



International Centre for Trade
and Sustainable Development



Regulatory Guide for the Tourism Services Sector

Developed by the New Markets Lab
for the International Centre for Trade and Sustainable Development

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* The New Markets Lab (NML) is a legal and regulatory think tank and innovation lab that improves systems for economic law and regulation to generate broad-based opportunity and entrepreneurship. Through an international team of lawyers and diverse partnerships around the world, the organization develops and tests new models for inclusive economic legal and regulatory change. Since 2010, NML has acted as both a repository of international economic legal best practices and a training ground for the next generation of lawyers. The Regulatory Guide for the Transport Services Sector was developed by NML President Katrin Kuhlmann, NML Senior Fellow Karen Bosman, and NML Associate Lawyer, Shannon Keating. NML would like to acknowledge the significant contributions of Naoto Saika, Brooke Tenison, and Vikram Naik in developing this Regulatory Guide.

TABLE OF CONTENTS

LIST OF FIGURES, TABLES, AND BOXES.....	3
ACRONYMS.....	4
EXECUTIVE SUMMARY.....	5
1. INTRODUCTION.....	7
2. NATURE, SCOPE, AND CONTENT OF THE TOURISM REGULATORY ENVIRONMENT.....	9
2.1. NATURE OF THE TOURISM SECTOR.....	ERROR! BOOKMARK NOT DEFINED.
2.2. SCOPE OF TOURISM REGULATIONS: MECHANISMS AND INSTITUTIONS... ERROR! BOOKMARK NOT DEFINED.	
2.2.1. <i>National Level</i>	Error! Bookmark not defined.
2.2.2. <i>Regional and International Level</i>	13
2.2.3. <i>Related Areas of Law</i>	20
3. REGULATORY AND DEVELOPMENT OBJECTIVES.....	23
3.1. GOOD BUSINESS ENVIRONMENT.....	23
3.2. SUSTAINABLE DEVELOPMENT GOALS.....	25
4. REGULATORY PRIORITIES, TRADE-OFFS, AND APPROACHES.....	27
4.1. EFFECTIVE REGULATION AND COORDINATION.....	27
4.2. LICENSING AND CLASSIFICATION.....	28
4.3. STANDARDS AND CERTIFICATION.....	31
4.4. COMPLEMENTARY AREAS OF REGULATION.....	32
4.5. MEASURES TO FOSTER A GOOD BUSINESS ENVIRONMENT.....	33
5. CONCLUSION.....	38
REFERENCES.....	41
ENDNOTES.....	45

LIST OF FIGURES, TABLES, AND BOXES

Figure 1:Regulatory Goals and Approaches	Error! Bookmark not defined.
Figure 2: Related Areas of Law	20
Figure 3: National, Regional, and International Frameworks Related to Tourism Sector	21
Figure 4: Regulatory Goals	23
Figure 6: Sustainable Development Goals	25
Table 1: Key International Agreements Impacting the Tourism Sector.....	
Table 2: Regulatory Goals, Objectives, Trade-offs, and Options	39
Box 1: Modes of Supply	Error! Bookmark not defined.
Box 2: Regulation and Modes of Service	Error! Bookmark not defined.
Box 3: Example of Coordination Among Regulatory Functions	28
Box 4: Ex Ante and Ex Post Regulation	29
Box 5: Regulatory Trade-offs: Discriminatory Investment Measures	34
Box 6: Trade and Investment Agreements Can Support Investment	35
Box 7: Advocacy Bodies	39

ABBREVIATIONS AND ACRONYMS

ASEAN	Association of Southeast Asian Nations
BIT	Bilateral Trade and Investment Treaty
CFTA	Continental Free Trade Area
COMESA	Common Market for Eastern and Southern Africa
EAC	East African Community
EU	European Union
FDI	Foreign Direct Investment
ICTSD	International Centre for Trade and Sustainable Development
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
ICT	Information Communication Technology
ICTSD	International Centre for Trade and Sustainable Development
IHR	International Health Regulations
ILO	International Labour Organisation
IGO	Intergovernmental Organization
IP	Intellectual Property
LDC	Least Developed Country
LIC	Low Income Country
MFN	Most Favoured Nation
NCHMCT	National Council for Hotel Management and Catering Technology
MOU	Memorandum of Understanding
NGO	Non-governmental Organization
NML	New Markets Lab
REC	Regional Economic Community
RTA	Regional Trade Agreement
SADC	Southern African Development Community
SDGs	Sustainable Development Goals
SIDS	Small Island Developing States
SME	Small- and Medium-Sized Enterprise
SOE	State Owned Enterprise
SOLAS	Safety of Life at Sea Convention
TEL	Tourist Enterprise Licence
TFTA	Tripartite Free Trade Area
TNC	Transnational corporations
UNWTO	United Nations World Tourism Organization
WHO	World Health Organization
WTO	World Trade Organization

EXECUTIVE SUMMARY

284 Million people, or one in 11 jobs on the planet, are supported by tourism.¹ Due to its unique nature, growth and development of the tourism sector has the potential to contribute to widespread social, environmental, and economic policy objectives, with positive spillover effects into numerous industries and sectors. Regulation of the tourism sector is particularly important in order to ensure health and safety of consumers and labourers, protect wildlife and the environment, and ensure quality of services. However, particular focus on several key regulatory priorities can have a significant impact. Regulatory goals for the tourism sector are summarized in Figure 1, and include, among other things, effective regulation and coordination; streamlined and transparent licensing and classification; standards; links to complementary areas of regulation; promotion of a good business environment; and support for small and medium-sized enterprises (SMEs). Different regulatory approaches can support the achievement of these goals, including coordination among regulatory authorities, improvements in licensing regimes, assurance of minimum quality and safety standards; and incentives to support business linkages.

Figure 1:Regulatory Goals and Approaches for Tourism Services



¹World Travel and Tourism Council Website. *Economic Impact Analysis*. <http://www.wttc.org/research/economic-research/economic-impact-analysis/> (accessed 16 September 2016).

Source: New Markets Lab 2016

Overall, additional measures can contribute to development of the sector such as establishment of a favourable investment climate, limitations on restrictions on foreign direct investment (FDI), establishment of an effective competition framework, provision of tax incentives, links to regional and international trade and investment agreements, and strong legal and dispute resolution institutions.

Various considerations and trade-offs exist in the choice of regulatory options and the design of legal and regulatory frameworks for tourism. For example, different approaches may be explored with respect to the institutional design of the regulatory authority, and regulatory measures can be balanced to ensure fairness while maintaining sufficient incentives to encourage market entry and investment. Regulatory balance may also come into play with respect to preserving public policy space versus entering into international and regional commitments, although these goals can be synchronized in many cases. In addition, all countries seek to balance the goal of developing a domestic industry with gains from FDI. This Regulatory Guide will discuss all of these considerations, and, in each case, policymakers and regulators need to consider the best options for their domestic situation, the country's economic and development goals, and the path to development of the local tourism sector.

This Regulatory Guide is one of four sector-specific Regulatory Guides developed by the New Markets Lab for the International Centre for Trade and Sustainable Development (ICTSD). These Regulatory Guides are designed to serve as practical tools to highlight key regulatory intervention points for best leveraging development benefits and sustainable market growth in the development of key services sectors. They are part of a larger project geared towards supporting the development of service sector capacity in LDCs and LICs through regulatory and policy improvements and will be used to guide further stakeholder discussion and engagement around regulatory and policy change.

1. INTRODUCTION

Tourism plays a central role in economic growth through inter-sectoral linkages and employment opportunity (and thus higher wages), infrastructure development, and increased supply capacity. An efficiently regulated tourism services sector can have many positive effects throughout entire economies. Growth in the tourism sector has the potential to spill over into many other sectors, such as agriculture, retail and handicrafts, and transport. It contributes to job creation, including for women who often make up the majority of workers in the agricultural and handicrafts sectors and are also prevalent in the hospitality and food and beverage industries. It also helps shift workers from the informal economy to the formal economy, where their legal rights are better protected.

For example, regulatory measures concerning licensing and food safety standards impacting restaurants proved to be important interventions that helped formalize informal sectors in the Gambia.² Gambia developed Codes of Conduct for fruit sellers, juice pressers, and tour guides, which were informal sectors, through a consultative approach. The Codes incorporate licensing and badge regulations, which became an important mechanism by which tourists could securely access these services and presented a mechanism for legitimating the informal sector. The new Gambian Tourism Authority also engaged with overseas tour operators, the Gambian Hotel Association, the Ground Handlers, and other associations to help strengthen the relationship between the formal and informal sectors in order to continue to resolve conflicts and define operational relationships among various stakeholders in the Gambia's tourism sector.³

Regulatory structures in least developed countries (LDCs) and low-income countries (LICs) must deal with a host of issues in order to both generate market growth and manage resources in a sustainable way. Regulatory challenges can include how to address environmental degradation and scarcity of natural resources, health and safety issues, lagging technological innovation, and high foreign exchange rates. A well-designed regulatory system that creates stable linkages within the tourism value chain and with other sectors as well can help address these challenges and reduce diversion of benefits. For example, clear rules and enforcement mechanisms to protect the environment may be an important early step in developing a sustainable tourism policy framework, which is illustrated by the case of Iceland, where environmental degradation has increased as tourism has increased.

Understanding the needs of different actors and the tradeoffs that can be involved in the development of legal and regulatory systems will impact whether sectors grow in an inclusive way. The public sector may be responsible for regulating to encourage market growth (for example, creating new regulations to encourage development of a robust ICT services sector) but may be unaware of the full range of equity considerations to take into account, inadvertently overlooking an aspect of regulation that could be critical for start-ups, SMEs or women entrepreneurs. In other cases, law and regulation may need to be adapted to expand access to market services that are currently lacking. How and when to enforce standards is also a critical role for government (for example what to require of new businesses entering), yet when and how

² Natural Resources Institute and Department for International Development, *Harnessing Tourism for Poverty Alleviation: A Blueprint from the Gambia*, 7.

³ Natural Resources Institute. *Harnessing Tourism for Poverty Alleviation: A Blueprint from the Gambia*, 40.

to regulate can follow different models. Some countries maintain controls before any market activity occurs (ex ante), while others regulate existing activity in the market and take action if a problem arises (ex post). Best practices, including those from the global south, should be considered, as should the needs of all participants in the market. Finally, putting in place a system for effective regulatory decision-making and change (applying workable standards rather than creating standards so high they discourage most activity) is of paramount importance, particularly when assessing possibilities for services sector development.⁴

This Regulatory Guide is one of four sector specific Regulatory Guides that are designed to serve as practical tools focused on good regulatory practices, including approaches that have fostered innovation and growth in other markets, and common regulatory mechanisms to encourage sustainable development in line with the Sustainable Development Goals (SDGs). By providing an overview of different regulatory options, along with discussion of the objectives and implications that underpin them, stakeholders will be equipped to assess regulatory options that are best suited for different domestic circumstances.

No single model fits all, but rather, regulators need to assess regulatory objectives and implement regulatory measures best suited to their domestic situation. Good regulatory practices do, however, exist that can guide LDCs and LICs in identifying priorities, dealing with regulatory trade-offs, and designing and implementing effective legal and regulatory systems.

The Regulatory Guide is structured as follows:

- Section 2 provides an overview of the nature, scope, and content of the regulatory environment, explaining the need for regulation in relation to the characteristics of the transport industry. This section also outlines the regulatory mechanisms and institutions that govern tourism services at the national, regional, and international levels. In addition, Section 2 presents related areas of law that affect domestic regulation of the tourism sector.
- Section 3 introduces regulatory and development objectives relevant to the tourism sector, including the importance of fostering of a good business environment and the role of tourism in relation to the SDGs.
- Section 4 identifies and discusses regulatory priorities and specific regulatory objectives, highlights trade-offs between different regulatory goals, and discusses questions of sequencing reforms that may arise. This section also highlights challenges related to foreign direct investment and constraints faced by SMEs.
- The Regulatory Guide concludes in Section 5 by reiterating the close link that exists between strengthening national regulatory frameworks and fostering international trade. Section 5 also includes a table summarizing various regulatory goals, objectives, trade-offs, and options.

⁴ Kuhlmann, Katrin. *Planning for Scale Brief #6: Enabling Environment*. 2013. http://media.wix.com/ugd/095963_2550d89477974d2eb1e190767e33bbcc.pdf (accessed 10 September 2016).

2. NATURE, SCOPE, AND CONTENT OF THE TOURISM REGULATORY ENVIRONMENT

Due to its cross-cutting nature, the tourism industry holds immense development potential and can support sustainable development through linkages to many areas of the economy. Realizing this potential is largely dependent upon the ability of the regulatory framework to ensure that gains from tourism are retained and spread throughout the local economy. The following section provides a brief overview of the composition and unique nature of the tourism sector.

2.1. Nature of the Tourism Sector

“Tourism and travel-related services” is identified in the WTO Services Sectoral Classification List (W/120) to include hotels and restaurants, tourist guides, travel agencies, tour operators and “other.”⁵ In practice, a diverse array of services typically are also regulated as tourism services, such as tourist transport operations, services relating to tourist attractions and entertainment such as water sports operation and amusement parks; and construction and renovation of hotels and restaurants.⁶ The following are, for example, amongst the services classified as “tourism activities” in Mauritius: dolphin and whale watching; hawking in tourist sites; operating rental

Box 1: Modes of Supply

Services trade is classified according to four “modes” of supply by the WTO GATS, including:

- Mode 1: Cross-border supply of services
- Mode 2: Consumption abroad
- Mode 3: Commercial presence
- Mode 4: Movement of natural persons

Source: WTO GATS, 1994.

agencies, including for bicycles, cars, or kite surfs; operating a beauty parlour within hotel premises; operating a ferry boat; operating a golf course; operating as a travel agent; working as a tour operator; and working as a tourist guide.⁷ In addition to tourism in general, there are also many types of specific tourism services such as medical tourism, ecotourism, and cultural tourism. These services have reach beyond the typical regulated areas mentioned, and they are governed by regulations related to health and safety, environment, and wildlife management.

Overall, services trade is classified according to four “modes” of supply by the World Trade Organization (WTO) General Agreement on Trade in Services (GATS) (see Box 1).

⁵ World Trade Organization, *Services Sectoral Classification List*. 10 July 1991. MTN.GNS/W/120. https://www.wto.org/english/tratop_e/serv_e/serv_sectors_e.htm (accessed 20 June 2016)

⁶ Some countries, in their GATS Schedule, have made commitments under this subsector concerning the following services: tourism management services (Egypt) tourism property management (Egypt), rental/lease tourism property (Egypt), tourist marina operators (Guatemala), tourist transport operation-car rental (Mauritius), yacht chartering and cruising services (Mauritius), tourist duty-free shops (Mauritius), hotel management services (Thailand), auxiliary tourism enterprises (Venezuela). (See <http://i-tip.wto.org/services/default.aspx>)

⁷ Mauritius Tourism Authority. *Tourist Enterprise License*. <http://ta.gov-mu.org/English/Licence%20Categories/Documents/TA/List%20of%20TEL%20activities.pdf> (accessed 18 July)

The tourism industry includes sub-sector regulations on services related to hotel and accommodation, restaurants, travel agencies and tour operators, and tourist guides.⁸ Legal and regulatory measures and mechanisms apply at the domestic, regional, and international levels. Regulation of the tourism industry includes a number of sector-specific and horizontal measures that can have significant impact. Horizontal measures such as e-commerce regulations and foreign exchange controls will affect both the tourism sector and other sectors in the economy.

Box 2: Regulation and Modes of Service

Regulatory measures affect trade in tourism services according to mode, for example:

- Horizontal laws and regulations limiting foreign equity participation affect mode 3*
- Immigration regulations affect mode 4*

Source: WTO, 2014.

Tourism is considered an internationally tradable service, which can be supplied according to the different modes of service delivery established under the GATS (see Box 2). For instance, hotels can be accessed electronically from importing countries (Mode 1), tourists can visit destinations (Mode 2), foreign-owned hotel chains can be established in a country (Mode 3), and foreign staff can be employed to work in foreign-owned hotels.⁹

The tourism sector's particular development potential lies in its unique ability to provide strong backward and forward linkages. Backward linkages include requirements for the construction of facilities such as hotels and restaurants, infrastructure such as energy and information and communications technology (ICT), and support services such as agriculture and manufacturing. Potential for forward linkages also abound from increased tourism, which include services consumed by tourists such as retail, financial, hospitality, cultural, and recreational services.¹⁰ When these linkages are weak, a large share of tourism revenues are not retained in the country; this is referred to as "leakage." Leakage, which occurs when tourism-related goods and services are imported from abroad, rather than locally procured, can severely undermine the realization of development gains from tourism.¹¹

If effectively harnessed, linkages in the sector can support and strengthen the local economy. In particular, these may offer many opportunities to SMEs as well as greater inclusion of women in the formal economy. Tourism linkages also can support development by contributing to improvements to hard infrastructure, such as roads, airports and ports, as well as stronger response to natural disasters.¹² In addition, an increased level of tourism brings new competition to many sectors of the economy, driving down prices and increasing the level of quality and

⁸ World Trade Organization, *Accession to the World Trade Organization: Procedures for Negotiations under Article XII*, WT/ACC/1, 1995.

⁹ International Trade Centre (ITC), World Tourism Organization (UNWTO). *Tourism and Trade: A Global Agenda for Sustainable Development*, 16. 14 September 2015. [http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/Tourism and Trade_low%20res_2014-2015-335.pdf](http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/Tourism%20and%20Trade_low%20res_2014-2015-335.pdf) (accessed 19 June 2016)

¹⁰ United Nations Conference on Trade and Development (UNCTAD). *Sustainable Tourism: Contribution to Economic Growth and Sustainable Development*, 8. 28 January 2013.

¹¹ UNCTAD. *Sustainable Tourism: Contribution to Economic Growth and Sustainable Development*, 13.

¹² Massimiliano Cali et al., "The Contribution of Services to Development and the Role of Trade Liberalization and Regulation," Working Paper 298 (ODI, 2008), <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/3482.pdf> (accessed 29 June 2016)

availability of services. Increased demand for flights to Kenya by tourists, for example, contributed to lower airfare prices, which led to lower transportation costs and ultimately contributed to a reduction in costs related to transportation of goods. Expanded tourism in Kenya also increased demand for local products.¹³

By its nature, tourism is deeply intertwined with, and therefore dependent upon, the functioning of a broad spectrum of other industries such as transport, infrastructure, environmental affairs and financial services. The diverse characteristics of the tourism industry can easily lead to a fragmentation of policies and regulations among various agencies and levels of government, resulting in inefficiencies, overlaps in function, and disjointed efforts in different segments of governance. Regulators and policymakers, therefore, have an important coordination function to fulfil in addition to regulation of certain core issues.

Tourism is not only a thriving sector worldwide, but it is also one of the top two sources for export revenue in a number of LDCs (twenty at last estimate),¹⁴ making it particularly vital for the economies of many LDCs and LICs. In 2015, over one billion tourists travelled internationally; with these large numbers, tourism makes up ten percent of global GDP and provides one in eleven jobs in the global economy. For LDCs and LICs, tourism has major potential to bring significant development gains by providing a wide range of direct, indirect, and dynamic effects that support development of other sectors (such as local retail and services).

LDCs and LICs, however, face serious and widespread challenges, not only in increasing the competitiveness of their tourism sectors but also in harnessing the full benefits that tourism can bring to the local economy. These issues relate in particular to establishing effective linkages and limiting leakage and include challenges faced by local suppliers with meeting international hospitality, food quality and safety standards; inadequate transport and logistics services; skills constraints; and unfavourable business regulatory environments. Access is also a major factor in competitiveness of the tourism sector, influenced in particular by transport services and infrastructure such as airports, ports, and roads. The business environment, which depends largely upon legal and regulatory frameworks, is a primary consideration in the attraction of much needed investment in the tourism sectors of LDCs and LICs.¹⁵

2.2. Scope of Tourism Regulations: Mechanisms and Institutions

Tourism activities are governed by different legal and regulatory mechanisms. Sector-specific regulations, as well as other domestic laws and regulations that impact tourism, are largely designed and implemented at national and sub-national levels; however, regional and international agreements also significantly impact domestic regulatory structures. The following

¹³ Cali et al., "The Contribution of Services to Development and the Role of Trade Liberalization and Regulation," 11.

¹⁴ UNCTAD. *Sustainable Tourism: Contribution to Economic Growth and Sustainable Development*, 7.

¹⁵ World Trade Organization, Organisation for Economic Co-operation and Development, United Nations World Tourism Organization, *Aid for Trade and Value Chains in Tourism* (2013), 29. https://www.wto.org/english/tratop_e/devel_e/a4t_e/global_review13prog_e/tourism_28june.pdf
https://www.wto.org/english/tratop_e/devel_e/a4t_e/global_review13prog_e/tourism_28june.pdf

section provides an overview of key aspects of national, regional, and international regulatory frameworks related to the tourism sector.

2.2.1. National Level Regulation

The nature of the tourism sector and its dependence upon other areas of regulation calls for unique regulatory approaches. Because the tourism sector is highly reliant upon the functioning of many other areas of the economy, effective regulation to support policy objectives requires not only the regulation of a few core services but also well-coordinated economy-wide regulatory and policy cooperation.

Regulatory and institutional frameworks in the tourism sector vary in structure and arrangement. There is no one model that fits all, and institutional designs vary depending upon country-specific circumstances. In each case, steps can be taken to support the effectiveness of the regulatory framework and the achievement of regulatory objectives. Some countries have dedicated tourism ministries (for example, Brazil, Philippines, Egypt, Mexico, India, and Kenya), while others choose to have tourism regulation fall within the scope of different ministries. Colombia, Iceland, Switzerland, and the United States are examples of countries where tourism falls under the authority of the economics or commerce ministry, and in Ireland and Japan the transport ministry is responsible for tourism. In some countries, authority falls within the scope of the culture portfolio. Often the industry is regulated through a combination of these various portfolios.¹⁶

Where countries have a dedicated tourism ministry, regulation can fall either under the scope of the ministry itself, or, as in the case of Kenya, the regulatory function may belong to an independent regulatory authority such as the Kenyan Tourism Regulatory Authority. Having a regulatory authority can provide greater transparency and independence to regulatory decisions and actions. In Kenya the Ministry of Tourism is responsible for formulation of the national tourism strategy, while the regulatory authority is responsible for the regulation of tourism activities and services in accordance with the national tourism strategy.¹⁷

Tourism institutions also often include various state owned enterprises (SOEs) and statutory bodies aimed at promoting, developing, and monitoring the tourism sector. In India, for example, these include the India Tourism Development Corporation and the National Council for Hotel Management and Catering Technology (NCHMCT).¹⁸ In the case of Kenya, they include the Kenya Tourism Board, the Tourism Finance Corporation, the Tourism Research and Monitoring Institute, and the Tourism Tribunal.¹⁹

Regardless of the institutional structure, core regulatory functions that pertain directly to the tourism sector include:

¹⁶ Organisation for Economic Co-operation and Development, *Tourism Trends and Policies*, 32. 9 March 2016. OECD Publishing Paris. <http://dx.doi.org/10.1787/tour-2016-en> (accessed 21 June 2016)

¹⁷ Ministry of Tourism, *Kenya Tourism Act No. 28 of 2011 [Revised edition 2012]*, 10-12. <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TourismActNo28of2011.pdf> (accessed 26 June 2016)

¹⁸ Ministry of Tourism, Government of India, <http://tourism.gov.in/organisation#>. (accessed 21 June 2016)

¹⁹ Ministry of Tourism, *Kenya Tourism Act No. 28 of 2011 [Revised edition 2012]*.

- Regulation of hotels (including licensing, registration, classification, and grading);
- Travel agents and tour operators (including licensing and permitting);
- Tour guides (including licensing, qualifications, and training);
- Restaurants and night clubs (including international food standards, liquor rules, licensing, and classification); and
- Licensing, permitting and oversight of any other activities classified as tourism activities under domestic regulations.

Efficient regulation of the tourism sector as a whole, however, requires a much broader mandate, including coordination among various government ministries and agencies responsible for areas linked to tourism activities as well as private sector stakeholders and associations. In addition, strong coordination is required between different levels of government.

The regulatory environment in which these functions are carried out significantly impacts the development of the sector. Effective use of good regulatory approaches can create an enabling environment that streamlines licensing and permitting requirements, ensures a coherent regulatory regime across the various portfolios that comprise the tourism sector, catalyses private investment in tourism, and strengthens linkages with the local economy.

As the tourism sector grows and becomes stronger, regulatory aims may shift from a promotional focus to creating conditions that support competitive tourism enterprises and regions in order to maximise tourism revenues. This includes a greater emphasis upon increased productivity and quality and stronger support for local innovation. Regulatory objectives may include facilitating investment for infrastructure development, or improving business skills and capacity to support competitiveness and take greater advantage of business linkages.²⁰

²⁰ OECD. *Tourism Trends and Policies*, 33.

2.2.2. Regional and International Level Regulation

International and regional regulatory frameworks, as well as agreements and treaties, can have a significant influence upon national laws and regulations. In order to maximize economic growth and development potential, regulators need to take into account the effects of implementation of international and regional agreements and consider trade-offs against national regulatory objectives. This section will focus on three types of international legal instruments.

The GATS stipulates general obligations and sector-specific commitments for WTO Members. Those disciplines concern, *inter alia*, most-favoured-nation (MFN) treatment, transparency, market access, and national treatment. The GATS also sets out the different types of market access parameters affecting the supply of services. Almost all of these involve prohibited restrictions in services which are of a quantitative nature and take the form of limitations on the number of service suppliers, transactions, outputs, persons employed, and the participation of foreign equity. Another refers to the type of legal vehicle used to supply the service. Such limitations can only be imposed in the sectors in which specific commitments have been made insofar as they are agreed upon and scheduled by a member during negotiations. Further, the GATS also proscribes measures that have the effect of discriminating between or against countries' services and service suppliers. Through a system of exceptions, the rules also set out to ensure that services regulations are designed and correctly applied so as to serve legitimate regulatory objectives consistent with the WTO. The GATS also recognizes the importance of each Member's regulatory sovereignty for public policies, which is partially reflected in a provision stipulating general exceptions.²¹

Also noteworthy is the WTO LDC Services Waiver (decision on the "Preferential Treatment to Services and Service Suppliers of Least-Developed Countries" adopted in 2011, and the 2013 decision on the "Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of Least developed countries").²² The LDC Services Waiver has allowed WTO Members to waive their most-favoured nation (MFN) obligation under the GATS and grant preferential treatment to services and service suppliers from LDCs. Any preferential treatment under the LDC Services Waiver is to be granted immediately and unconditionally to like services and service suppliers of all LDCs. The LDC Services Waiver allows preferential treatment with respect to market access (Article XVI of the GATS) to be implemented once a notification has been submitted to the Council for Trade in Services.²³ To date, 21 countries have submitted notifications to the WTO setting out particulars of the services for which they will grant preferential access to LDCs. A number of countries have included tourism or tourism related services in their notifications under the LDC Services Waiver. For example, Australia has eliminated the commercial presence requirement for cross-border supply of travel agencies and tour operator services.²⁴ The Republic of Korea has included preferential treatment for tourist

²¹ OECD. *Tourism Trends and Policies*, 33.

²² World Trade Organization Website, *Trade in services and LDCs*.
https://www.wto.org/english/tratop_e/serv_e/ldc_mods_negs_e.htm (accessed 12 September 2016).

²³ World Trade Organization. *Preferential Treatment to Services And Service Suppliers of Least-Developed Countries*, Decision of 17 December 2011, WT/L/847; Ministerial Conference; Eighth Session; Geneva; 19 December 2011. https://www.wto.org/english/thewto_e/minist_e/min11_e/official_doc_e.htm#adopted (accessed 9 September 2016).

²⁴ ITC, UNWTO, *Tourism and Trade: A Global Agenda for Sustainable Development*, 24.

guide services,²⁵ and Thailand has included various preferences related to campsites, theme parks and amusement parks, and holiday centre services.²⁶

While the GATS addresses trade in services at a multilateral level, collective efforts among countries to develop tourism industries have generated several international and regional treaties specific to the tourism sector. For example, the East African Community (EAC) concluded the Protocol on Tourism and Wildlife Management as well as the Tourism Marketing Plan and Strategy, and the Member States of the Association of Southeast Asian Nations (ASEAN) concluded the ASEAN Tourism Agreement. These treaties are largely focused on joint efforts in promoting and marketing the region as a single tourist destination, harmonizing policies, and increasing capacity building.²⁷ Provisions to encourage member states to ease visa requirements²⁸ and implement classification standards for tourism service suppliers²⁹ are also included in such treaties. In addition to these regional treaties, the World Tourism Organization (UNWTO), a United Nations agency responsible for tourism, encourages the implementation of the Global Code of Ethics for Tourism, which is a non-binding comprehensive set of principles for equitable, responsible, and sustainable tourism.³⁰

Even where RTAs are not directly applicable to tourism services, some include provisions on services more generally. Many RTAs are based only on trade in goods; however, trade in services is increasingly being included. The East African Community (EAC) Common Market Protocol,³¹ for example, provides for the free movement of services within the EAC.³² Notably, the Tripartite

²⁵ World Trade Organization “Notification of Korea’s Preferential Treatment to Services and Service Suppliers of Least Developed Countries.” S/C/N/808. 13 July 2015.

²⁶ World Trade Organization. “Notification of Thailand’s Preferential Treatment to Services and Service Suppliers of Least Developed Countries.” S/C/N/860. 19 February 2016.

²⁷ For example, Preamble to the ASEAN Tourism Agreement states, in relevant part, “EMPHASIZING the need to strengthen, deepen and broaden cooperation in tourism among ASEAN Member States and among their private sectors in the light of the complementary nature of their tourism attractions...” (ASEAN Tourism Agreement preamble, Nov. 4, 2002.) Objectives of the Protocol on Tourism and Wildlife Management include “[to] harmonise policies in wildlife and tourism sectors.” (East African Community CCPAD, 26 February 2010, Sectoral Council on Tourism Adopts Draft EAC Protocol on Tourism and Wildlife Management, http://www.eac.int/news/index.php?option=com_content&view=article&id=192:sectoral-council-on-tourism-adopts-draft-eac-protocol-on-tourism-and-wildlife-management&catid=48:eac-latest&Itemid=69)

²⁸ For example, Article 2 of the ASEAN Tourism Agreement states, in relevant part, “Member States shall facilitate travel within and into ASEAN by: (1) Extending visa exemption arrangement for nationals of ASEAN Member States travelling within the region on the basis of bilateral visa exemption agreements... (2) Harmonising the procedures for issuing visas to international travelers...”

²⁹ The EAC implemented a five-star system of standards of classification for hotels, restaurants and other tourist accommodation facilities of East Africa. (See East African Community CCPAD, last visited 15 July 2016, Criteria for Standardisation of Tourist Facilities, http://eac.int/travel/index.php?option=com_docman&Itemid=140)

³⁰ United Nations World Tourism Organization, *Global Code of Ethics for Tourism* (Santiago: UNWTO, 1999), G.A. Res. 406(XIII) preamble. Doc. A/RES/406(XIII), <http://ethics.unwto.org/en/content/full-text-global-code-ethics-tourism> (accessed 21 June 2016)

³¹ East African Community. *Protocol on the Establishment of the East African Community Common Market*, 2010, Article 16-23.

³² Other RTAs that have been notified at the WTO which include trade in services are the Southern Common Market (MERCOSUR), the Caribbean Community and Common Market (CARICOM), the Eurasian Economic Union (EEU), the European Free Trade Association (EFTA), the European Economic Area (EEA), the North American Free Trade Area (NAFTA), the Trans-Pacific Strategic Economic Partnership, and the Dominican Republic- Central

Free Trade Area (TFTA) between the Common Market for Eastern and Southern Africa (COMESA), EAC, and Southern African Development Community (SADC), launched in June 2015, will include trade in services,³³ as will the Continental Free Trade Area (CFTA), launched in June 2015.³⁴

Multinational and bilateral treaties addressing other areas of concern have a significant effect on the tourism industry as well. These include, for example, frameworks around labour, transport, and environmental issues. The tourism industry is labour intensive and often relies upon a labour pool of inexpensive foreign workers, including irregular and undeclared migrants. Thus, all international labour standards adopted by the International Labour Organization (ILO), for example, the Migration for Employment Convention of 1949, are relevant and affect the tourism industry and domestic regulations.³⁵

The tourism sector both directly and indirectly accounts for a vast number of workers, employees, and labourers, including, for example, travel-agency staff, guides, drivers, gardeners, shop staff, housekeeping staff, and food suppliers. The many different employment relationships that exist differ vastly, ranging from full-time to seasonal or casual workers, as well as foreign workers, including irregular and undeclared migrants. The labour relationships and working conditions of those employed in the tourism sector play a significant role, not only with regard to the potential of tourism as a important sector for decent employment opportunities in the economy, but also in relation to the quality of tourism services.³⁶ International regulatory frameworks relating to labour conditions, including the international labour standards and basic principles relating to the rights of workers set by the ILO, have direct application for national labour laws and regulations. Within ILO frameworks, the type of instrument determines the legal effect upon members; for example, conventions are legally binding international treaties, while recommendations serve as non-binding guidelines. Representatives of governments, employers, and workers draft conventions and recommendations, which are adopted annually at the ILO's International Labour Conference. Once adopted, members have to go through domestic ratification procedures, after which the international standard would be adopted into national laws and regulations (see footnote 6 regarding domestication of international agreements). Eight ILO conventions have been identified as "fundamental," and these Core Labour Standards include labour principles such as freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. All of the ILO conventions are relevant to tourism, while the Working Conditions (Hotels and Restaurants) Conventions, 1991 (No. 172) has direct application

America-United States Free Agreement (CAFTA-DR) (World Trade Organization. *World Trade Organization RTA Information System*. <http://rtais.wto.org/UI/PublicAllRTAList.aspx> (accessed 6 September 2016).)

³³ Tralac Trade Law Centre Website. SADC-EAC-COMESA Tripartite Free Trade Area Legal Texts and Policy Documents. <https://www.tralac.org/resources/by-region/comesa-eac-sadc-tripartite-fta.html> (accessed 12 September 2016).

³⁴ African Union (AU). *AU Declaration on the Launch of the Negotiations for the Establishment of the Continental Free Trade Area (CFTA)*. Southern African Legal Information Institute (SAFLII). <http://www.saflii.org/au/AUDECLARATIONS/2015/2.html> (access 10 September 2016).

³⁵ International Labour Organization (ILO). *International Labour Standards on Labour Migration*. <http://www.ilo.org/global/topics/labour-migration/standards/lang--en/index.htm> (accessed 15 July 2016)

³⁶ ILO. *Guide for Social Dialogue in the Tourism Industry*. Sectoral Activities Programme. Working Paper 265. Bolwell, Dain and Weinz, Wolfgang.

and contains provisions related to remuneration (wages and tips), working hours, and training schemes. Effective implementation of ILO standards can significantly support not only decent employment in the sector, but also can improve the standard, quality, and competitiveness of the sector overall.³⁷ Migrant workers warrant particular policy attention, given increasing flows of long-term and short-term migrants from resource-poor countries to meet the labour needs of the tourism sector.

Treaties concerning transportation also are closely linked to the tourism industry. While the majority of international tourists travel by air,³⁸ the “open skies” regime is largely underpinned by bilateral agreements,³⁹ although “traffic rights” and “services directly related to the exercise of traffic rights” are explicitly excluded from the scope of the GATS.⁴⁰ The International Maritime Organization, an agency of the United Nations, is the primary multilateral body for the cruise ship industry and updates the Safety of Life at Sea Convention (SOLAS), which ensures minimum safety standards. Cruise ships also give rise to concerns relating to labour and health, as a cruise ship carries a large number of international crews and passengers. Therefore, disciplines stipulated by and through the ILO and the World Health Organizations (WHO) govern parts of the industry.⁴¹

Mass movements to fill labour demands pose health, security, and economic challenges that fall within the purview of the International Health Regulations (IHR) of the WHO,⁴² as border health practices can disrupt the trans-border flow of people and goods. The WHO’s IHR represents an agreement among 196 countries (including all WHO Member States) to work together on matters related to global health security. Through the IHR, countries agree to build their capacities to detect, assess, and report public health events. The WHO coordinates capacity building for and supports implementation of the IHR. The IHR also includes specific measures to limit the spread of health risks across borders at ports, airports, and ground crossings and to prevent unwarranted travel and trade restrictions and disruptions. To this end, the 2005 revision to the IHR retains the principles of quarantine, but also recommends early international notification and national infrastructure support to control outbreaks that could affect global public health.

Environmental issues are also prevalent in the tourism sector, since most forms of transportation are sources of greenhouse gas emissions. The Paris Agreement adopted at the Paris climate conference in December 2015, which is legally binding and due to enter into force in 2020, along

³⁷ International Labour Organization (ILO). *International Labour Standards on Labour Migration*.

³⁸ 54 percent of all overnight international tourists traveled by to their destinations by air in 2014 (World Tourism Organization, 2015, UNWTO Tourism Highlights 2015 Edition, <http://www.e-unwto.org/doi/book/10.18111/9789284416899>)

³⁹ Joppe, Marion. *Entrepreneurship Und Tourismus, Unternehmerisches Denken und Erfolgskonzepte aus der Praxis*, 179.

⁴⁰ WTO. *General Agreement on Trade in Services*, Preamble, Paragraph 2 of Annex on Air Transportation Services. Apr. 15, 1994. https://www.wto.org/english/res_e/booksp_e/analytic_index_e/gats_03_e.htm#trans (accessed 20 June 2016)

⁴¹ Joppe, Marion. *Entrepreneurship Und Tourismus, Unternehmerisches Denken und Erfolgskonzepte aus der Praxis*, 179-180.

⁴² World Health Organization (WHO). MacPhersona, Douglas W, Gushulakb, Brian D Macdonald, Liane. *Health and Foreign Policy: Influences of Migration and Population Mobility*. Volume 85, Number 3. March 2007. <http://www.who.int/bulletin/volumes/85/3/06-036962/en/> (accessed 15 July 2016)

with other treaties concerning climate change such as Kyoto Protocol⁴³ are relevant.⁴⁴ The main objective of the Paris Agreement is to limit the global average temperature and support efforts to reduce climate change. Tourism activities cut across numerous sectors, so they are often not specifically included in the breakdowns of emissions by sector, but it is estimated that tourism forms a five percent share of total world emissions, comprised of emissions from transport, such as aviation and road transport; accommodation and housing; and tourist activities. Considerations concerning carbon emission reduction could likely promote initiatives like increasing energy efficiency in housing and accommodations as a vital step to support the sustainability of tourism. Environmental agreements also support movement towards low emission transportation systems and means of transport that are based on sustainable mobility. As countries consider the design of their tourism regulatory systems, environmental agreements will impact how emission standards are set in order to promote a responsible and sustainable tourism industry.

Bilateral, regional, and international treaties thus can have a significant influence upon the tourism sector, either directly or indirectly; some international and regional frameworks are legally binding and stipulate certain obligations while others remain as guiding principles and encourage inclusive development of the sector.⁴⁵ When treaties are binding, the member countries are required to include the internationally agreed obligations on tourism in their national laws and ensure implementation according to the objectives of the framework. However, international frameworks such as the UNWTO's Global Code of Ethics for Tourism or the ILO's R179 - Working Conditions (Hotels and Restaurants) Recommendation, 1991 (No. 179) do not create binding obligations. Voluntary adoption of non-binding obligation offers the flexibility to modify or revoke the same, depending upon its effect, without violating the international obligation. Regulators thus need to be aware of the nature and effects of each treaty in order to maximize economic growth and the development of tourism industry.

Table 1: Key International Agreements Impacting the Tourism Sector

Treaty	Nature	Obligations	Effects
International Labour Organization (ILO)	International Organization	<input type="checkbox"/> ILO conventions Cover “fundamental principles and rights” at work, including:	Under ILO Constitution <input type="checkbox"/> Once labour standard is adopted member states have to domesticate the

⁴³ United Nations Framework Convention on Climate Change Website, *Kyoto Protocol*. http://unfccc.int/kyoto_protocol/items/2830.php (accessed 16 September 2016).

⁴⁴ United Nations Framework Convention on Climate Change, *The Paris Agreement*. November 2015. http://unfccc.int/paris_agreement/items/9485.php (accessed 15 July 2016)

⁴⁵ RECs use different legal instruments, for example, regulations, directives, protocols, and MoUs, that can be binding or non-binding depending on the institutional structure of the RECs and the legal instrument used. For example, in the EAC regulations are automatically binding upon member states and supersede national law, although implementation generally requires domestication through the amendment of national laws and regulations, while in the SADC MoUs are not binding upon members (Kuhlmann, 2015). In addition, the application of international law at the domestic level varies from nation to nation. While not all countries fall into these categories, most are either “monist” or “dualist” when it comes to treaties. Civil Law countries tend to be “monist”: when civil law countries ratify a treaty, they agree to be bound internationally, and the state’s obligations become part of domestic law automatically. In contrast, most Common Law countries are “dualist”: dualist countries require implementing legislation at the domestic level, following ratification of an international agreement. That is, domestic and international law are considered to be separate bodies, and international law may only apply once it has been “domesticated,” or enacted at the national (or local) level (O’Connor 2012, p 14).

	<ul style="list-style-type: none"> <input type="checkbox"/> Conventions binding upon Members <input type="checkbox"/> Recommendations non-binding 	<ul style="list-style-type: none"> o Freedom of association and the effective recognition of the right to collective bargaining o Elimination of all forms of forced or compulsory labour o Effective abolition of child labour o Elimination of discrimination in respect of employment and occupation <p>Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172).</p> <ul style="list-style-type: none"> <input type="checkbox"/> Applies to the hotels, catering and tourism (HCT) sector <input type="checkbox"/> Associated Recommendation (No. 179) contains non-binding recommendations 	<p>binding standard through adoption in national laws and regulations</p> <ul style="list-style-type: none"> <input type="checkbox"/> Member states have to report on the implementation of adopted standards at intervals <input type="checkbox"/> Standards in fundamental conventions are automatically incorporated into Members' domestic laws, and national governments need to ensure compliance <p>Working Conditions (Hotels and Restaurants) Convention includes principles related to</p> <ul style="list-style-type: none"> <input type="checkbox"/> Working hours (overtime, rest periods, and reconciliation of working time with family life) <input type="checkbox"/> Regular remuneration (wages and tips) <input type="checkbox"/> Training schemes in collaboration with employers' and workers' organizations⁴⁶
World Health Organization (WHO)	<p>International Organization</p> <ul style="list-style-type: none"> <input type="checkbox"/> Binding commitments upon Member States 	<p>IHR (2005)</p> <ul style="list-style-type: none"> <input type="checkbox"/> Binding obligations on WHO Member States <input type="checkbox"/> Set of rules to support the global outbreak alert and response system <input type="checkbox"/> Require Members to improve international surveillance and reporting mechanisms for public health events and strengthen national surveillance 	<ul style="list-style-type: none"> <input type="checkbox"/> Member States required to notify WHO of all events that may constitute public health emergency of international concern <input type="checkbox"/> Member States have to respond to requests for verification of information regarding such events <input type="checkbox"/> Includes measures to limit spread of health risks across borders at

⁴⁶ International Labour Organization (ILO). *International Labour Standards on Labour Migration*.

World Trade Organization (WTO)		<p>and response capacities</p> <ul style="list-style-type: none"> □ Key sanitary and health services and facilities also to be developed at designated international airports, ports, and ground crossings 	<p>ports, airports, and ground crossings</p> <ul style="list-style-type: none"> □ Includes measures to prevent unwarranted travel and trade restrictions □ 2005 revision includes dispute settlement mechanism to resolve conflicts arising between States in respect of the Regulations
	<p>International Organization</p> <ul style="list-style-type: none"> □ Binding commitments for Member States 	<p>GATS</p> <ul style="list-style-type: none"> □ Binding general obligations and sector-specific commitments undertaken by Members 	<ul style="list-style-type: none"> □ Sets out market access parameters affecting supply of services □ Prohibits certain restrictions in services trade that place limits on number of service suppliers, transactions, outputs, persons employed, and participation of foreign equity □ Limitations only allowed in sectors where specific commitments made □ Prohibits measures that have effect of discriminating between or against service suppliers of Member Countries □ Violation of GATS commitments may lead to dispute settlement proceedings before the WTO
Kyoto Protocol	<p>International Convention</p> <ul style="list-style-type: none"> □ Binding upon signatory States 	<ul style="list-style-type: none"> □ Commits signatory States to reduce greenhouse gas emissions to their binding target levels □ Heavier commitments for developed countries 	<ul style="list-style-type: none"> □ Signatory states have to introduce measures at national level to meet their emission target levels □ Additionally, the Protocol offers “flexibility” mechanisms which allow states to meet

			their targets by way of three distinct market-based mechanisms
Paris Agreement	International Agreement <ul style="list-style-type: none"> <input type="checkbox"/> Legally binding once ratified <input type="checkbox"/> Will enter into force once 55 countries accounting for at least 55 percent of global emissions have deposited instrument of ratification 	<ul style="list-style-type: none"> <input type="checkbox"/> Binding agreement with goal to keep increase in global average temperature to well below 2°C above pre-industrial levels, with aim of limiting the increase to 1.5°C above pre-industrial levels 	<ul style="list-style-type: none"> <input type="checkbox"/> Governments of Signatory States to come together every 5 years to set targets according to science and track progress through transparency and accountability system <input type="checkbox"/> Countries agree to provide support to developing countries for adaption <input type="checkbox"/> Countries submit “intended nationally determined contributions” regarding national carbon emissions
Global Code of Ethics for Tourism (CGET)	International Principles <ul style="list-style-type: none"> <input type="checkbox"/> Non-binding 	<ul style="list-style-type: none"> <input type="checkbox"/> Voluntary implementation mechanism <input type="checkbox"/> Set of principles provides a frame of reference for responsible and sustainable tourism 	<ul style="list-style-type: none"> <input type="checkbox"/> 10 Principles include economic, social, cultural, and environmental aspects of tourism <input type="checkbox"/> Stakeholders can refer matters related to application and interpretation of the CGET to the World Committee on Tourism Ethics⁴⁷

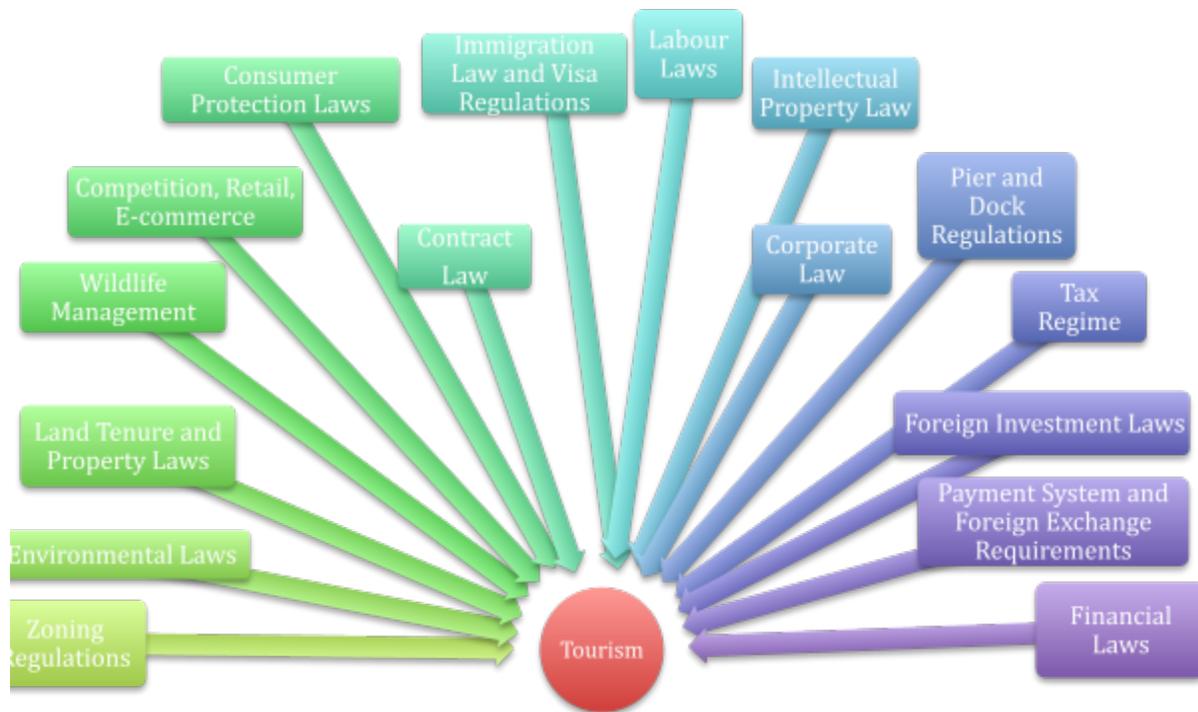
2.2.3. Related Areas of Law

Due to the nature of the tourism sector, a number of measures in the broader national legal and regulatory framework will impact the sector’s growth. Overall, the policy, legal, and regulatory framework in place impacts linkages with and among local businesses (affecting hotels, restaurants, florists, tourism companies, food and beverage suppliers, carriers, handicraft businesses and retailers, and furniture makers, among others). To maximize economic growth and development potential, regulators could consider measures that can promote linkages with other sectors and industries. In order for this to be effectively achieved, there is a need for

⁴⁷ United Nations World Tourism Organization Website. *Global Code of Ethics for Tourism*. <http://ethics.unwto.org/en/content/global-code-ethics-tourism> (accessed 16 September 2016).

well-designed regulatory frameworks to promote not only tourism services but also diverse issues such as environmental sustainability, health and safety, cultural protection, and technological innovation. For example, particularly for small island nations, pier and dock regulations may be important to regulate cruise ship industries, fishing activities, and other water-related recreational activities, and these also implicate related safety, wildlife management, and environmental protection policy considerations.

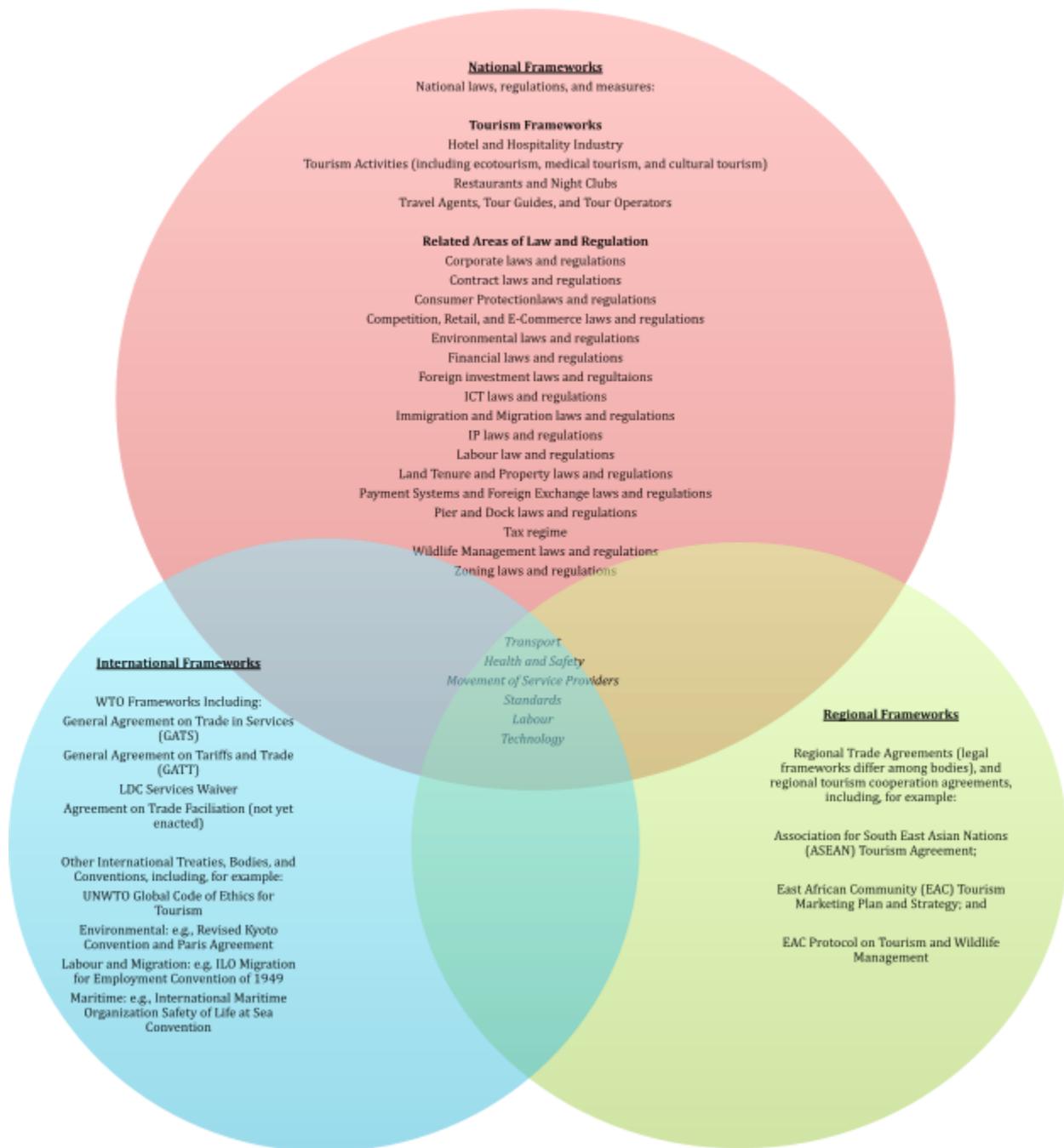
Figure 2: Related Areas of Law



Source: New Markets Lab, 2016

The hotel industry provides an illustration of the degree to which the tourism sector is intertwined with other areas of law and regulation. The service provided by the hotel industry falls under tourism regulations, including, for example, licensing, permitting, classification, inspection, and penalties. Establishing and running a hotel, however, is also subject to various areas of regulation; for example, these include employment laws, land usage and zoning, tax laws, rules on foreign investment, corporate law, liquor laws, environmental protection requirements, and health and safety regulations.

Figure 3: National, Regional, and International Frameworks Related to Tourism Sector



Source: New Markets Lab, 2016

In addition, the hotel industry is dependent upon transport services and infrastructure; utilities such as power and water; skilled staff; and agricultural and retail products. Contract law governs all contractual relationships and is critical for hotel operations, and it has a significant impact on investor certainty as well. Given the inter-connected nature of tourism services with other

elements of the economy, tourism regulatory frameworks will best support development when they are designed to take into account these complexities in order to ensure cohesive and streamlined regulatory processes that minimize time and costs for investors while simultaneously supporting linkages between tourism and other sectors of the economy.

Figure 3 above shows the many legal and regulatory frameworks that impact how the tourism sector will operate. Additional layers of regulation can affect operational costs; impact ease of market entry, particularly for smaller market participants; and influence investment considerations among both small and large service providers. This dynamic, and the regulatory trade-offs it encompasses, is important to consider when designing an effective and efficient regulatory system for the tourism sector.

3. REGULATORY AND DEVELOPMENT OBJECTIVES

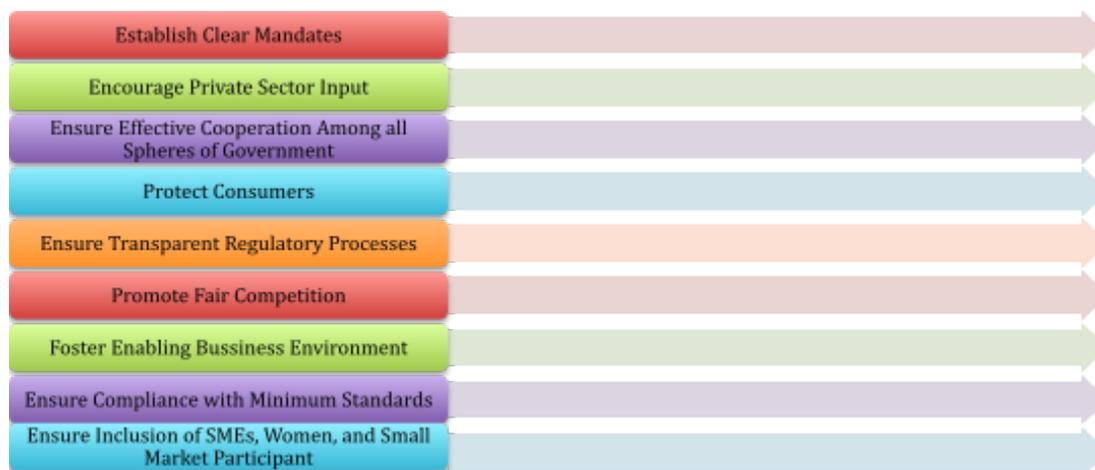
The design of the legal and regulatory framework for tourism services can be a significant factor in supporting the achievement of development objectives. Setting specific economic, social, and regulatory goals is important and can guide regulatory strategies and approaches. This section will discuss various considerations that may be taken into consideration in the design of a national regulatory framework for the tourism sector.

3.1. Good Business Environment

Tourism has immense potential to serve as a channel for economic growth and poverty reduction; however, as discussed in Section 2, certain conditions need to be in place in order to fully maximize the sector's development benefits. This means that policy objectives need to include not only promoting and developing tourism services, but they should also reflect the needs for establishing strong linkages between the tourism sector and the local economy and following a cohesive economy-wide strategy to minimize leakage.⁴⁸ Establishing strong linkages will include putting in place measures to support SMEs and encouraging opportunities for women to be included in the formal economy, which will carry legal protections.

Because of the nature of the tourism sector, regulatory objectives should also include strengthening those sectors that directly support the tourism sector. This would include, for example, increasing the availability of affordable quality transport services and encouraging expansion of financial services, both of which are covered under separate Regulatory Guides. Supporting infrastructure, such as roads, airports and banks, is also crucial to the provision of a competitive and high-quality tourism sector.⁴⁹

Figure 4: Regulatory Goals



Source: New Markets Lab, 2016

⁴⁸ UNCTAD. *Sustainable Tourism: Contribution to Economic Growth and Sustainable Development*.

⁴⁹ UNCTAD. *Sustainable Tourism: Contribution to Economic Growth and Sustainable Development*, 8.

The development of the tourism sector depends greatly upon the amount of investment in tourism services, and in LDCs and LICs with severe financial and capital constraints, establishing a good business environment can significantly support efforts to attract investment. A significant part of tourism's development potential stems from the fact that it links together a series of cross-cutting activities involving the provision of goods and services, such as accommodation, transport, entertainment, construction, and agricultural and fisheries production. Its industry structure encompasses a wide group of players, ranging from global transnational corporations (TNCs) to SMEs. This diversity enables participation in the industry at a number of different scales and levels of the market. In addition, the fact that the consumer comes to the producer in tourism, rather than the other way around, enables even the smallest transaction to be part of the global economy.⁵⁰

Figure SEQ Figure * ARABIC 5: Restrictions on Foreign Ownership of Companies Vary by Sector

Creation of an investment-friendly, predictable legal and policy environment

will help facilitate growth among enterprises of all sizes. Regulatory frameworks that foster a good business environment will attract both local and foreign investment; in addition, measures can be implemented to facilitate FDI and support local SMEs. While FDI can bring significant benefits to the tourism sector, the full development benefits of FDI are not always realized.

Restrictions on foreign investments are found across various sectors in almost 90 percent of countries. Notably the fewest limits on foreign participation in services occur in sectors such as tourism and construction. Limitations on foreign participation may arise from legislative restrictions, for example on foreign equity ownership, or from state-owned monopolies that prevent private firms, both foreign and domestic, from participating in the sector. Such state-owned monopolies are particularly prevalent in the transportation sector, for example. Figure 2 illustrates restrictions on foreign ownership by sector.

Although the tourism sector offers many opportunities, it can also lead to a number of costs, regardless of whether foreign investment is involved. Not least among challenges, the sector can be volatile and vulnerable to external shocks over which a country may have little control. The overall policy approach used to promote and boost tourism, including through FDI, needs to be carefully considered. The potential benefits gained from attracting global hotel chains and the like will be limited if a host country does not institute a wider policy framework that supports local opportunities for spillover, for example by encouraging the establishment of local firms capable of taking advantage of the transfer and diffusion of technology and expertise, while minimizing any costs. To take full advantage of FDI as a catalyst for and a complement to domestic investment, a coherent and integrated policy framework is essential.⁵¹ Hence, measures need to be designed to harness FDI for the benefit of the local economy.

3.2. Sustainable Development Goals

Building on the Millennium Development Goals, the SDGs, adopted in September 2015 at the United Nations Sustainable Development Summit, set ambitious social, economic, and

⁵⁰ UNCTAD. *Current Studies on FDI and Development, FDI in Tourism: The Development Dimension*. UNCTAD/DITE/IIA/2007/5. http://unctad.org/en/Docs/iteiia20075_en.pdf (accessed 19 June 2016)

⁵¹ UNCTAD. *Current Studies on FDI and Development, FDI in Tourism: The Development Dimension*.

environmental development targets.⁵² These targets, set out in Figure 6 below, not only form a shared global agenda on development through 2030 but also provide a clear roadmap for domestic policy objectives. The SDGs recognize the development potential of tourism and call for the implementation of policies that promote sustainable tourism, which creates jobs, promotes local culture and products, and spurs the development of monitoring tools. The SDGs also recognize the importance of conserving natural marine resources to reap the greatest benefits from tourism, especially for Small Island Developing States (SIDS) that rely on coastal and marine tourism.⁵³ Achievement of the SDGs can substantially support the realization of a number of other policy and development goals, particularly in relation to decent work and economic growth. Tourism, which draws upon local culture and services, also presents additional prospects for the achievement of greater gender equality by providing economic opportunities for women.

Figure 6: Sustainable Development Goals



Source: United Nations Department of Economic and Social Affairs, *Sustainable Development Goals*, available at <https://sustainabledevelopment.un.org/sdgs>

Tourism is unique in its potential to support the achievement of development goals because, by its nature, it exposes international consumers to local goods and services that would otherwise not reach global markets. These “tourism exports” have become an important source of income for developing countries, exceeding manufacturing exports for 40 percent of developing countries and surpassing agricultural exports for half of developing countries. Between 1982 and 2012, tourism exports from developing countries increased at an annual growth rate of 11 percent.

A recent study shows the long-term development benefits that tourism services brought to the Mexican economy, where tourism has been a growing industry since the 1950s. The study finds, amongst other things, that tourism has had very positive effects on employment, population,

⁵² United Nations Development Programme. *Sustainable Development Goals*.

<http://www.undp.org/content/undp/en/home/sdoverview/post-2015-development-agenda.html> (Accessed 30 July 2016)

⁵³ UNWTO. *Tourism and the SDGs*. <http://icr.unwto.org/content/tourism-and-sdgs> (Accessed 30 July 2016)

local GDP, and wages in municipalities with a high incidence of tourism, as compared to areas with less tourism. A 10 percent increase in local tourism revenues was found to increase employment in municipalities by 2.8 percent and GDP by 4.3 percent. In addition, the local multiplier effect generated an increase in local manufacturing GDP by 3.2 percent as a result of a 10 percent increase in local tourism revenues. The study concluded that increases in local services production resulting from increased tourism produced long-run positive spillover effects on the production of goods and improved access to business services for local firms, such as financial and accounting services, by easing credit constraints and fostering business networks. Tourism, therefore, can significantly support a wide range of development objectives.⁵⁴ Setting the SDGs as national policy priorities can guide and inform domestic regulatory objectives as they relate to tourism and industries that support the tourism sector.

⁵⁴Benjamin Faber and Cecile Gaubert. "Tourism and economic development: Evidence from Mexico's coastline." *National Bureau of Economic Research*. Working Paper No. 22300. June 2016. <http://www.nber.org/papers/w22300> (accessed 16 September 2016.)

4. REGULATORY PRIORITIES, TRADE-OFFS, AND APPROACHES

This section will discuss the most pressing regulatory priorities, trade-offs, and approaches for the tourism sector. Regulatory priorities include areas of intervention that have been recognized through international best practice as key to the development of a robust tourism sector. The sequencing of regulatory reforms is crucial to maximizing market opportunity and avoiding negative unintended consequences. In some cases, such as when a sector is being privatized or liberalized, it is important to have solid legal and regulatory frameworks in place (for example, Competition Laws) as the introduction of subsequent reforms continues.

4.1. Effective Regulation and Coordination

Objectives for Effective Regulation and Coordination of Tourism Services

- Establish Clear Mandates*
- Ensure Transparent Regulatory Processes*
- Facilitate Private Sector Input*
- Ensure Effective Cooperation Government-wide*

The diverse areas of regulation that cut across the tourism sector call for concerted coordination efforts to ensure that policies and regulations implemented by different ministries and different spheres of government all support agreed upon national tourism objectives. In order to achieve this degree of coordination, many countries have opted for a whole-of-government approach as a way to foster greater policy and regulatory coherence.⁵⁵

This approach can be reinforced by platforms for coordinating actions among various ministries and stakeholders, strong high-level leadership, and medium- to long-term policy focus.⁵⁶ Not only is cooperation and coordination essential across ministries and portfolios, but effective cooperation, both on a regional and a sub-national level, can significantly support policy coherence and coordination to achieve policy outcomes.⁵⁷ Such platforms can take the form of inter-agency or inter-ministerial committees or groups, such as the example established in the United Kingdom, as highlighted in Box 3. Coordination platforms can (and should) also include industry voices; policymakers and regulators are best able to respond to the needs of the industry when there are sufficient mechanisms for input from industry stakeholders.

Coordination is important, especially in countries where various government

Box 3: Platforms to Coordinate Among Regulatory Functions

In the United Kingdom an inter-ministerial group for tourism has been established, headed by the Secretary for Culture, Media and Sport and including Ministers from across the Government. Functions of this group include addressing fragmentation in the tourism sector and facilitating coordination among stakeholders; driving and retaining talent in the sector to encourage growth; reforming regulations; forging innovative links between the transport and tourism sectors; and making tourists feel welcome upon arrival.

Source: OECD, 2016

⁵⁵ OECD. *Tourism Trends and Policies*, 37.

⁵⁶ Including, for example, Australia, Canada, Chile, Czech Republic, Denmark, Finland, France, Iceland, Ireland, Japan, Mexico, New Zealand, Poland, Portugal, United Kingdom and the United States.

⁵⁷ OECD. *Tourism Trends and Policies*, 38.

ministries are responsible for aspects of the tourism industry, in order to ensure that overlaps in authority are kept to a minimum, as this will ensure streamlined regulatory processes. Routine audits of regulatory frameworks that outline the mandates and functions of different agencies and ministries may help to maintain efficient regulatory processes for the provision of tourism services.

Another way to ensure cooperation among different authorities is to include terms of cooperation in the enabling legislation of each institution. For example, the Indian Ministry of Tourism serves as the “nodal agency for the formulation of national policies and programmes and for the coordination of activities of various Central Government Agencies, State Governments... and the Private Sector for the development and promotion of tourism in the country.”⁵⁸ Alternatives also include concluding cooperation agreements or memoranda of understanding (MOA) between various institutions in order to clarify roles and responsibilities. Taking steps to synchronize national and regional policies will further strengthen cooperation and support coherence on a regional level.

4.2. Licensing and Classification

Objectives for Licensing and Classification for Tourism Services

- Streamlined Licensing Processes*
- Transparent Requirements*
- Measures to Ensure Quality of Services*

Laws and regulations governing licensing and classification are common in the tourism sector and are designed to control the number of providers in the sector and the quality of services provided. If not carefully designed and implemented in a transparent manner, these measures may prevent investment and hinder opportunities for growth in the sector. Regulations can affect market entry or operation as well as partnerships across sub-sectors. For example, many service providers in the hotel and tourism businesses present comprehensive service offerings to customers. If a country

requires many different licences to establish a local tourism business, it may be difficult for small local businesses and entrepreneurs to move into the formal sector, preventing partnerships with hotels and other established businesses. With respect to hotels and accommodation, operators entering the market can be regulated by different means including, for example, licensing, classification, authorization, certification, registration, and rules on foreign investment in hotels (as opposed to rules on foreign investment in general, discussed below).

Generally, licenses, authorizations, and permits are required in order to be able to provide a service in the market; these can be obtained from national or local authorities. In addition, foreign investors may be required to obtain additional authorizations. Some measures, such as licensing, influence not only market entry, but also conduct, particularly when licenses set operational conditions; this is an example of ex-post regulatory regulation in contrast to ex ante regulation that is common in many developing markets (see Box 4 below). Licences and classification are powerful regulatory tools to shape market structure, guide market behaviour, and enable market entry for smaller market players. When reviewing licensing and related frameworks, regulators should consider the number of different government offices or agencies that are involved in the process to obtain required licences and approvals, the length of time to

⁵⁸ Government of India. *Ministry of Tourism*.

secure them in practice, and whether there are ways in which the process can be streamlined In Hong Kong, for example, different government departments have implemented various measures in order to streamline the application and processing of hotel-related licences. Licensing procedures were identified as a challenge for investors because so many diverse types of licenses were required to establish a hotel. Many of the requirements for the different licenses did not take into account the unique features of the hotel industry, and streamlining efforts focused on simplifying the various applications through inter-departmental cooperation and the clarification of regulations. The application time for the installation of a ventilation system for a hotel, for example, has been shortened and streamlined as a result of closer cooperation between departments, including cooperation between the Home Affairs Department, Fire Services Department, and the Food and Environmental Hygiene Department.⁵⁹

Accommodation services can be classified in various ways, including according to their size or the type of accommodation provided, and these classifications can provide crucial information to customers regarding the services they can expect, while also making it easier for regulators to ensure that regulatory requirements do not, for example, overburden smaller operators. Licensing requirements may be set according to classifications, ensuring that regulatory requirements for small-scale hotels or guesthouses are less onerous than those applied to large commercial hotels. In Thailand for example, after entry of the Hotel Act B.E.

2547, 2004, the definition for “hotel” was very broad and included small-scale providers of accommodation. Because small entrepreneurs fell under the definition of a hotel, however, they were required to obtain a hotel license. However, applications for a hotel licence were too onerous for small-scale operators and included, for example, having to appoint a hotel manager with sufficient skills and comply with the requirements of the Building Control Act B.E. 2522. In order to address this challenge, a Ministerial Regulation was issued that modified the definition of hotel to exclude lodging premises open to the public with no more than four rooms and a total service capacity of 20 guests. Operations falling within this category were not required to obtain a hotel license, but they did need to be registered, ensuring that through registration they would

Box 4: Ex Ante and Ex Post Regulation

Ex Ante and Ex Post Regulation

- Different approaches to regulation depending upon whether government controls process at front end or back end*
- Government can apply combination to achieve desired outcomes*
- Ex Ante Regulation***
 - Generally sector-specific*
 - Designed in anticipation of certain behaviour*
 - Usually an attempt to direct market activity towards specific desired outcomes*
 - Example: Setting specific conditions connected to awarding of operating license*
- Ex Post Regulation***
 - Relies upon market to direct conduct, with government providing enforcement function*
 - Aims to redress misconduct*
 - Example: Application of general competition laws to tourism market behaviour*

Source: Infodev, 2011.

⁵⁹ Government of Hong Kong. Business Facilitation Initiatives. *Creative Streamlining Enables Smoother Hotel Operations*. <http://www.gov.hk/en/theme/bf/highlights/ha.htm> (accessed 16 September 2016).

remain part of the formal tourism industry. In addition, hotels were classed into four different types, with foreign ownership of hotels permitted, subject to conditions set in the Foreign Business Act.⁶⁰

The opening and operating of restaurants, nightclubs, and bars also can be largely regulated through licenses and permits. These are especially important as a mechanism to ensure food safety and hygiene standards. Licensing requirements or fees may also be applied according to a classification system as a way of ensuring that smaller operators can gain market entry, although food safety standards should not be compromised. In Mauritius for example, regulations distinguish between a restaurant (of which there are various categories) and a Table D'Hôte, where locals serve Mauritian cuisine from their homes.⁶¹ This flexibility can be used to help strike a balance between policy objectives, such as food safety, and overly burdensome requirements that prevent growth of the sector and exclude local SMEs.

Tour operators and travel agencies offer a diverse range of services, from large commercial package tours to small local tours. Tour services provided by these operators often overlap with other industries, such as transport and nature conservation. Licensing regimes ensure that operators in the market are able to provide the services promised, that safety and quality standards are maintained, and that tours are provided in accordance with tourism and sustainability policy objectives. Due to the overlap of industries, these licenses are best applied when harmonized and streamlined in accordance with operating requirements across industries.

The licensing of tour guides in particular supports achievement of safety and quality standards. Guides can offer an array of different services such as safari tours, cultural heritage tours, or walking city tours. Tour guides often require specialized knowledge and training, evidenced by qualifications or certification, particularly for safari or adventure tours. To obtain a tour guide licence in Singapore, for example, candidates must be over 21 years of age and medically fit, must be able to show qualifications or proficiency in the language in which they wish to provide tours, and must also have completed theory and practical training and passed two examinations administered by the Singapore Tourism Board.⁶² Regulatory measures often also include restrictions on foreign tour guides.

In all cases, it is important to ensure that licensing requirements are proportional to regulatory objectives and do not discourage market entry of potential service providers by being too onerous. For example, it makes sense for licensing criteria to be strict for adventure or wildlife tour guides that accompany tourists into potentially dangerous situations. Nationality requirements for tour guides may also have legitimate policy objectives, such as representing national culture and identity to tourists through a local tour guide. Nationality requirements can, however, restrict trade in tourism services. All measures that restrict trade should be weighed

⁶⁰ The Ministry of Tourism and Sports, the Kingdom of Thailand, *Hotel Act* B.E. 2547; *Foreign Business Act* B.E. 2542, 1999, <http://www.thailawforum.com/database1/foreign.html> (accessed 29 June 2016).

⁶¹ Mauritius Tourism Authority. *Tourist Enterprise License*.

⁶² Singapore Tourism Board. *Tourist Guide License*.

<https://www.stb.gov.sg/assistance-and-licensing/licensing/Pages/TOURIST-GUIDE-LICENCE.aspx> (accessed 16 June 2016)

against policy objectives in order to ensure that the balance is proportional and no international or regional obligations have been affected.⁶³

To help ensure that licensing is not overly burdensome, licensing processes can be made more transparent and streamlined. In Mauritius, licensing processes have been significantly improved. The Mauritius Tourism Authority offers a sector-wide operating licence, or a “Tourist Enterprise Licence” (TEL). Regulations and guidelines list different activities for which a TEL is required and in each case provide the full set of requirements. Tourist enterprises are divided into 1) tourist accommodation; 2) places where food, beverages and entertainment services are provided; and 3) activities. Although in each case the documentation required for the licence varies, these requirements are transparent and clear. Additionally, a skipper’s licence and pleasure craft licence are required for the provision of certain services. Non-citizens applying for a pleasure craft licence need to seek approval from the Ministry of Tourism and External Communications and must show that they have invested a minimum of ten million Mauritian rupees into an innovative project.⁶⁴ Besides a TEL, a tourist accommodation certificate is also required.⁶⁵ Creating streamlined, transparent licensing processes, as well as using classifications to ensure that market entry is not too onerous, can help regulators meet their policy objectives while facilitating development of the sector.

4.3. Standards and Certification

Objectives for Standards and Certification of Tourism Services

- Ensure Compliance with Minimum Safety, Occupational, and Environmental Standards*
- Encourage Shift from Informal to Formal Sector*
- Protect Consumers*

A number of regulatory measures are designed to ensure that health and safety standards are met and services are of a minimum level of quality. These include the implementation of regulatory standards and quality and safety controls, and voluntary standards and certifications can also have a significant role. Hotels may be required to meet minimum quality standards and could be classified accordingly, and restaurants are required to meet certain food hygiene and safety standards. To illustrate, Morocco established a quality programme in tourist accommodation establishments that includes the implementation of a mix of regulatory measures and voluntary quality certifications and labels.⁶⁶ Tourism service operators or their employees may be required to comply with certain competency standards. Training requirements can help regulators determine the ability and

⁶³ Molinuevo, Martin and Sebastián Sáez. “Regulatory Assessment Toolkit: A Practical Methodology for Assessing Regulation on Trade and Investment in Services.” World Bank, 2014. http://unctad.org/en/Publichttp://documents.worldbank.org/curated/en/2014/03/19244904/regulatory-assessment-toolkit-practical-methodology-assessingationsLibrary/presspb2015d7_en.pdf (accessed 16 September 2016).

⁶⁴ The Mauritius Tourism Authority. *Pleasure Craft License*. <http://ta.gov-mu.org/English/Licence%20Categories/Documents/TA/List%20of%20TEL%20activities.pdf> (accessed 18 July)

⁶⁵ The Mauritius Tourism Authority. *Tourist Enterprise License*.

⁶⁶ OECD. *Tourism Trends and Policies*, 51.

competence of a service provider, such as a tour guide, to help ensure quality of services and consumer protection.

Benchmarking against good international practices, such as the ILO guidelines for decent work, WHO standards, or food safety standards, can provide proven models that encourage safety and support international trade and investment. A challenge in many LDCs and LICs is the ability of small operators to comply with high standards. In some sectors, such as agriculture, standards can be complex and multi-layered, with standards arising at the national, regional, and international levels, as well as from the private sector. Developing clear, transparent standards benchmarked against good regulatory practices, along with coordinated capacity building, can help support local businesses and increase compliance with safety, quality, and training requirements within the sector and related industries. This can also support a shift from the informal to formal sector.

In Luang Prabang, Laos, standards in tourism services sector are being established with strong business linkages to support sustainable development. The town has benefited from targeted activities to implement local industry standards for food safety, occupational health, and safety, as well as environmental standards. This has helped maximize backward linkages from the handicraft and agriculture sectors in order to better support social and environmental sustainability.⁶⁷ Farmer producer organizations were organized with a portion of membership fees dedicated to marketing and supporting production of high quality produce to meet market demand. Its members became the primary fresh vegetable suppliers to hotels and restaurants. This new market opportunity helped increase the members' monthly revenues by up to USD 700 per month, and it has significantly impacted women, who make up a majority of the agricultural sector.⁶⁸ In addition, National Competencies Standards are being developed in Luang Prabang through public-private partnerships among local worker and employer associations and the Ministry of Labour, along with the ILO. The standards aim to support competency-based, fair wages and enable workers to benefits as the sector develops.⁶⁹ This illustration demonstrates how standards can be designed and applied in a way that contributes to the growth of the tourism sector, as well as related sectors, and help ensure its development benefits are inclusive.

4.4. Complementary Areas of Regulation

Objectives for Complementary Areas of Regulation

- Promote Business Linkages*
- Ensure Gains from Tourism Benefit Local Economy*
- Protect Consumers*

Tourism services share strong linkages with many other sectors of the economy. When thinking about how the tourism sector can contribute to job creation objectives, policymakers could assess rules impacting the local labour pool and capacity of SMEs (including gender considerations). For example, this might include improving the capacity of local restaurateurs to meet food

⁶⁷ *Value Chains in Tourism*, 40. 18 June 2013.

⁶⁸ https://www.wto.org/english/tratop_e/devel_e/a4t_e/global_review13prog_e/tourism_28june.pdf (accessed 18 July 2016)

⁶⁹ WTO, UNTWO, OECD. *Aid for Trade and Value Chains in Tourism*, 40.

⁶⁹ WTO, UNTWO, OECD. *Aid for Trade and Value Chains in Tourism*, 40.

safety standards or assessing whether local hotels are adequately connected to global booking systems.⁷⁰ The level of accessibility and openness can also have a large impact on the sector's growth. Accessibility is determined by various factors, including the "frequency, ease and quality of air, sea and land access, aviation regulations, entry permits, visa regulations, route concessions, airport capacities, and competition among carriers."⁷¹ In the case of South Africa, South Africa's Domestic Tourism Growth Strategy has been greatly supported by the proliferation of low cost air carriers resulting from the deregulation of airline services. Issues specific to transport services are discussed in detail in the related Regulatory Guide for the Transport Services Sector.

While visa and immigration regulations do not generally fall directly under the authority of tourism, close cooperation between institutions around the issuance of tourist visas can significantly improve the achievement of policy objectives. A visa is a check on the traveller's identity, travel purpose, and plans. Visas play an important role in maintaining control over entry of people into a country, and visa regimes and requirements differ from country to country. In the case of a "visa on arrival," the purpose is no longer a pre-emptive check but rather an administrative formality. Pre-emptive check visas usually require travellers to submit their passports to the consulate of the destination country ahead of time, and they can add significant effort, cost, and time to travel, as well as require planning well ahead of time. These issues can be a particular problem for small countries that do not have many consulates abroad.⁷²

Ensuring that visa formalities are streamlined, in line with the objective behind the visa requirement, and matched with tourism objectives, as well as verifying that the costs of obtaining a visa are not excessive, can significantly ease efforts and improve accessibility. The Schengen Visa, shared by 26 countries in Europe, for example, allows visa-free travel within the region for nationals from member states, or for a single visa valid throughout the region for non-EU nationals who require visas. This allows for the removal of internal border controls, common regulations on external border checks, and a common visa policy. Strategic agreements with countries that are key tourist markets, designed to waive visa requirements for short-term visits, can significantly improve accessibility and competitiveness of the tourism industry.⁷³ The South African Department of Tourism, for example, entered into a memorandum of understanding (MOU) with the Department of Home Affairs, which outlines areas of cooperation between the two departments, including visa issuance procedures, tourism awareness training for immigration officials, and support for organized group travel and mega events.⁷⁴ Regulations also can be tailored for the purposes of attracting a particular type of tourism. Some countries, including India and South Africa, offer visas specifically for the purpose of obtaining medical treatment.⁷⁵ Other countries invest in state of the art conferencing and events facilities.

⁷⁰ Cali et al, *The Contribution of Services to Development and the Role of Trade Liberalization and Regulation*, 19.

⁷¹ Douglas, Anneli, Lubbe, Berendien and Kruger, Elizabeth. *Would a Single Regional Visa Encourage Tourist Arrivals in Southern Africa?* Development Southern Africa 29:3. September 2012. 2. [http://repository.up.ac.za/dspace/bitstream/handle/2263/21590/Douglas_Would\(2012\).pdf?sequence=1&isAllowed=y](http://repository.up.ac.za/dspace/bitstream/handle/2263/21590/Douglas_Would(2012).pdf?sequence=1&isAllowed=y) (accessed 19 June 2016)

⁷² Douglas et al, *Would a Single Regional Visa Encourage Tourist Arrivals in Southern Africa?* 6.

⁷³ Douglas et al, *Would a Single Regional Visa Encourage Tourist Arrivals in Southern Africa?* 5.

⁷⁴ OECD. *Tourism Trends and Policies*, 381.

⁷⁵ Department of Home Affairs, Republic of South Africa, *Visas*, <http://www.home-affairs.gov.za/index.php/immigration-services/types-of-visas> (accessed 18 July).

While immigration is only one important example, it highlights the importance of considering complementary areas of regulation in terms of their impact on the tourism sector and reinforces the need for close regulatory coordination with related ministries. As mentioned throughout this Regulatory Guide, other areas of overlap exist with important sectors for development such as agriculture and transportation. For example, local farmers and agro-processors can be supported to meet demand from hotels, restaurants, and cruise ships, while airline regulations can impact the availability of affordable airfares that impact accessibility.

4.5. Measures to Foster a Good Business Environment

Objectives for Fostering a Good Business Environment

- Establish Clear Mandates*
- Ensure Transparent Regulatory Processes*
- Facilitate Private Sector Input*
- Seek Effective Government Cooperation*

Due to the nature of the tourism sector, investment can have a significant multiplier effect, impacting related sectors and industries, such as transport, agriculture, and retail. With the right mix and sequencing of measures, tourism can greatly impact poverty rates. In Namibia and Luang Prabang, Laos, for example, the tourism value chain contributes one-third to one-half of the income earned by the local poor.⁷⁶ Of equal importance to a sound tourism regulatory framework is the creation of an investment-friendly, predictable legal and policy environment to facilitate growth among enterprises of all sizes. A significant factor for ensuring an investment-friendly environment is the ease with which new players can enter the

market. While FDI significantly supports growth of the tourism sector, it is also critical to support local investment and enterprise development, including SMEs, for sustainable development.

Balanced regulatory measures affecting FDI can facilitate crucial investment in tourism services, support skills development and job growth, enhance technological advances in the sector, and impact the establishment of linkages with and among local businesses, including hotels, restaurants, florists, tourism companies, food and beverage suppliers, common carriers, retailers, furniture makers, and others.

A well-developed regulatory framework for investment, including FDI, can increase investor confidence, help establish transparent legal and regulatory processes, and improve enforceability of contracts and dispute resolution. Investment measures should be assessed based on whether they restrict foreign investment, drawing distinctions as to whether they are discriminatory, whether de jure or de facto, or non-discriminatory (see Box 5), as well as whether they allow for the benefits of foreign investment to be harnessed in order to capture development and technology transfer. In addition, horizontal regulations not specifically directed at the tourism

⁷⁶ Caroline Ashley, Peter De Brine, Amy Lehr, and Hannah Wilde. "The Role of the Tourism Sector in Expanding Economic Opportunity," Economic Opportunity Series, The Fellows of Harvard College, ODI, International Business Leaders Forum. NRI Report 2693. 2007. http://www.ksg.harvard.edu/m-rcbg/CSRI/publications/report_23_EO%20Tourism%20Final.pdf (accessed 20 June 2016)

Box 5: Regulatory Trade-offs: Discriminatory Investment Measures

Regulations Discriminating Against Foreign Service Suppliers Can Deter Investment

DRAFT 18 SEPTEMBER

sector can impact foreign investment. These include, for example, controls on foreign capital flows, limitations on foreign direct equity ownership, requirements for foreign ownership only through joint venture, restrictions on subsidiaries, and limitations on mergers and acquisitions. This type of comprehensive assessment will help carefully weigh measures that restrict FDI against those that facilitate the capture of the positive effects of foreign investment. In sub-Saharan Africa many countries require additional measures for the establishment of a foreign-owned business, and the establishment process can therefore take twice as long as the process for establishing a locally owned business. For foreign investors in sub-Saharan Africa, this process takes longer than any other region in the world (with notable exceptions such as Rwanda and Mauritius). Such additional measures include, for example, investment approvals, which take on average 33 days to obtain, and requirements that foreign companies have local representatives in order to establish subsidiaries. These are examples of additional regulatory measures, which are applied based upon the nationality of shareholders (discriminatory measures; see Box 7). In addition, the majority of countries in the region do not make incorporation and registration documents available online, nor do they offer the option of registering a company online. While not formally based upon nationality, this type of situation also tends to place potential foreign investors at a disadvantage in comparison to nationals. In contrast, establishing a business in some countries in Latin America and the Caribbean takes equally long for both foreign and domestic companies (the process can take up to 212 days in Haiti). Although the majority of countries in Latin America do not require onerous foreign investment approvals, many do, however, seek some form of capital importation notification.⁷⁷

- De facto discriminatory laws and regulations do not distinguish overtly, but they affect foreign service suppliers differently*
- Discriminatory measures are often justified by policy objectives; however, trade-offs need to be considered between protection of domestic industries and benefits of greater FDI inflows*

Source: Molineuvo, 2014.

Most developed countries do not require investment approvals for foreign investors, and many offer downloadable registration documents, online business registration, and streamlined business registration processes (for example, it takes only 6 days to establish a business in Canada). Reducing the time and cost of establishing a business encourages investment, innovation, and entrepreneurship. Regulatory frameworks that differentiate establishment processes and requirements based upon size, legal form, or commercial activity, rather than upon nationality of shareholders, minimize restrictions on foreign investment. In addition, ensuring that registration documents and up-to-date regulations are available online, along with offering online business registration, can further support both domestic and foreign investment.⁷⁸ LDCs and LICs face significant challenges attracting FDI and integrating into global value chains, such as high trading and operating costs, insufficient infrastructure, controls on foreign capital flows, onerous regulatory processes, scarcity of a local skilled workforce, and restrictions on the movement of service providers.

⁷⁷ World Bank, Overview: Investing Across Borders. 2010. <http://iab.worldbank.org/~media/FDPKM/IAB/Documents/Overview-IAB.pdf> (accessed 15 September 2016).

⁷⁸ World Bank, Overview: Investing Across Borders. 2010. 8. <http://iab.worldbank.org/~media/FDPKM/IAB/Documents/Overview-IAB.pdf> (accessed 15 September 2016).

Measures that support foreign investment in LDCs and LICs include significant liberalization of national policies impacting FDI and removal of restrictions on foreign ownership, fiscal incentives, and conclusion of bilateral trade and investment treaties (BITs) and regional trade agreements (RTAs) (see 6), along with double taxation treaties. Investment promotion agencies and one-stop shops provide information and streamline regulatory processes for foreign investors. For example, Egypt's One Stop Shop for

Box 6: Trade and Investment Agreements Can Support Investment

BITs and RTAs are designed to provide certainty to investors

BITs include provisions governing

- National treatment*
- Most-favoured nation treatment*
- Expropriation and dispute settlement*
- Unrestricted transfers of capital and earnings*

Regional investment provisions strengthen investment attractiveness

- Fragmented and small nature of many LDCs and LICs may discourage investment*
- RTAs with investment provisions offer investors larger markets along with investment certainty*

Box
can
for

Source: Sauvart and Mallampally, 2015.

Investment, established by the Ministry of Investment and the General Authority for Investment and Free Zones, facilitates procurement of business licenses, provides technical advice and information, supports transparent and reasonable fee structures, and aims to improve the quality and speed of government related processes.⁷⁹ Malawi, too, has recently established a One Stop Shop Centre (OSSC), which provides streamlined processes and procedures for investment approvals, permits, and registration certificates.⁸⁰ An online trade portal also provides information and guidelines for business registration and export and import procedures to potential investors.⁸¹ Key elements in the successful establishment of a One Stop Shop include institutional and legal reform and streamlining of procedures, including review of investment laws and unification of legal procedures.⁸²

In certain instances, measures that protect domestic enterprises from foreign competition may be looked to for policy and social reasons; however, regulators should consider alternative regulatory approaches, which do not necessarily create a choice between attracting FDI and promoting domestic business. Rather, measures could be implemented that harness business linkages between FDI and local entrepreneurs as well as ensure that local entrepreneurs are equipped to take advantage of these connections. Initial measures may include ensuring ease of market entry for small market participants and SMEs, ensuring sufficient access to finance, and

⁷⁹ Egypt General Authority for Investment and Free Zones One Stop Shop Website. <http://www.gafi.gov.eg/English/Howcanwehelp/OneStopShop/Pages/default.aspx> (accessed 12 September 2016).

⁸⁰ Malawi Ministry of Industry and Trade Website. *Invest in Malawi – One Stop Shop Centre (OSSC)*. <http://www.moit.gov.mw/index.php/investing-in-malawi> (accessed 17 September 2016).

⁸¹ Malawi Investment and Trade Centre Website. *Trade Information Portal*. <http://trade.mitc.mw> (accessed 17 September 2016).

⁸² Andrew Stone. "Establishing a Successful One Stop Shop: The case of Egypt." World Bank. Presented at IMF/AMF High-Level Seminar on Institutions and Economic Growth in the Arab Countries. Abu Dhabi, United Arab Emirates. December 10-20, 2006. 1 (B). <https://www.imf.org/external/np/seminars/eng/2006/arabco/pdf/stone.pdf> (accessed 12 September 2016).

creating an enabling environment in which local businesses can take advantage of information technology and connect to global markets.

While certain measures help to attract FDI, the benefits of foreign investment are best leveraged when the regulatory framework is designed with development objectives in mind; such as measures that include conditions that support skills development, technology transfer, and linkages with the local economy, as well as targeted incentives.⁸³ The Tourism Linkages Hub established by the Ministry of Tourism and Entertainment in Jamaica provides a good example of government action in this regard. The Tourism Linkages Hub was established to develop and strengthen sustainable linkages between the tourism sector and other productive sectors of the economy; it does so by supporting the development of competitive local goods and services in order to increase local sourcing by the tourism industry. The Hub supports the effective harnessing of Jamaica's foreign exchange earning potential to create employment and develop local industries.⁸⁴ These linkages between the tourism industry and the local economy are essential to enabling sustainable development. If these linkages are not developed, tourism may instead exacerbate inequalities rather than facilitating broad-based growth.

Public-private partnerships and platforms for stakeholder dialogue can help introduce and reinforce connections among businesses along the tourism value chain, such as connecting a hotel owner with tourism companies, agribusinesses, and florists. For example, Berimbau Programme in Brazil is a partnership led by the private sector around the huge Costa do Sauipe Resort. Local farmers regularly sell coconuts at a profitable value to hotels on the Coconut Coast. Hotel managers have proven not only willing to buy local produce but also, through the Tourism Cluster, offer advance purchasing contracts, working with farmers to identify the types of produce on which to focus. However, small vegetable farmers wanting to sell fresh fruit and vegetables (other than coconuts) to hotels and restaurants have found the transition from subsistence cultivation difficult, although many are starting to participate in local farmers' markets. Constraints for these small farmers include lack of access to credit,⁸⁵ insufficient contract support, poor market links, and lack of awareness of standards.

Creating and maintaining linkages between hotels and local entrepreneurs often has high initial costs. Regional producers may not be sufficiently prepared to supply the products demanded by the tourism companies.⁸⁶ Fortunately, these higher initial costs often are defrayed in the long run.⁸⁷ The Overseas Development Institute (ODI) suggests that NGOs and intergovernmental organizations (IGOs) should offer incentive schemes to overcome these initial high costs to creating linkages. NGOs and IGOs can proactively prepare local entrepreneurs for the arrival of tourism companies, build incentives for the foreign companies to enter into contracts for opening

⁸³ Sauvart, Karl and Mallampally, Padma. *Policy Options for Promoting Foreign Direct Investment in the Least Developed Countries*. 241-242. *Transnational Corporations Review* 7(3). September 2015.

⁸⁴ Government of Jamaica. Ministry of Tourism. *Tourism Linkages Hub*. <http://www.mot.gov.jm/content/tourism-linkages-hub> (accessed 16 September 2016).

⁸⁵ International Trade Center, *Inclusive Tourism: Linking Agriculture to Tourism Market*, (Geneva: ITC, 2010), 46

⁸⁶ Ashley et al. *The Role of the Tourism Sector in Expanding Economic Opportunity*, 18.

⁸⁷ Ashley et al. *The Role of the Tourism Sector in Expanding Economic Opportunity*, 18.

business in the country, or help countries integrate tourism as a strategy for poverty reduction in their Poverty Reduction Strategy Papers.⁸⁸

One model does not exist for establishing good regulatory practices. Stakeholders need to determine how best to assess potential and balance considerations in design and implementation of law and regulation based upon a particular situation and desired outcomes. Table 2 below provides a summary of key regulatory goals in the tourism sector that can be achieved through the implementation of a carefully designed regulatory framework. The table also sets out regulatory objectives to guide the achievement of each goal, as well as common trade-offs, and available regulatory options.

⁸⁸ Overseas Development Institute, "Can Tourism Help Reduce Poverty in Africa?" *Briefing Paper* (ODI, 2006), 1-5, <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/2594.pdf> (accessed 19 June 2016)

5. CONCLUSION

The tourism sector presents significant development opportunities, not only for growth in the sector itself, but also for improved competitiveness of producers and traders and greater economic benefits in the many interconnected sectors. A good regulatory framework for tourism can act as a force multiplier for broader reform.

An important consideration when sequencing reform will be political will. Sector-wide dialogue between stakeholders (nationally and regionally) can help increase support and momentum for reforms. There is also a need to develop mechanisms for public-private engagement, such as partnerships to build training capacity and supporting the uptake of ethics guidelines for the sector.⁸⁹ Achieving successful regulatory reform in the tourism sector will require concerted effort by all stakeholders and strong political will; politicians need to take a leading role in fostering consensus among stakeholders and building coalitions to support reform.⁹⁰ Box 7 also highlights the role that advocacy bodies, whether public, private, or a mix of the two, can play in building support for reforms. In addition, regulations will be better informed where there is sector-wide dialogue, both nationally and regionally, and establishing platforms for public-private engagement can enhance the quality of and support for development-friendly regulatory frameworks.

Box 7: Advocacy Bodies

Advocacy bodies have a particular role to play in building support for regulatory reforms

- Can be private sector-based or state-funded institutions with a key mandate to conduct research and share data with regulators and stakeholders on necessary reforms
- Example: Actal in the Netherlands fulfills both advisory and advocacy functions across sectors, advising on regulatory burdens of proposed measures and advocating for reform of existing laws and regulations*

Source: OECD, 2008.

This Regulatory Guide has highlighted various regulatory goals and possible regulatory options for achieving them. Trade-offs and considerations show that there is no simple solution, and governments and other stakeholders need to assess the best approach for their particular situation. The issues presented in this Regulatory Guide may provide points for further discussion between stakeholders to develop practical and innovative solutions for overcoming challenges, and further study is recommended at both the country and regional levels.

⁸⁹ Ashley et al. *The Role of the Tourism Sector in Expanding Economic Opportunity*, 24.

⁹⁰ Organisation for Economic Co-operation and Development, *Implementing Regulatory Reform: Building the Case Through Results* (Paris: OECD, 2007), 8. <https://www.oecd.org/gov/regulatory-policy/44683291.pdf> (accessed 21 June 2016).

Table 2: Regulatory Goals, Objectives, Trade-offs, and Options

Goal	Regulatory Objectives	Trade-offs	Regulatory Options
Effective Regulation and Coordination	<ul style="list-style-type: none"> <input type="checkbox"/> Establish clear mandates <input type="checkbox"/> Ensure transparent regulatory processes <input type="checkbox"/> Facilitate private sector input <input type="checkbox"/> Encourage effective cooperation among all spheres of government 	<ul style="list-style-type: none"> <input type="checkbox"/> Assess need for routine audits of regulatory frameworks in light of limited resources 	<ul style="list-style-type: none"> <input type="checkbox"/> Clear guidelines for inter-agency cooperation and communication <input type="checkbox"/> Clear mandates <input type="checkbox"/> Publication of regulations, guidelines, and decisions <input type="checkbox"/> Cooperation with related regulatory authorities, such as health, agriculture, labour, and environmental agencies
Licensing and Classification	<ul style="list-style-type: none"> <input type="checkbox"/> Ensure streamlined licensing processes <input type="checkbox"/> Increase transparency requirements <input type="checkbox"/> Support quality of services 	<ul style="list-style-type: none"> <input type="checkbox"/> Balance between ensuring quality of operators and overly burdening market entry 	<ul style="list-style-type: none"> <input type="checkbox"/> Streamlined licensing processes <input type="checkbox"/> Transparent and independent licensing regimes
Standards	<ul style="list-style-type: none"> <input type="checkbox"/> Ensure compliance with minimum safety, occupational, and environmental standards <input type="checkbox"/> Encourage shift from informal to formal sector <input type="checkbox"/> Protect consumers 	<ul style="list-style-type: none"> <input type="checkbox"/> Weigh burden of compliance with standards upon operators against dangers to safety and environment <input type="checkbox"/> Balance compliance with ability of small market operators to enter market 	<ul style="list-style-type: none"> <input type="checkbox"/> Benchmarks against international standards <input type="checkbox"/> Public-private partnerships <input type="checkbox"/> Transparent requirements
Complementary Areas of Regulation	<ul style="list-style-type: none"> <input type="checkbox"/> Promote business linkages <input type="checkbox"/> Ensure gains from tourism benefit local economy 	<ul style="list-style-type: none"> <input type="checkbox"/> Assess competing sectoral policy objectives 	<ul style="list-style-type: none"> <input type="checkbox"/> Public-private partnerships <input type="checkbox"/> Integrated voice of small market participants

Good Business Environment	<ul style="list-style-type: none"> <input type="checkbox"/> Establish favourable investment climate <input type="checkbox"/> Implement limited restrictions on FDI <input type="checkbox"/> Support SMEs <input type="checkbox"/> Promote business linkages <input type="checkbox"/> Streamline regulatory and licensing processes <input type="checkbox"/> Establish strong legal institutions 	<ul style="list-style-type: none"> <input type="checkbox"/> Assess protection of domestic enterprises in international competition in view of gains from FDI <input type="checkbox"/> Balance public policy space with gains from international and regional commitments 	<ul style="list-style-type: none"> <input type="checkbox"/> Improved ease of market entry <input type="checkbox"/> Simple, transparent licensing processes <input type="checkbox"/> Discriminatory measures only to the extent necessary <input type="checkbox"/> Focus on regional agreements for cooperation on tourism, trade, and investment <input type="checkbox"/> Reduced cost of business, for example through streamlining business registration and licensing <input type="checkbox"/> Publicly available, transparent guidelines <input type="checkbox"/> One-stop shops for investors <input type="checkbox"/> Tax incentives
Support SMEs, Small Market Participants, and Women	<ul style="list-style-type: none"> <input type="checkbox"/> Facilitate market entry <input type="checkbox"/> Promote business linkages <input type="checkbox"/> Ease regulatory burdens 	<ul style="list-style-type: none"> <input type="checkbox"/> Assess protection of domestic enterprises balanced against international competition <input type="checkbox"/> Reduce overly burdensome conditions on foreign/local investors versus gains from FDI 	<ul style="list-style-type: none"> <input type="checkbox"/> Improved access to finance <input type="checkbox"/> Establishment of clear guidelines <input type="checkbox"/> Assistance and incubation for SMEs <input type="checkbox"/> Support for the local economy and development of local skills through foreign investment <input type="checkbox"/> Implement licensing regime accommodating to SMEs <input type="checkbox"/> Support training for skilled workforce <input type="checkbox"/> Facilitate business linkages

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ENDNOTES