Deductions of 150 per cent of expenditures incurred in tourist industry marketing, including those incurred at fairs, exhibitions and travel marts, travel expenses, salaries and wages incurred during tourist promotion trips, payments to agents and overseas sales representatives, advertising costs, market research costs and hiring short-term marketing consultancy services, costs of establishing electronic commerce tourism systems and tourism websites, and funding visits of tour operators;
- Deductions of 150 per cent of expenditure incurred training employees and a 200 per cent deduction where there is an approved employee share ownership scheme.
- Deductions of 150 per cent of expenditure incurred by an owner or operator of tourism project on its development, tourism research, an apprenticeship scheme, or the organization and hosting of tourism exhibitions and trade fairs, or on developing and operating nature trails in rural areas as tourist attractions, developing cross-sectorial linkages, developing computer software to measure the performance of the tourism industry, community tourism program, visitor exchange program between Caribbean countries and acquiring Green Globe or similar certification.
- A deduction to be made over a period of 15 years to the owner of a tourism project for approved expenditures of up to \$200 million incurred for providing accommodation or a facility for paying guests; where the approved expenditure exceeds \$200 million, the period may be extended to 20 years (i.e., one additional year for every \$20 million of additional approved expenditure).
- An investment tax credit equal to 20 per cent of the capital cost of fittings, pipes, and pumps used by an operator of a tourism product in the construction of a waste-water disposal system meeting prescribed environmental standards.
- Dividends paid to a shareholder by the owner of a tourism product are not subject to withholding tax under the Income Tax Act.

Certain provisos apply, most notably, that no more than 50 per cent of any loans for which interest rate subsidies have been provided may be used to refinance existing loans, and properties benefiting from such subsidies must be of a standard approved by the registrar of tourism services. Additionally, an owner or occupier of a hotel or any other tourism project or product

who is granted concessions under the Tourism Development Act is not be eligible for concessions under the Shipping Incentives Act or the Special Development Areas Act.⁴⁷

Additional incentives may be made available through other pieces of legislation. The Land Tax Act CAP 78A imposes a land tax on an owner of land (including a lessee or licensee of Crown land). The tax is levied at different rates depending on the use of the land.⁴⁸ Special reduced rates are applied to, *inter alia*, hotels within the meaning of section 2 of the Tourism Development Act (i.e., the amount payable is calculated at 50 per cent of the improved value of the land) and the proprietor (i.e., the owner or any person having immediate control over the management) of a villa registered with the Barbados Tourism Authority, having at least three bedrooms and valued at not less than \$525,000, managed by a company or real estate agent, and employing no less than three persons, and available for the accommodation of paying guests for at least nine months in every year; the amount payable by the proprietor of a villa is calculated on 75 per cent of the improved value of the land.⁴⁹

The Barbados Tourism Investment Corporation established under the Act (CAP 332A) of the same name is a commercial enterprise designed to operate in accordance with sound business principles, in which has been vested parts of the Heywoods Plantation (including beach property) which it may let or otherwise dispose of or grant rights over; the corporation may also take on lease or otherwise acquire property for its purposes. The act provides that the corporation and hotel and apartel lessees are entitled to all benefits permitted under the Hotel Aids Act, now replaced by the Tourism Development Act of 2002.⁵⁰

⁴⁷ See Tourism Development Act, sections 10, 33 and 41.

⁴⁸ Note that provision is made for an exemption from taxation in favor of the Crown, certain institutions, charities, and persons (citizens and residents) holding agricultural land, as well as that based on any other enactment. See Land Tax Act CAP 78A, sections 8, 8A and 24A.

⁴⁹ See Land Tax Act CAP 78A, sections 5 and 6, which further provides that entitlement to the reduced tax rate is conditional on the submission to the commissioner of land tax of a declaration on having met the prescribed criteria. The act establishes the Land Taxation Relief Board, which may grant a relief certificate to any person making an application on the basis that the valuation takes into account the potential of the land for use for certain purposes (such as an hotel, guest house or commercial building) other than which it was being used at the time of its valuation; See Land Tax Act CAP 78A, sections 18-20.

⁵⁰ See Barbados Tourism Authority Act CAP 342, sections 2-5 and 21 and Second Schedule. Note that the corporation may establish companies to facilitate its business and provide all necessary services for establishments under its control including training employees, maintaining facilities and landscaping premises, bulk purchasing, marketing and collective sales, and providing security services

Belize

The Belize Tourism Board Act CAP 275 establishes the Belize Tourism Board (BTB) which is charged with developing all aspects of the tourist industry and promoting its efficiency, including classifying hotels according to the standard of amenities provided, encouraging and promoting training facilities for hotel staff, and promoting and securing increased airline and shipping facilities to increase tourist traffic to Belize.⁵¹ The role of the BTB is complemented by the Belize National Tourism Council (BNTC), established under the Belize National Tourism Council Act, which is charged with, *inter alia*, developing, establishing and monitoring policies, procedures, guidelines and legislative measures to promote the efficient management and development of tourism in Belize and investment in the sector.⁵²

Lodging facilities for tourists are regulated under the Hotels and Tourist Accommodation Act CAP 285, which requires that the proprietor of a hotel or tourist accommodation register annually and obtain a license for him/her and the business. A hotel is defined as a premises for guests with more than ten rooms or units; and a tourist accommodation is an establishment other than a hotel with one or more units and includes cruise ships, live-aboard vessels, time-shares, condominiums, camp sites, education and research facilities, community-based tourism accommodation, and any other type of accommodation used by guests.⁵³ A prospective hotel or tourist accommodation must be registered before commencing construction and development; and no person may advertise, use, or hold out any hotel or tourist accommodation unless it is duly registered or licensed.⁵⁴ Registration is based on satisfying the required minimum standards of service, health and accommodation prescribed for hotels and tourist accommodations.⁵⁵ Any person aggrieved by the refusal of the registrar to register premises may appeal to the minister.⁵⁶ Where the registrar registers any premises as a hotel or tourist accommodation he/she must issue

⁵¹ See Belize Tourism Board Act (CAP 275), section 11.

⁵² See Belize National Tourism Council Act (CAP 276), sections 9 and 10.

⁵³ See Hotel and Tourist Accommodation Act (CAP 285), section 2. Note that a guest is defined as any individual staying in a hotel or tourist accommodation, whether a foreigner or Belizean, whereas the term “tourist” is limited to visitors in Belize for a period of not more than six months.

⁵⁴ See Hotel and Tourist Accommodation Act (CAP 285), sections 2, 5 and 27. Note that “proprietor” includes the owner of a hotel or a building providing tourist accommodation and any person, not being such owner who, for the time being, has immediate control over the management of the hotel or such building.

⁵⁵ See Hotel and Tourist Accommodation Act (CAP 285), sections 7 and 8; see also Hotels and Tourist Accommodation (minimum registration, Licensing and Operating Requirements) Regulations 1998.

⁵⁶ See Hotel and Tourist Accommodation Act (CAP 285), section 32.

a license including any terms and conditions as deemed necessary, upon payment of the prescribed fee.⁵⁷

The registration and licensing requirements and fees imposed by the Hotel and Tourist Accommodation Act are in addition to those required under the Trade Licensing Act.⁵⁸ Under the Trade Licensing Act, discussed in previous chapters, the Trade Licensing Board of the relevant town where the hotel business is to be established must issue a license before the hotel may commence operation. Section 8 of the Trade Licensing Act provides that, “[i]n deciding upon the application made to it, a Board may take into account the need for such a trade in that town, the need for control of trade within the town and such other matters as to the Board may seem fit or which may be set out in any regulations made by the Minister.” The decision of the Trade Licensing Board is subject to an appeal to the minister.⁵⁹ In this regard it may be recalled that Belize has entered a reservation on market access for mode 3 for hotel lodging services to the effect that hotels of less than 50 rooms may be subject to economic needs tests; the reservation does not apply to letting services of furnished accommodation and camping and caravanning site services. Belize has also inscribed in Annex IV.F of the EPA a broad horizontal reservation on mode 3 market access subjecting Foreign Service providers “to relevant Acts pertaining to property acquisition, lease and rental, and any operating condition that may be subject to existing laws and regulations.” The extent to which this limitation may save existing measures from challenge has been discussed in previous chapters. Additionally, the Trade Licensing Act does not *mandate* action contrary to Belize’s EPA commitments; it merely permits the imposition of restrictions on trade.

The Belize National Tourism Council (BNTC), referred to above, is charged with advocating the generation of employment of Belizean citizens in the tourism industry and ensuring that there are adequately trained and skilled tourism professionals to meet the future

⁵⁷ See Hotel and Tourist Accommodation Act CAP 285, section 17 and 22. An accommodation tax is also levied on all accommodation charges. The act further underscores that currency or exchange control laws apply to all payment of charges by guests.

⁵⁸ See Hotel and Tourist Accommodation Act CAP 285, sections 9 and 13, which provides that the fee calculated under the Hotel and Tourist Accommodation Act is based on each bedroom or accommodation unit provided in the hotel or tourist accommodation for use by guests as sleeping accommodation. See also Trade Licensing Act, section 31 requiring “[e]very person who, in any town, carries or intends to carry on any of the vocations set out in the Seventh Schedule shall obtain a license from the board of that town.” A “Hotel Business” is one of the vocations listed in the Seventh Schedule.

⁵⁹ Trade Licensing Act (CAP 66), section 19.

needs of the tourism sector and the facilities available to train people locally.⁶⁰ The emphasis on promoting the employment of Belizeans in the industry is reflected in the legislation on tour operators and tourist guides; this is an area where Belize, notably, has undertaken no commitments in the EPA.

The Belize Tourism Board (Tour Guide) Regulations establishes the Tour Guide Committee, which is responsible for issuing tour guide licenses.⁶¹ A license may be issued to persons certified in certain listed courses who can prove that they are Belizean citizens or have been granted permanent residency with tour guiding as the defined occupation.⁶² No person may operate as a tour guide without first obtaining a license and no person may be granted a license unless that person is a citizen or a permanent resident of Belize with tour guiding as a defined occupation.⁶³ Provision is, however, made where there is a shortage of tour guides generally, or tour guides possessing any particular skill, for the committee to grant a provisional license to any person (notwithstanding anything written in the regulations) subject to such terms and conditions as it deems fit.⁶⁴

The Belize Tourism Board (Tour Operators) Regulations implements similar policies as those noted above with regard to tour guides. A tour operator is defined as a Belizean citizen or permanent resident with the business of tour operator defined as his occupation on his permanent residency permit, or an entity which is controlled by a majority of Belizeans or permanent residents of Belize, or a company whose majority shareholding is owned by Belizean citizens or permanent residents, engaging in one of the listed activities, including operating and marketing tour packages internationally, and executing complete tour packages or countrywide or localized tour packages within Belize or ground handling operation tour services, and which works or represents international interests.⁶⁵ The Tour Operators Committee is charged with receiving and determining applications for licenses and assisting license holders.⁶⁶ The Belize Tourist Board (BTB) is empowered to grant a license to a Belizean citizen or permanent resident with the

⁶⁰ See Belize National Tourism Council Act (CAP 276), sections 9 and 10.

⁶¹ See Belize Tourism Board (Tour Guide) Regulations, regulation 3 and 4. Note that a tour guide is defined as a person whose main occupation is showing tourists the national attractions, and generally watching over the safety while doing so, for a fee.

⁶² See Belize Tourism Board (Tour Guide) Regulations, regulation 5(1) (f).

⁶³ See Belize Tourism Board (Tour Guide) Regulations, regulations 6(1) and 7(1) (a).

⁶⁴ See Belize Tourism Board (Tour Guide) Regulations, regulation 7(2).

⁶⁵ See Belize Tourism Board (Tour Operators) Regulations, regulation 2.

⁶⁶ See Belize Tourism Board (Tour Operators) Regulations, regulation 4.

business of “tour operator” defined as his occupation on the permanent residency permit, or an entity that is controlled by a majority of Belizeans or permanent residents of Belize, or a company whose majority shareholding is owned by Belizeans or permanent residents, and which possesses a valid trade license. The Board will grant the license where the tour operator’s business is duly registered under the laws of Belize. Operators must provide information on the number of Belizean citizens or permanent residents so employed. Tour operators not licensed in accordance with the regulations may only operate in Belize if they utilize the services of tour operators licensed under the regulations. A foreign tour operator who conducts tour operations in Belize in contravention of the regulations commits an offence and is liable to fine or imprisonment.⁶⁷ A license issued under the regulations does not negate the need for a work permit, where relevant, or any other permit required under any law in force in Belize for operating a business in Belize.⁶⁸

The emphasis noted above on the employment of nationals is also evident in other areas. The Belize Tourism Board (Local Water Passenger and Water sports Vessels) Regulations establishes the Local Water Passenger Vessels and Local Water sports Vessels Committee and provides that any Belizean citizen, or permanent resident of Belize with the business of tourism indicated as his/her principal occupation on his permanent residency permit and who has resided in the country for at least five years, or entity that is controlled by a majority of Belizeans or permanent residents of Belize who have resided in the country for at least five years, or a company whose majority shareholding is owned by Belizean citizens or permanent residents of Belize who have resided in the country for at least five years, may apply to the committee for a license to operate a local water passenger vessel or a local water sports vessel.⁶⁹ The regulations empower the committee to grant licenses to an individual who is a Belizean citizen or permanent resident with the business of tourism indicated as his principal occupation on his permanent residency permit *and* who has resided in Belize for at least five years, or an entity which is controlled by a majority of Belizeans or permanent residents of Belize, or a company whose majority shareholding is owned by Belizean citizens or permanent residents, and which possesses a valid trade license. The information considered by the committee includes the number of Belize citizens and permanent residents employed. Foreign water passenger or

⁶⁷ See Belize Tourism Board (Tour Operators) Regulations, regulation 6.

⁶⁸ See Belize Tourism Board (Tour Operators) Regulations, regulation 7.

⁶⁹ See Belize Tourism Board (Local Water Passenger and Watersports Vessels), regulations 3 and 4.

watersports vessel operators may be permitted to operate in the territorial waters of Belize under a special license granted by the committee.⁷⁰ The regulations, however, do not address the circumstances under which such special license may be granted. A license issued by the committee does not cover work permits, accommodation tax, customs duties, or other charges or imposts.⁷¹

It may be noted that in general Belize has undertaken limited commitments on recreational, cultural, and sporting services.⁷² Belize has undertaken limited commitments on sports facility operation services (CPC 96413) concerning the operation of facilities such as arenas or stadia where sports events are performed, which is bound for mode 2 and modes 1 and 3 national treatment, and unbound for modes 1 and 3 market access and mode 4 except as indicated in the horizontal commitments (market access for CSS and IP is subject to economic needs tests). Belize's other commitments are restricted to circus amusement parks and similar attraction services (CPC 96194), ballroom, discotheque, and dancing instructor services (CPC 96195) on which Belize has bound modes 1 and 2 and mode 3 market access, mode 3 national treatment is unbound and also mode 4 (with the same qualifications as stated for CPC 96413); and news agency services to newspapers and television stations (CPC 9621 and 9623) where Belize has bound commitments on modes 1 and 2 and mode 3 national treatment, mode 3 market access is subject to transfer of knowledge and technology and the establishment of press agencies by foreign investors is subject to reciprocity, mode 4 is unbound (with the same qualifications as afore-mentioned). With regard to the latter stated commitments general reference may be made to the Newspaper Act CAP 242 which makes provision for the licensing of legitimate operations.⁷³

⁷⁰ See Belize Tourism Board (Local Water Passenger and Watersports Vessels), regulation 7.

⁷¹ See Belize Tourism Board (Local Water Passenger and Watersports Vessels), regulation 8.

⁷² Note also that the Entertainment Tax Act CAP 51 provides for the imposition of an entertainment tax from which all local productions have been exempted by order of the minister. The tax is applied on payments for admission to an entertainment event, such as a game or sport, any dance, exhibition or performance, film or theatrical performance, boxing contest, bicycle race, etc. General exemptions are provided for religious, educational, scientific, philanthropic or charitable events. Additionally, the minister has the discretion to exempt any class of entertainment or particular event, and orders have been made, for example, with respect to horse racing, baseball, football, tennis and cricket, in addition to the general exemption provided for local productions as previously noted. Where there is any dispute as to whether or not a production is a "local production" the decision of the minister is final; see Entertainment Tax Act CAP 51, section 4 and Entertainment Tax (Exemption) Order, March 24, 1990.

⁷³ See also Newspaper Act CAP 242, sections 12, 17 and 21, which require a person to make a declaration in writing containing certain information relating to the correct title of the newspaper, the premises in which it is published, etc., before printing and publishing a newspaper. A printer or publisher must also provide a bond with one or more sureties, and deliver to the permanent secretary a copy of each paper so published for which he/she is entitled to

Belize does not have specific legislation on incentives targeted solely at the tourism sector. Special incentive packages may be legislated to cater to particular investors and investments; this generally occurs where there are large development projects. The Income and Business Tax Act provides for the assessment of income tax on chargeable income which is calculated with provision for deductions of legitimate expenses. These are defined as including, notably, any sum expended in establishing or developing an industry approved by the minister as being to the benefit of Belize, or expended for a purpose approved by the minister as being for the welfare of the public or a particular section thereof, including the development of amateur sports.⁷⁴ A reasonable amount for exhaustion by wear and tear is only provided for in certain cases, including any qualifying hotel building, and plant and machinery employed for the purpose of a person's trade or business. The term "qualifying hotel" refers to a hotel registered under the Hotels and Tourist Accommodation Act meeting certain minimum size and service criteria.⁷⁵

The Income Tax (Concessions for Development) Rules provide incentives in targeted sectors, including tourism, which are an alternative to the wear and tear allowances permitted under section 12 of the Income and Business Tax Act.⁷⁶ Part III of the Schedule to the Rules addresses residential or recreational facilities for travellers or tourists approved by the minister as being to the benefit of Belize or for the welfare of the public or a particular section thereof. The rules provide special concessions in ascertaining the chargeable income of any person carrying on an enterprise specified in Part III of the Schedule; these allow a deduction for the year in which capital expenditure is incurred, of an amount not exceeding 25 per cent of such

receive the ordinary price. See also *ibid*, section 9, which defines a newspaper as any paper containing any public news, intelligence, or occurrences, or any remarks or observations thereon, which is published periodically, or in parts or numbers at intervals not exceeding 26 days between the publication of any two such parts or numbers.

⁷⁴ See Income and Business Tax Act CAP 55, section 11, which further provides that the minister may make rules regarding the industries, class of industries or purposes for which, and the conditions under which, such deductions may be allowed. See also Income Tax (Concessions for Sports Development) Rules, rule 2, which provides that the development of amateur sports in Belize is an approved purpose within the meaning of section 11 of the Income and Business Tax Act; Income Tax (Recognised Sports and Facilities) Order recognizing certain amateur sports for the purpose of the Income Tax (Concessions for Sports Development) Rules, including 1. Football; 2. Softball; 3. Basketball; 4. Cricket; 5. Tennis; 6. Boxing; 7. Body-building; 8. Weight-lifting; 9. Table-tennis; 10. Volleyball; 11. Darts; 12. Track and field athletics; 13. Cycling; 14. Horse-racing; 15. Badminton; 16. Sailing.

⁷⁵ See Income and Business Tax Act CAP 55, section 12 and Fifth Schedule, which provides that qualifying hotels must be open for at least four months in the season, which means the seven months from September 1 to March 31; and during that time have at least 10 letting bedrooms that are the main form of sleeping accommodation; and provide guest services that normally include breakfast and an evening meal, the making of beds and the cleaning of rooms.

⁷⁶ See Income Tax (Concessions for Development) Rules, rules 4 and 5.

expenditure and, for the next seven years thereafter, of an amount not exceeding 10 per cent of such expenditure.

The General Sales Tax Act No 49 of 2005 entered into force in 2006 and replaced the Sales Tax Act CAP 63. The legislation provides for exempt supplies as well as zero-rated supplies. The General Sales Tax Regulations 2006 (as amended) includes in the list of exempt supplies of services the supply of accommodation in a hotel, guesthouse, or similar establishment.⁷⁷

Other general legislation relevant to the sector includes the Fiscal Incentives Act CAP 54 which provides for the designation of, *inter alia*, approved enterprises, approved small or medium-size enterprises, and approved services. The provision of incentives is channelled through BELTRAIDE and is based on the expected contribution of the enterprise to the economy, taking into account factors such as the anticipated level of exports, foreign exchange earnings or savings, and the number of persons to be employed. Additional considerations such as adequate financing and effective and competent management are also assessed. An applicant is required to pay a fee but an exemption is provided for Belizean companies with an investment of less than \$250,000. A Belizean company is defined as a company in which Belizean nationals own not less than 51 per cent of the share capital.⁷⁸ In order to benefit from incentives under the act a business must be incorporated in Belize under the Companies Act.⁷⁹ The restriction to companies incorporated in Belize and the fee waiver for Belizean companies is discriminatory but constitutes a subsidy which falls outside EPA services disciplines. Before designating a company as an approved enterprise, notices are published allowing for objections to be made; these are considered by the minister in making his/her determination as to whether it is in the public interest to declare the enterprise to be an approved enterprise.⁸⁰ Although the designation as an approved enterprise is necessary to the grant of incentives under the act, the provision of incentives is discretionary and not an entitlement. It is for the minister to decide whether any approved enterprise will be granted a tax holiday.⁸¹

The tax benefits provided to an approved enterprise are set out in the minister's order. These may include a tax holiday period of normally not more than five years duration

⁷⁷ See 2010 No 38 Amendment to General Sales Tax Regulations.

⁷⁸ See Fiscal Incentives Act CAP 54, section 3.

⁷⁹ See Fiscal Incentives Act CAP 54, sections 2 and 4.

⁸⁰ See Fiscal Incentives Act CAP 54, section 4.

⁸¹ See Fiscal Incentives Act CAP 54, section 6(9).

commencing from the date of production (which may not be more than five years after the date of the approved enterprise order) subject to renewal for a further term not exceeding ten years with respect to service entities; the annual percentage rates at which profits and gains will be exempt from income tax; and, in pertinent circumstances (i.e., where an approved enterprise is conducted by a company), exemption on dividends or other profits arising out of an approved enterprise.⁸² An approved enterprise under the Fiscal Incentives Act is treated as a specified development industry or project in the context of the Income and Business Tax Act.⁸³

The Fiscal Incentives Act also makes provision for the grant of duty exemptions for a period of not more than 15 years (with a possible renewal of 10 years in the case of an exporting enterprise) commencing on the date of the approved enterprise order. The duty exemption covers both customs duties and stamp duties which would otherwise be due on items such as raw materials, equipment, specialized tools, plant, machinery, building materials, office equipment, vehicles, appliances, and spare parts. Duty exemptions, like tax exemptions are discretionary and it is open to the minister to order that no duty exemption shall be granted to an enterprise.⁸⁴

Special provision is made in the Fiscal Incentives Act for small and medium-size enterprises (SMEs). The act defines a small or medium-size enterprise as an enterprise that engaged in certain approved activities, including tourism-related services, which is a net foreign exchange earner; falling under established thresholds as regards annual turnover, net worth and investment in machinery and equipment; not a subsidiary of, or controlled by an entity that is not a small or medium-size enterprise; and which holds a valid trade license and all other permits required to carry on its business.⁸⁵ Applications by SMEs are considered by a Cabinet Subcommittee. The minister may by order declare the enterprise to be an approved small or medium-size enterprise and may provide duty exemptions for a period of up to two years, which

⁸² See Fiscal Incentives Act CAP 54, section 5. Note that certain provisos apply with respect to exemptions for shareholders which may not exceed an amount equivalent to the total amount invested by the shareholder in the approved enterprise during its tax holiday period; the exemption also does not apply to a shareholder who would become liable by the laws of the country of his/her residence to pay additional income tax were an exemption to be granted under the act.

⁸³ See Fiscal Incentives Act CAP 54, section 6(8); Income and Business Tax Act, sections 8 and 113.

⁸⁴ See Fiscal Incentives Act CAP 54, section 7(4).

⁸⁵ See Fiscal Incentives Act CAP 54, section 18. The thresholds established in the legislation are an annual turnover not exceeding \$500,000, net worth not exceeding \$300,000, and an investment in machinery and equipment not exceeding \$300,000.

may be extended to a maximum of five years. Tax holidays are not provided.⁸⁶ Small and medium-size enterprises may also be assisted through the Development Finance Corporation.⁸⁷

Guyana

The Guyana Tourism Authority Act 2002 CAP 91:12 establishes the Guyana Tourism Authority, which acts as an adviser to the government on all aspects of tourism and matters affecting tourism.⁸⁸ The authority is charged with, *inter alia*, promoting the development of the tourism industry, and increased efficient and sustainable air, sea, and land transport services to, from and within, Guyana; and developing and implementing training program and facilities for persons providing services in tourism related industries.

The Guyana Tourism Authority Act requires any person who desires to operate a tourism business to make an application to the authority for an annual license, which is subject to such conditions as may be prescribed by regulations.⁸⁹ Before granting or renewing a license the

⁸⁶ See Fiscal Incentives Act CAP 54, sections 19-21; note that the Cabinet Sub-Committee is comprised of three ministers, i.e., those responsible for Investment, Industry, and the approved activity. The list of approved activities for a small business set out in the Second Schedule of the act are the following: 1. agriculture, forestry and related activities; 2. agro processing; 3. auto rental; 4. arts and cultural Activities; 5. computer and information technology; 6. fishing, operation of fish hatcheries and fish farms and service activities incidental to fishing; 7. health care services; 8. hotel, restaurant, and other tourism-related services; 9. manufacturing; 10. handicraft, woodcarving, and jewelry making.

⁸⁷ The Development Finance Corporation Act, 2009 (which repeals and replaces the earlier Act of the same name) provides for the Development Finance Corporation to assist individuals or groups of individuals seeking financing for approved purposes and who would otherwise be unable to fund their endeavors through other sources. The corporation assists with microfinance but also promotes, advises on, and facilitates the provision of long-term capital, both domestic and foreign, for larger entities and projects. Note also that the Enterprise Development Centre Act, 2005, establishes the Enterprise Development Centre as an autonomous institution and lead agency in representing all aspects of the development of micro-, small, and medium-size enterprises (MSMEs). See Enterprise Development Centre Act, section 2 defining an MSME as a micro-, small and medium-size enterprise, whether a natural or a legal person or an unincorporated entity or association, that fulfills the following criteria: (a) has an annual turnover not exceeding \$500,000; (b) has a net worth not exceeding \$300,000; (c) has an investment in machinery and equipment not exceeding \$300,000; (d) holds a valid trade license and other permits required to carry on its business; and (e) employs not more than 15 persons. See also Belize Business Bureau Act CAP 307, Belize Chamber of Commerce and Industry Act CAP 308.

⁸⁸ See Guyana Tourism Act 2002 CAP 91:12, sections 3-5. But note that the director of the authority—a non-voting member—is appointed by the chairperson. The director is responsible for the proper administration of the authority and the discharge of its functions in accordance with act and policy of the authority; see *ibid*, section 18.

⁸⁹ Note that a “tourism business” is defined as the business of providing tourist accommodation, guest house or restaurant facilities, ground tour, water sports, and other activities, attractions, service facilities, including transportation services to tourist resorts; see Guyana Tourism Act 2002 CAP 91:12, section 2. A tourism business may be distinguished from tourism-related services that may be provided at tourist resorts; e.g., the Gambling Prevention (Amendment) Act 2006, sections 29 and 30, which provide for the establishment of a Gaming Authority (by way of regulations made by the minister) and for the licensing of casinos, with the proviso that no more than three casino premises may be licensed in respect of any one of the ten regions into which Guyana is divided, and no casino premises license may be issued except for a new hotel or resort complex with a minimum of one 150 rooms

authority is mandated to request and have regard to reports about the premises from which the tourism business will operate and its plant and equipment.⁹⁰ The authority is further authorized at any time to vary any term or condition of a license, but must provide a reasonable opportunity for the licensee to make representations in this regard.⁹¹ A person may appeal from the decision of the authority.⁹²

The Sale of Travel Tickets Act 1985 regulates the services provided by travel agents. The act proscribes any person other than an airline or an authorized travel agent from selling travel tickets in Guyana. Travel agents are required to apply for a license and pay the prescribed application fee. In granting the license the minister must have regard to all relevant matters including the number of authorized travel agents already carrying on business in Guyana, the qualification and experience of the applicant in matters relating to the business of the sale of travel tickets and, where there are more applicants than one, the comparative merit of the applicants. A license is made subject to such conditions as may be prescribed and specified in the license.⁹³ The Sale of Travel Tickets Act, as such, facilitates (*versus* mandates) the imposition of economic needs tests (ENTs) on travel agency services. It may be recalled that Guyana has

allocated for accommodation and holding a minimum rating prescribed by regulation. The act restricts who may be admitted to a licensed casino, i.e., only a worker, paying hotel guest, or other person authorized by regulations. Note that commitments on sporting and other recreational services (CPC 964) exclude gambling.

⁹⁰ See Guyana Tourism Act 2002 CAP 91:12, sections 31-35, which require reports from the Environmental Protection Agency, chief environmental health officer; chief fire officer, director of the authority, and any other public officer as requested by the authority. See also *ibid*, section 44 on the minister's regulation-making power, including regulations prescribing the terms and conditions subject to which a license may be issued, and the fees or charges for making an application for a license or its renewal and for the license or for services provided by the authority.

⁹¹ See Guyana Tourism Act 2002 CAP 91:12, section 36. Note that the authority may cancel a license where the licensee fails to fulfill the conditions of the license and fails to rectify this when required so to do; see Guyana Tourism Act 2002 CAP 91:12, sections 37 and 40. See also *ibid*, section 43, which requires the authority to maintain a register of all licensed tourism businesses. A tourism business is defined in the act as meaning the business of providing tourist accommodation, a guest house or restaurant facilities, ground tours, water sports and other activities, attractions, and service facilities, including transportation services to tourist resorts.

⁹² Note that a person aggrieved by a decision of the authority refusing to grant, transfer, or renew a license, or refusing to vary a term or condition as requested, or imposing or varying a term or condition of a license on its own motion, or cancelling a license, may appeal to the minister, and if dissatisfied with the outcome, may appeal against the minister's decision to a judge in chambers, whose decision is final; see Guyana Tourism Act 2002 CAP 91:12, sections 41 and 42. Note that an appeal to the minister has the effect of suspending the execution of the decision of the authority until the minister gives his decision unless the minister orders otherwise.

⁹³ See Sale of Travel Tickets Act, sections 2-4, which further define a "travel ticket" as any written instrument issued within Guyana whereby a person on a journey from Guyana is entitled for that purpose to be provided with transportation by aircraft on a scheduled journey. Note that the minister is authorized to revoke a license for various stated reasons, including where an enterprise ceases to carry on business for six months or, where a licensee contravenes the provisions of the act or the conditions of the license; see *ibid*, section 5. The minister may also suspend the license but must give an authorized travel agent a reasonable opportunity to be heard.

undertaken bound commitments on modes 1, 2 and 3 on travel agencies and tour operators. Guyana may not therefore impose ENTs on EU and CARIFORUM service providers.

The act limits sales of travel tickets for scheduled journeys to and for persons not ordinarily resident in Guyana unless the price therefor and the taxes payable thereon are paid in the specified foreign currency.⁹⁴ The minister of finance may permit an airline to receive and recover the price of travel tickets, sold directly or through an authorized travel agent, in foreign currency. However, where an airline or authorized travel agent receives foreign currency from the sale of travel tickets they must offer the foreign currency within three days of receipt to an authorized dealer.⁹⁵

Other licensing conditions are imposed under the Tax Act CAP 80:01, most notably, the requirement for a first class hotel license where a hotel is situated in Georgetown (as opposed to New Amsterdam or elsewhere), a duty or tax for an annual restaurant or parlor malt liquor and wine license, and an annual members' club liquor license. Additionally, the occupier or owner of any place, including a hotel or other tourist accommodation, who has or holds any ball or dance for money or reward or permits such an event to be held, must also take out a license for the ball or dance; similarly, a license is required for billiard or bagatelle table.⁹⁶ The latter licensing requirements mirror those found in the Music and Dancing Licences Act CAP 23:03 which imposes a licensing requirement on places used for public dancing, singing, music, or other similar public entertainment, which may include hotels;⁹⁷ and the Licensed Premises Act which

⁹⁴ See Sale of Travel Tickets Act, section 6. For the purposes of the act a person is not "ordinarily resident" – if he/she has lived outside of Guyana during the previous 365 days for a period exceeding 183 days; and, unless the contrary is proved, if granted permanent resident status in another country. Where any doubt arises as to whether an individual is ordinarily resident, the matter must be referred to the minister who must give the person an opportunity to be heard; the decision of the minister is final. Note also that the minister may exempt any person or class of persons from requirements of the section. See also Tax Act, section 57 and Travel Voucher Tax Act, section 3. The provision concerning persons not ordinarily resident appears to promote transparency in foreign currency transactions and anti-circumvention of currency regulations.

⁹⁵ See Sale of Travel Tickets Act, sections 7 and 9, which provides that the minister may for good cause extend the time, and further that where the sale is made by the agent, the agent may legitimately deduct the price of the ticket; see also *ibid*, section 2, which defines "authorized dealer" as having the same meaning as in the Exchange Control Act.

⁹⁶ See Tax Act CAP 80:01, sections 41-43, 48, 52, and 55; note that the Minister may refund the licence fee where the event is held purely for a religious, educational or charitable objective.

⁹⁷ See Music and Dancing Licences Act CAP 23:03, sections 3-17, which provide that a magistrate of the district in which the place is situated is authorized to grant licenses for one year or less, upon such terms and conditions and subject to such restrictions as deemed appropriate. A license is dependent on meeting certain safety standards and conditioned on the provision of a 14-hour notice to the police of every dance, public entertainment, or other like event to be held. A license is dependent on meeting certain safety standards and the provision of due notice to the Police. A person is required to give 14 days' notice to the clerk to the magistrate of intention to apply for a license

regulates the use of premises for, *inter alia*, any discotheque, guest house, hotel, liquor restaurant, or night club in respect of which a license is required under the Intoxicating Liquor Licensing Act or any law. The act restricts the opening days and hours of licensed premises but makes provision for a police officer to issue a permit extending the opening hours for a hotel to sell liquor and tobacco and allow for the use of billiard and other similar tables.⁹⁸

Although service providers in the tourism sector will require the afore-mentioned licenses, many of the services to which they relate fall within the category of recreational, cultural, and sporting services (CPC 96). In this regard it may be noted that Guyana has undertaken bound commitments on entertainment services for modes 1, 2 and 3; news agency services for modes 1, 2 and 3, with the proviso that mode 3 national treatment may be subject to joint venture or economic needs test requirements); libraries, archives, museums and other cultural services for modes 1, 2 and 3; sporting and other recreational services for modes 2 and 3, and mode 1 national treatment (mode 1 market access is unbound); and rental and leasing of yachts for modes 1, 2 and 3. Additional legislation of relevance to Guyana's commitments includes the Publication and Newspapers Act CAP 21:01, which does not provide for licensing but includes certain disclosure/transparency requirements.⁹⁹

The regulatory framework for tourism services demonstrates a marked difference from that of Barbados or Jamaica, for example, the significantly fewer fiscal incentive program targeted at stimulating investment in the sector.

The Income Tax (In Aid of Industry) Act CAP 81:02 provides fiscal incentives to encourage the establishment or development of certain industries in Guyana, including hotels (providing mainly for the accommodation of tourists) with not less than 30 bedrooms if situated in a municipal area, and not less than 20 bedrooms if situated elsewhere.¹⁰⁰ More recent (2008) amendments to the legislation authorize the minister, notwithstanding anything to the contrary in

(though not for the renewal of a license or a temporary license not exceeding 14 days). Note that opening hours are made a condition of every license but the holder of a first class hotel license may keep open licensed premises for the purpose of public dancing, singing, music or other public entertainment once in every week until 2 a.m. except on any Sunday.

⁹⁸ See Licensed Premises Act, sections 2, 4-6 and 17.

⁹⁹ The Publication and Newspapers Act CAP 21:01 merely requires every publisher to display the details of the establishment on the publication and provide copies every book printed in Guyana to the registrar of the University of Guyana, National Archives of Guyana, and National Library of Guyana, although the president may exempt certain books. The printer or publisher of a newspaper in Guyana must deliver a copy of such newspaper to the archivist and deliver a bond to the States, together with two sufficient sureties; see Publication and Newspapers Act CAP 21:01, sections 3, 6 and 12-14.

¹⁰⁰ See Income Tax (In Aid of Industry) Act CAP 81:02, section 1(2) and First Schedule.

the Income Tax Act or the Corporation Tax Act,¹⁰¹ to grant an exemption from corporation tax with respect to income from new economic activities of a developmental and risk-bearing nature which demonstrably create new employment in certain stated fields including tourist facilities; the minister may grant a tax exemption for a period up to 10 years.¹⁰² The periods during which incentives are conferred run sequentially. As such, where a business benefits from a tax holiday arising from the more recent amendments in addition to those previously available, allowances that may otherwise be claimed under the act are computed as if the capital expenditures were incurred on the first day following the end of the tax holiday period originally provided for in the act. Additionally, where a business benefiting from the more recent amendments to the act is a company, it is entitled during the tax holiday and within two years thereafter to distribute the income arising during the tax holiday period to its members, and they will benefit from an exemption from income tax on such sums.¹⁰³

The Industries Aid and Encouragement Act CAP 95:01 provides businesses with concessions on import duties and taxes in relation to specified items to be used in direct connection with the establishment of a new industry or development of an existing industry. The list of items that may be exempt from customs duties include building materials for hotels providing mainly for the accommodation of tourists and having (if in municipal area not less than 30 bedrooms; if outside municipal area, not less than 20 bedrooms) and such items of furniture and equipment therefor as the minister may approve. The minister may grant a license allowing the duty-free importation of such items for a period of up to five years.¹⁰⁴

Jamaica

The Tourist Board of Jamaica established by the Tourist Board Act is charged with developing all aspects of the tourist industry and adopting measures to promote its efficiency and the highest

¹⁰¹ Note that the Corporation Tax Act imports the exemptions, allowances, deductions, additions, and charges from the Income Tax Act and the Income Tax (In Aid of Industry) Act; see Corporation Tax Act CAP 81:03, sections 9 and 16-18.

¹⁰² See Income Tax (In Aid of Industry) Act CAP 81:02, section 2.

¹⁰³ See Income Tax (In Aid of Industry) Act CAP 81:02, section 2(2) and (3).

¹⁰⁴ See Industries Aid and Encouragement Act CAP 95:01, sections 3-8 and First Schedule. Note that an applicant must enter into a bond with such sureties as the comptroller may approve to ensure due compliance with the terms and conditions of any license. See also www.goinvest.gov.gy, where the Guyana Office for Investment (Go-Invest) (established under the Public Corporations Act 1988) is advertising incentives for companies in the tourism sector which may potentially benefit once every five years from a package of incentives, comprised mainly of duty and consumption tax waivers on basic furnishing, equipment, and building materials. Concessions are limited to 50 percent of the value of the items for new projects and 25 percent for renovations and extensions to existing hotels.

standards of service while controlling and/or eliminating any undesirable factors that may affect the industry.¹⁰⁵ The board is also tasked with assisting in resolving disputes within the industry concerning complaints made by tourists against concessionaires in relation to any trade or business transaction.¹⁰⁶

The Tourist Board Act requires any person wishing to provide tourist accommodation to obtain a license from the Tourist Board.¹⁰⁷ The term "tourist accommodation" is defined as including a hotel, resort cottage or any other premises or any vehicles, boats, ships, or places where accommodation is offered to tourists for reward. A resort cottage must contain at least two furnished bedrooms, and a hotel must contain at least 10.¹⁰⁸ The license is granted for an indefinite period (though it may be suspended or revoked) and may be subject to conditions and restrictions. Where the board does not grant a license this decision may be appealed to a tribunal appointed by the minister under the act, and the decision of the tribunal may be appealed to a judge in chambers whose decision is final.¹⁰⁹

The Travel Agencies Regulation Act requires all travel agencies to be registered. A "travel agency" is defined under the act as an establishment in which is carried on the business of arranging, at the request and on behalf of persons proposing to travel from Jamaica by sea or by air, for the provision of passages for such persons; the definition expressly excludes ship or

¹⁰⁵ The reference to "undesirable factors" which is found in the legislation, though not defined therein, may be viewed in the context of Jamaica's Master Plan for Sustainable Tourism Development as well as the EPA proscriptions on anti-competitive conduct; see also the 2003 "Master Plan for Sustainable Tourism Development," prepared with technical assistance from the Commonwealth Secretariat, viewed on-line at http://www.jtbonline.org/tourism_jamaica/Major%20Tourism%20Laws/Tourism%20Master%20Plan%20Full.pdf . Note that the board is required to give effect to general directions given by the minister as to the policy to be followed in the exercise of its functions, and the minister is given the general authority to make regulations for, *inter alia*, controlling and eliminating undesirable factors that may affect the tourism industry; see Tourist Board Act, sections 16 and 18. See also the Tourism Enhancement Act, 2004, which is designed to, *inter alia*, facilitate the implementation of projects and program which impact on the growth and sustainable development of the tourism sector. The act imposes a tourism enhancement fee and establishes a Tourism Enhancement Fund to be used towards the achievement of the objects of the act.

¹⁰⁶ See Tourist Board Act, sections 3, 11, and 12, which further provide that where the board is unsuccessful in resolving the matter within 28 days, it advises the tourist of same and reports the matter to the commissioner of customs and excise.

¹⁰⁷ See Tourist Board Act, section 22. See also the Tourist Accommodation (License Duties) Act imposing a license duty on the operator of every tourist accommodation in respect of which an application for a license is made or granted by the Tourist Board. The act gives the minister the power to waive, remit, or refund the license duty in whole or in part; and the Tourist Accommodation (Licence Duties) Regulations, 1988, provides limited exemptions for accommodations with very low room rates and specifies the level of license duty payable based on the number of rooms in a hotel, resort cottage or other tourist accommodation.

¹⁰⁸ See Tourist Board Act, section 2 and Tourist Board Regulations, 1969, regulation 2.

¹⁰⁹ See Tourist Board Act, sections 23 and 23E.

aircraft companies and their agents in the Island.¹¹⁰ The regulation of travel agency services, as such, is limited to out-bound travel and does not cover sales of carriers and their agents such as frequently occurs on-line.¹¹¹ The registrar of travel agencies is required to inspect the premises where the travel agency will be located and consider evidence that is required to be submitted as to the good character, financial ability, as well as a bond with surety, in deciding whether to grant an application for registration. The decision of the registrar may be appealed to a judge in chambers.¹¹² As noted above, only Jamaica and Guyana have undertaken bound commitments without qualification on travel agencies and tour operators' services for modes 1, 2, and 3. Significantly, unlike many of the other countries reviewed, neither the Travel Agencies Regulation Act nor the Travel Regulations, 1958, suggest the imposition of economic needs tests or nationality criteria in the grant of licenses.

The Tourist Board is also charged with granting licenses to "tourism enterprises," defined as including any car rental or U-drive services, sites, and other facilities for camping, water sports services, any other service, utilized by or offered to tourists as may be declared by the minister to be a tourism enterprise.¹¹³ The definition of tourism enterprise includes some recreational, sporting, and cultural services as well as certain transport services.¹¹⁴ Jamaica has undertaken bound commitments on modes 1, 2, and 3 on entertainment services; libraries, archives, museums and other cultural services; and rental and leasing of yachts; and has similar

¹¹⁰ See Travel Agencies Regulation Act, sections 2, 3 and 6.

¹¹¹ Note that the selling and marketing of air transport services is covered under the GATS Annex on Air Transportation, paragraph 3(b) and defined in paragraph 6(b); see also EPA, Articles 66(e)(ii) and 75(1)(c)(ii).

¹¹² See Travel Agencies Regulation Act, sections 7-12, 17 and 18; see also the Travel Regulations, 1958.

¹¹³ See Tourist Board Act, sections 2, 23A, 23B, and 23C; see also the Tourist Board (Tourism Enterprises) Order 1985. See also the Port Authority (Regulation of Cruise Ship Premises) By-Laws, 2001, which provides, *inter alia*, that no one may engage in activities as a taxi operator or contract carriage operator without a valid permit issued by the Tourist Board established under the Tourist Board Act or such other body as approved by the Port Authority.

¹¹⁴ Tourism legislation addresses other service sectors, including distribution services where Jamaica has undertaken no commitments in the EPA (whether commission agents' services, wholesale trade or retailing services or franchising). See also the Tourist (Duty-Free) Shopping System Act providing for the commissioner of customs and excise to license premises as tourist (duty-free) shops and grant licenses to operate duty-free shops and permits to act as agent for a tourist (duty-free) shop operator. Premises so licensed benefit from more flexible opening hours and regulatory incentives. Residency and local incorporation (in the case of a company) are requirements for obtaining a license. The act provides that the commissioner must refuse to grant or to renew any license or permit where, *inter alia*, the applicant is not resident in Jamaica or was not so resident throughout the six months immediately preceding the date of application, or being a body corporate is not incorporated in Jamaica. See Tourist (Duty-Free) Shopping System Act, sections 3-5, 7, and 9, which further provide for a right of appeal from the decision of the commissioner of customs and excise to the minister, whose decision shall be final; see also Tourist (Duty-Free) Shopping System Regulations, 1975.

commitments on sporting and other recreational services save that market access for mode 1 is unbound.

The Tourist Board (Tourism Enterprises) Order, 1985, Tourist Board (Water Sports) Order, 1985, and the Tourist Board (Water Sports) Regulations, 1985, further define the category of tourism enterprises and the licensing requirements for water sports operators (i.e., owners or persons otherwise in charge of the business), employees, and boats or vessels used to provide water sports services. The licensing criteria address competence, qualifications and safety concerns and are not designed to arbitrarily restrict trade or discriminate against foreign service providers. The board may grant exemptions to any person or category of persons as it sees fit.¹¹⁵ Where the board does not grant a license an aggrieved applicant may appeal to the tribunal and further to a judge in chambers. The Tourist Board (Prescribed Areas) Regulations, 1985, designates certain locations to be prescribed areas and provides for the licensing of vendors operating in areas adjacent to the beach or any other public place in such locations.¹¹⁶

The Hotels (Incentives) Act grants incentives for the establishment or operation of hotels (with 10 or more bedrooms) and extensions thereof. The act provides for the designation of an approved hotel enterprise or an approved extension which may benefit from a concessionary period of 10 years.¹¹⁷ Where the minister declares an area to be a special development area, an approved hotel in the area will benefit from a concession period of 11 to 15 years. Additionally, a concession period of 15 years may be provided to an approved enterprise in relation to a convention type hotel (i.e., a hotel containing an aggregate number of not less than 350 bedrooms and facilities for the holding of conferences).¹¹⁸

The benefits conferred by the Hotels (Incentives) Act accrue to any company (whether or not locally incorporated or registered)¹¹⁹ that is the owner or tenant of an approved hotel or

¹¹⁵ E.g., Tourist Board (Water Sports) Regulations, 1985, regulation 4.

¹¹⁶ See Tourist Board (Prescribed Areas) Regulations, 1985, First Schedule, prescribing various areas in Ocho Rios, Dunns River Falls, Montego Bay, Negril, Mammee Bay, Salem/Runaway Bay, Rio Grande, Port Antonio, Unity Bay, and Boston Beach. Note that were the Tourist Board refuses to grant or renew a vendor's license; an appeal may be made to the tribunal and thereafter a judge in chambers.

¹¹⁷ See Hotels (Incentives) Act, sections 2-4 and 7(1), which also defines "hotel enterprise" as a business concerned with the establishment or operation of a hotel, and "hotel" as containing an aggregate number of not less than 10 bedrooms and facilities for meals for the accommodation of transient guests, including tourists, for reward; see also Hotel (Incentives) Regulations, 1971.

¹¹⁸ See Hotels (Incentives) Act, section 7.

¹¹⁹ See Hotels (Incentives) Act, section 2, which broadly defines company as including any company incorporated or registered under any law in force in Jamaica; or any company which, though incorporated or registered outside Jamaica carries on business or has an office or place of business therein.

approved extension (whether or not entitled to receive profits from the operation of the hotel), or the operator of the property where an agreement exists with the owner or tenant, and where this is accepted by the minister.¹²⁰ The benefits provided include income tax relief in respect of profits or gains arising or accruing during the relevant concession period from the approved hotel or approved extension; annual allowances to be made after the expiration of the relevant concession period, and the carry forward of losses incurred during the relevant concession period for the first six years of assessment following thereafter; and exemption from the payment on tax on dividends (though in the case of non-residents, only to the extent that they are not liable for taxes on such sums in their country of residence).¹²¹ Additional benefits are provided with respect to customs duty and general consumption tax (GCT); a company during the relevant concession period may import into Jamaica free of customs duty and GCT a variety of items specified in the Second Schedule to the Act.¹²²

The Resort Cottages (Incentives) Act provides incentives in relation to resort cottages, defined as furnished premises with no less than two furnished bedrooms, a living room, bathroom facilities and facilities for the preparation and consumption of meals and used for tourist accommodation.¹²³ The act provides for the minister to designate a recognized resort cottage, group of resort cottages, or an extension. A recognized group of resort cottages must contain not less than 10 bedrooms, be located in the same village or town, and be owned by the same person. A recognized extension must involve a substantial alteration that improves the accommodation or other amenities provided. In making any designation, the minister must be satisfied that the venture is adequately financed and will have beneficial economic effects on the tourist trade.¹²⁴

The income tax benefits provided under the Resort Cottages (Incentives) Act mirror those conferred under the Hotels (Incentives) Act.¹²⁵ The principal difference is that the relevant

¹²⁰ See Hotels (Incentives) Act, section 8, which provides also that companies benefiting under the enactments listed in the First Schedule may not benefit under this provision; the relevant enactments are the Motion Picture Industry (Encouragement) Act, the Industrial Incentives Act, and the Export Industry Encouragement Act.

¹²¹ See Hotels (Incentives) Act, sections 9 and 10.

¹²² See Hotels (Incentives) Act, sections 11 and 13.

¹²³ See Resort Cottages (Incentives) Act, section 2.

¹²⁴ See Resort Cottages (Incentives) Act, sections 3 and 4.

¹²⁵ See Resort Cottages (Incentives) Act, section 8. The benefits provided include income tax relief in respect of profits or gains arising or accruing during the relevant concession period; annual allowances to be made after the expiration of the relevant concession period, and the carry forward of losses incurred during the relevant concession period for the first six years of assessment following thereafter; and exemption from the payment on tax on

concession period is seven years for a recognized resort cottage, recognized group, or recognized extension.¹²⁶ Benefits are also provided in respect of customs duty and general consumption tax (GCT) to the owner or tenant or operator of a recognized group of resort cottages. Persons entitled to relief may be granted a permit by the commissioner of customs and excise to import into Jamaica free of customs duty and GCT, at any time prior to the expiration of the relevant concession period, any of the articles specified in the schedule to the act.¹²⁷

Certain additional incentives are administered under the minister of finance's general authority provided for waivers and exemptions. Notably, in the tourism sector, there is an Attractions Incentives Programme (AIP)¹²⁸ that provides incentives for approved attractions meeting requirements established by the Tourism Product Development Company (TRPCo).¹²⁹ Provision is made for income tax relief and exemptions from customs duty and general consumption tax (GCT) on the importation of a scheduled list of items for a concession period of five years. Recent pronouncements on the budget suggest that the GCT will be introduced to certain items that were previously non-tax, and that effective September 1, 2012, the current tax free expenses of commissions and transportation for the tourism sector will no longer be

dividends (though in the case of non-residents, only to the extent that they are not liable for taxes on the said sum in their country of residence). See also Income Tax Act, section 12, which provides that exemptions from income taxation apply in favor of investments in an approved hotel and recognized resort cottage (within the meaning of the Hotels (Incentives) Act and Resort Cottages (Incentives) Act), and all other exemptions provided by any other enactment.

¹²⁶ See Resort Cottages (Incentives) Act, section 2.

¹²⁷ See Resort Cottages (Incentives) Act, sections 3(4)(a) and 9; see also *ibid*, Schedule, which lists all building materials; bedsprings, billiard tables and their appliances, pianos, organs, radios, dynamos, air conditioning apparatus and appliances, refrigerating apparatus and appliances, mirrors, pillows, mattresses, crockery, silver and plated tableware, table glassware, cutlery, kitchen utensils including stoves, iceboxes, bed linen, table linen, towels, rugs and carpets; fire extinguishers and apparatus; water pumps; blankets; electric light, bell and telephone equipment and appliances (not to include electric light bulbs); electric fans; electric and gas cooking equipment; hot water equipment, boilers and tanks; kitchen sinks and other kitchen fixtures; bath tubs, basins, toilets, showers and other bathroom fittings; swimming pool equipment; laundry equipment (namely domestic and commercial washers and dryers); sewerage plant and equipment; security vaults and safes; gym equipment; television and radio equipment; electrical transformers and panel board; commercial floor polishers; commercial vacuum cleaners; drapery material and upholstery fabrics; water treatment plant and equipment.

¹²⁸ The AIP was instituted as a means of stimulating growth in the attractions subsector and is apparently administered on the basis of a cabinet decision.

¹²⁹ TPDCo is the central agency mandated by the Government of Jamaica to facilitate the maintenance, development, and enhancement of the tourism product. TPDCo has been in operation since April 5, 1996, and is registered as a private company under the jurisdiction of the Ministry of Industry & Tourism. A Board of Directors oversees the company's policies and strategic plans. The executive director reports to the chairman of the board and has a functional relationship with the minister of industry and tourism, the permanent secretary and the director general in the Ministry of Industry and Tourism; see <http://www.tpdco.org/dynaweb.dti?dynasection=general&dynapage=aboutus>.

allowed; however, the definition and treatment of these items will be subject to further discussions prior to implementation.¹³⁰

¹³⁰ E.g., “Adjustment in taxes for tourism sect a win-win situation: says Minister McNeill,” June 9, 2012, viewed online at: <http://www.jamaicaobserver.com/news/Minister--Adjustments-in-taxes-for-tourism-sector-a-win-win-situation#ixzz1xy3ayJPl>.