



USAID FIRMS PROJECT

Position Paper - Review of Legal & Regulatory Framework of Tourism Sector of Gilgit-Baltistan

June, 2014

This publication was produced for review by the USAID. It was prepared by Semiotics Consultants (Pvt.) Limited for an assignment commissioned by Chemonics International under the USAID Firms Project



USAID FIRMS PROJECT

Position Paper - Review of Legal & Regulatory Framework of Tourism Sector of Gilgit-Baltistan

DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development, the United States Government or Chemonics International Inc.

Data Page

Contract Number:	GBTI II Task Order No. EEM-4-07-07-00008-00
Contractor Name:	Chemonics International, Inc.
Name of the Component:	Business Enabling Environment (BEE)
USAID Technical Office:	Office of the Economic Growth and Agriculture; USAID Pakistan
Date of Report:	June, 2014
Document Title:	Position Paper - Review of Legal & Regulatory Framework of Tourism Sector of Gilgit Baltistan
Author's Name:	Semiotics Consultants (Pvt.) Limited
Editing:	Zehra, M
SOW Title and Work Plan & Action ID:	SOW Title: Develop a Tourism Policy and PPP Framework for GB Work Plan: 33650 Action ID: 7337
Project Area:	Gilgit Baltistan, Pakistan
Key Words:	Gilgit Baltistan, Tourist; Guide; Rules; Government; Tourism

Abstract:

This report presents the position paper for developing tourism policy for Gilgit Baltistan, identifying key issues that need to be addressed in the proposed policy and initiates the discussion around these issues

Table of Contents

EXECUTIVE SUMMARY	VII
1. REGULATION OF SERVICE PROVIDERS IN THE TOURISM INDUSTRY	1
1.1 HOTEL & RESTAURANT ACT, 1976	1
1.2 TRAVEL AGENCIES ACT 1976 AND RULES 1977	1
1.3 TOURIST GUIDES ACT 1976.....	2
1.4 MOUNTAINEERING AND TREKKING RULES & REGULATIONS.....	2
2. LAWS AFFECTING PHYSICAL PLANNING & ENVIRONMENT	3
3. REFORM RECOMMENDATIONS.....	5
3.1 HOTEL & RESTAURANT ACT	5
3.2 TRAVEL AGENCIES ACT.....	5
3.3 TOURIST GUIDES ACT.....	6
3.4 MOUNTAINEERING & TREKKING RULES & REGULATION.....	6
3.5 PHYSICAL PLANNING LAWS AND PROTECTION OF THE ENVIRONMENT	6
4. SUMMARY OF REQUIREMENTS	7
4.1 ENFORCEMENT & EXTENSION OF LICENSING AND REGISTRATION REQUIREMENTS	7
4.2 POLICY MAKING & FACILITATION	7
4.3 ENACTMENT OF PHYSICAL PLANNING LAWS	7

List of Tables

Table 1 Legislative Overview	3
------------------------------------	---

Executive Summary

Review of Tourism Legal Framework

This report looks at the legal and regulatory framework of the Tourism sector in Gilgit Baltistan with a view to:

- a) Identify deficiencies in the legal framework
- b) Whether the interest of the tourist is adequately protected by the legal framework
- c) Whether there are any legal barriers to robust and effective enforcement.

Legal Status of Gilgit Baltistan

Gilgit Baltistan is a special territory under the administration of the Government of Pakistan. Since it is not subject to the Constitution, there are special legal rules for the area. These rules are contained in the Gilgit -Baltistan Governance (Empowerment and Self-Governance) Order, 2009, under which legislative authority is distributed as follows:

- GB Council- posts and telegraphs, insurance, Tourism, forests, taxation etc., (55 subjects)
- GB Legislative Assembly – land revenue, public order, local governments, fisheries, etc., (61 subjects)
- Government of Pakistan- all subjects not mentioned in the above two legislative lists.

1. Regulation of Service Providers in the Tourism Industry

The only tourism-related law applied to GB by the Federal Government is the Hotel and Restaurants Act, 1976. This means that the Federal Travel agencies Act, 1976 and the Tourist Guides Act, 1976, are not applicable in GB. Further, the GB council has not legislated in the area of Tourism, which is a subject within its legislative competence.

Notwithstanding the partial applicability of tourism related laws in GB a review of the licensing/registration and regulatory requirements of service providers as applied in the rest of the country is as follows:

1.1 Hotel & Restaurant Act, 1976

The Hotel and Restaurant Act, 1976 regulates the standards of service and amenities for tourists in hotels and restaurants. The Act prescribes a star system of classification of hotels. The Act provides for the offices of Controller, Deputy Controller and Assistant Controller to administer the Act¹. The system allows the Controller to grant up to five stars to hotels depending on their services and comfort. The Act also allows the Controller to fix the maximum number of guests, which may be accommodated in each room and/or unit of accommodation. He may also fix rates for board lodging and other charges².

The Act also establishes a Hotel and Restaurants Committee to advise the Federal Government in relation to matters pertaining to the Act. The Act requires the following compliances:

- i) Registration related compliances - Section 5(2) requires Hotels and restaurants to render a certificate of medical fitness of staff prior to registration. It also requires hotels and restaurants to comply with the requisite standards of health and comfort and building safety prior to obtaining registration.
- ii) Information related compliances- Section 8(2)(e) requires owners to enter the names of guests in a specified register. Section 9 new owners to report change of ownership etc.

1.2 Travel Agencies Act 1976 and Rules 1977

The Travel Agencies Act regulates both travel agencies and tour operators -this is done by including tour operators in the definition of travel agencies³. This Act has not been extended to GB. Government Enterprises, national carriers of Pakistan and foreign airlines duly authorized to operate to and from Pakistan and travel agencies allowed to perform Hajj and other pilgrim related work⁴ are exempted from the operation of the Act.

¹ Section 3, Hotel and Restaurants Act, 1976

² Section 10, Hotel and Restaurants Act, 1976

³ See section 2(f)(ii), Travel Agencies Act, 1976

⁴ Section 5, Travel Agencies Act, 1976

The Act sets up a Travel Agencies Regulatory Committee to advise the federal government in the implementation of the provisions of the Act and assist in the preparation of a code of conduct for travel agencies. The Act requires the following compliances:

- i) Registration compliances - Section 4 requires travel agency operators to apply for and obtain a license from the Federal Government.

Maintenance of a Business Guarantee fund- Section 7 requires every travel agency to maintain a business guarantee fund. Payment from the fund may only be made on the orders of the Government and in the event of default of payment to a tourist, carrier, or hotel.

1.3 Tourist Guides Act 1976

The Tourist Guides Act, 1976 regulates and controls the profession of tourist guides. This Act has not been extended to GB. The Act establishes the Tourist Guides Regulatory Committee to advise the federal government with regard to implementation of the Act and in preparation of a code of conduct for tourist guides⁵.

The Act allows the Federal Government to fix the maximum charges to be paid to tourist guides⁶. It prohibits tourist guides from charging any fee including a tipping fee by guides employed by a travel agency on a fixed salary on a whole time basis⁷. The Act requires the following compliances:

- i) Registration compliances - Section 7 requires tourist guides to obtain a license prior to engaging in the business of provision of guide services.

Information related compliances- Section 4(3) requires the Federal Government to maintain a register of tourist guides.

1.4 Mountaineering and Trekking Rules & Regulations

In view of the mountainous and wild terrain of Gilgit-Baltistan, a majority of tourists visit GB primarily for mountain climbing and trekking. While both activities are not statutorily regulated, there are procedures for applying for mountaineering and trekking permissions and undertaking these activities. The Rules have been apparently issued as executive instruments contra statute based rules.

⁵ Section 3(3), Tourist Guides Act, 1976

⁶ Section 8(1), Tourist Guides Act, 1976

⁷ Section 8(3), Tourist Guides Act, 1976

2. Laws Affecting Physical Planning & Environment

Beauty, environment, cleanliness, historic buildings/areas, artifacts and antiquities all attract tourists. While Gilgit Baltistan has beautiful and wild natural scenery, petro glyphs (rock art), rare wildlife, and plants species, protection is limited. For instance, there is no law regulating physical planning and villages and towns are not picturesque sites. A broad legislative overview of things that are attractive to tourists is as follows:

Table 1 Legislative Overview

Sector	Law	Whether extended to GB or not	Authority having legislative competence
Environment	Environmental Protection Ordinance, 1983	Yes ⁸	GB Legislative Assembly
Forests	The Forest Act, 1927	Yes ⁹	GB Council
Wildlife and Fisheries	The Protection of Wild birds and Animals Act	Yes ¹⁰	GB Legislative Assembly
	The Fisheries Act, 1975	Yes ¹¹	
	The Game Preservation Act, 1998	Yes ¹²	
Antiquities and artifacts	Antiquities Act, 1976	Yes ¹³	Government of Pakistan
Historic Buildings/ Monuments and Areas	No law		GB Legislative Assembly
Physical planning and urban environment	No special law		

⁸ No. LA. Comm-9(7)/94 dated 31st December, 1983.

⁹ No. LA. Comm-9(7)/94 dated 25th February, 1993; No. Reg-HC-NTF-6/73 dated 12-3-2013

¹⁰ No. Reg-HC-NTF-6/73 dated 12-3-2013

¹¹ No. LA. Comm-9(7)/90 dated 4th April, 1975; No. Reg-HC-NTF-6/73 dated 12-3-2013

¹² No. Master File 1975-1976-1 dated 01-08-1968

¹³ No. LA-Comm-9(7)/93-I dated 24th October, 1994.

3. Reform Recommendations

While reform possibilities exist in every aspect of the legal and regulatory framework, the following amendments will make the legal framework more effective and facilitative:

3.1 Hotel & Restaurant Act

i. Detail of membership of the Advisory Committee

The Act and the Rules do not provide any detail regarding composition of the Advisory committee. The Act should provide for balanced representation including representative of the Hotel Industry

ii. Reduction and/or removal of minimum room criteria for registration

Minimum criteria for registration of establishments as hotels should be reduced to make the Act more widely applicable. Small hotels provide the bulk of accommodation and their standards need to be regulated more robustly as market forces have little impact on them

iii. Making registration mandatory before start of business

Section 5(1) currently requires filing of registration application within two months of the opening of the hotel or restaurant. It is not advisable for any business entity to start its work first and then get registration. This also deprives the registration authority from taking corrective action at the outset.

iv. Definition of businesses prohibited to operate in the vicinity of hotels

The Act and/or rules need to define the businesses that should not operate in the vicinity of hotels.

v. Definition of health and safety standards

The Act and/or rules do not define the standard of health and comfort. These need to be defined to promote standardization of services

vi. Price fixation

While protection of interests of tourists is a fair objective, power to allow the Controller to fix charges without consultation is unreasonable. A suggested way is to allow the Controller to review charges and slap fines where market players are abusing their position in the market.

vii. Power of reservation

The power to reserve accommodation available to the Controller under section 14 is excessive and should be qualified to make its use contingent on an emergency.

viii. Provision of booking/payment through internet

A large number of bookings and payments in the international hotel industry are now made through the Internet. Provisions promoting and regulating the same should be included in the Hotel and Restaurants Act.

3.2 Travel Agencies Act

i. Detail of membership of the Advisory Committee

The Act and the Rules do not provide any detail regarding composition of the Advisory committee¹⁴. The Act should provide for balanced representation including representative of the Travel Industry

ii. Definition of Tourist

The Act excludes local tourists from the definition of tourists thereby excluding them from safeguards provided by the law¹⁵. The definition needs to be amended to make it more inclusive.

iii. Travel agencies and Tour Operators need to be separately regulated

Travel Agencies and Tour operators are separate entities with different scope of work and they should be dealt with separately.

iv. Non-availability of information about Travel Agencies to tourists

The Data about travel agencies need to be searchable and accessible to tourists¹⁶

v. Application of Act to Hajj operators and airlines

The Act needs to be more inclusive so as to ensure standardization of services. The current non-applicability provisions needs to be omitted

3.3 Tourist Guides Act

i. Detail of membership of the Advisory Committee

The Act does not provide any detail regarding composition of the Advisory committee¹⁷. The Act should provide for balanced representation including representative of the Tourist Industry

ii. Non-availability of information about Guides to tourists

The Data about tourist guides need to be searchable and accessible to tourists. The Act can also be used to regulate and license trekking and mountaineering guide businesses.

iii. Price Fixation

The Act allows the federal government to fix charges, which should not be done. This is anti-market and leads to a stunted and non-progressive sector

iv. Making enforcement effective

The provisions regarding fines and prosecution are ineffective and need to be strengthened

3.4 Mountaineering & Trekking Rules & Regulation

The Mountaineering and Trekking Rules and Regulations should be issued as statutory rules preferably under the rubric of a Mountaineering and Trekking law. This will not only bring clarity in the sector but is likely to increase business opportunities in the area

3.5 Physical Planning Laws and Protection of the Environment

Physical planning and the protection of the natural environment have a close nexus with tourism, therefore it is important that the two subjects are carefully and closely regulated. It is therefore important that comprehensive town and country planning laws are enacted in GB and the level of enforcement of environmental laws is increased.

¹⁴ See section 3(1), Travel Agencies Act, 1976

¹⁵ See section 2(g) read with 7(3) of the Travel Agencies, Act, 1976

¹⁶ See section 4(4), Travel Agencies Act, 1976

¹⁷ See section 3(1), Travel Agencies Act, 1976

4. Summary of Requirements

4.1 Enforcement & Extension of Licensing and Registration Requirements

The enforcement of the Hotel and Restaurants Act is uneven and ineffective. Effective enforcement and reform of the Hotel and Restaurants Act is necessary for bringing the hotel industry in GB to international standards. The Travel Agencies Act and the Tourist Guides Act need to be extended to GB after addressing the issues indicated in the above noted section.

4.2 Policy Making & Facilitation

In order to facilitate continuous review and updation of Rules under the a) Hotel and Restaurants Act, b) the Travel Agencies Act and c) the Tourist Guides Act it is important that the Committees established under them are notified and made operational.

4.3 Enactment of Physical Planning Laws

In order to protect the chief attraction in GB – the physical and natural environment, physical planning laws should be enacted and robustly enforced.

USAID Firms Project
info@epfirms.com