

TOURISM IN COSTA RICA

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In Costa Rica, the tourism industry is regulated and supervised by the Costa Rica Tourism Board-ICT, for its abbreviation in Spanish-, which establishes the conditions, prices, and classification of establishments engaged in tourism activities.

Tourism Declaration

The ICT has the authority of issuing a "tourism declaration" for companies and activities that meet the requirements included in the Regula-

tions on Tourism Companies and Activities. Companies interested in obtaining a tourism declaration must file an application at ICT, stating information about activity to be developed, location, company name, and means for receiving notifications or communications from ICT. Within the process of granting of the tourism declaration, ICT may inspect the premises where the activity will be carried out, and make observations to any documentation submitted that requires to be amended.

Implications of a Tourism Declaration

A tourism declaration provides a number of benefits and imposes a series of obligations on the company holding a declaration.

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Among the benefits granted in connection with the declaration are:

- Protection
- Technical assistance
- Marketing and advertising
- Training programs provided by ICT

As per requirements imposed by the Regulations on tourism companies, they include:

- Compliance with the all the regulations regarding tourism activities, including Regulations for Tourism Companies and Activities, Executive Decree Number 25226 and article 34 of the Promotion of Competence and Consumer Effective Defense Act,
- Hire personnel suitable for the activity
- Ensure that facilities, furniture, and materials are clean and well-maintained
- Inform ICT of any changes in the facilities or services
- Report rates to ICT
- Issue detailed invoices
- Allow free access to the establishment
- Include a “tourist menu” in the restaurants
- Report any change in owners, administrator, stockholders, managers, domicile, partnership name, trade name, or any other change in the company’s operation

The company that does not fulfill with the above mentioned requirements is subject to certain penalties that range from a written warning to the cancellation of the company’s tourism declaration or activity.

Tourism Incentives

The Costa Rican Government has enacted a series of fiscal and non-fiscal incentives to promote development of tourism activities in the country. Under the Tourism Incentives System, the Government assists private companies in the development and consolidation of specific tourism projects. Tourism incentives are designed mainly to benefit companies dedicated to the following tourism activities:

- Hotel services
- Foreign and domestic tourism air transportation
- Tourism water transportation
- Travel agencies exclusively engaged in inbound tourism
- Car rental services for domestic and foreign tourism

Companies interested in taking advantage of the benefits for tourism activities must first obtain a tourism declaration from the Government. The declaration grants legitimacy to the company for purposes of executing a tourism agreement with ICT. The tourism agreement defines the benefits, obligations and guarantees required from the applicant. A duly approved agreement must be obtained prior to commencing operations or acquiring assets eligible for application of tax incentives, in order to enjoy the corresponding benefits.

Tourism incentives granted to companies engaged in tourism services differ from each other. These include fiscal and non-fiscal benefits. The benefits granted to the lodging sector apply to new projects (for their start up) as well as to additions or remodel-

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eling of such projects, as long as it is foreseen in the tourism agreement. These advantages refer to:

Exemptions of import taxes on goods necessary for the set up or operation of new companies, or established companies that offer new services, as well as construction, additions or remodeling of premises, excepting automobiles and fuel. In the case of Value Added Tax (General Sales Tax) charged upon importation of goods, such exemption is limited to the initial investment to acquire goods and materials necessary to build the facilities needed to operate each project. All additions, expansions, remodeling, or acquisitions of equipment are subject to VAT payments pursuant to the Sales Tax Law. However, considering that the provision of accommodation services would be subject to VAT, the taxpayer would be allowed to credit the VAT paid upon importation of said goods. Also, this exemption does not apply to the importation of goods similar to those produced within the territory of countries signatories to the Agreement of the Tax and Customs Central American System, which are of equal conditions in regard to quality, quantity and prices, in accordance with the Ministry of Economy, Industry and Commerce (MEIC). Future expansions and remodeling completed under the tourism agreement shall be limited to those projects originally proposed and mentioned in the agreement. Otherwise the expansion and remodeling would have to be subject to a

new agreement in order to benefit from the incentives.

Granting of municipal business licenses required for companies to develop their activities.

Authorization from the Central Bank for companies engaged in international tourism to provide currency exchange services to foreign tourists.

Exemption of property tax, up to six years from the execution of the agreement, to those establishments set up outside the metropolitan region delineated by the Ministry of Planning.

Benefits available to the hotel sector do not extend to food services offered by hotels. Consequently, the Authorities do not grant tax benefits when the company acquires assets that can only be justified if the hotel offers food services.

Maritime Zone

The Maritime Zone is a State asset governed by the Maritime Zone Act and its Regulations, and it is defined as the 200 meter-wide strip along the Atlantic and Pacific coasts of Costa Rica, regardless of nature, measured horizontally from the ordinary high tide line and the land and rocks exposed at low tide. The Maritime Zone is divided in two sections, defined as follows:

- **Public Area:** Strip measuring 50 meters wide from the ordinary high tide line available for public use, particularly free passage of persons. With very limited exceptions, title may not be granted to this land under any circumstance.

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- **Restricted Area:** Remaining strip measuring 150 meters wide, which may be used by private parties if authorization is obtained and legal requirements are met.

In general, Municipalities are in charge of the administration of the Maritime Zone (except for the Maritime Zone in the Papagayo project, referred to below, where ICT is in charge, and Ministry of Environment, Energy and Telecommunication in forest areas), and of enforcing compliance with regulations regarding use and development over such public asset. Consequently, municipalities are responsible for ensuring well-planned development, particularly in regard to the preparation, approval, and implementation of Regulatory Plans in the area of their jurisdiction. Jointly with the municipality, the ICT, on behalf of the Government, is responsible for general oversight over all aspects of the maritime zone.

The Ministry of Environment, Energy and Telecommunication (MINAET) is responsible for managing forests and woodlands located within the inalienable areas of the Maritime Zone that are owned by the State as part of the country's Natural Heritage, in accordance with articles 13 to 15 of the Forest Act and ruling 297-2007 of the Office of the Attorney General of the Republic. Accordingly, municipal governments are prohibited from awarding concessions in those areas.

In order for a private party to use and make developments on land located on the Restricted Area, it is necessary for it to obtain a conces-

sion from the municipality. For these purposes, a regulatory plan needs to be in effect at the corresponding municipality, taken that this plan establishes all limitations, obligations and responsibilities of the concession holder, regarding the land. Furthermore, concessions are granted for a period of five to twenty years, and they can be successively renewed for periods of twenty years.

Concessions may not be obtained at municipalities that do not have a Regulatory Plan. In such cases, private parties apply for a concession, but until the Regulatory Plan is approved and in effect, they only have a right of use over the land, if the municipality grants it. The right holder in these cases pays a fee to the municipality for such use.

It is important to mention that there are certain limitations, foreseen by law, regarding cases where concessions may not be granted. The following persons or entities are legally banned from having a concession: a) Foreign nationals who have not resided in Costa Rica for at least five years; b) foreign-based corporations or entities; c) entities organized in Costa Rica by foreign nationals; d) entities in which more than fifty percent of the capital stock or quotas is held by foreign nationals. Additionally, companies that have been granted a concession may not transfer or assign stock or quotas to foreign nationals in violation of the above mentioned restrictions. Any transfer in violation of these restrictions is deemed null, thus lacks force and effect.

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Papagayo Gulf Tourism Project

Through law number 6370, the Papagayo or Culebra Bay project was declared of public interest. This law applies to land located on the Pacific coast maritime zone from Cabuya Point (north Pacific coast), to one kilometer south of Ballena Point.

Such law states that, due to their location, real estate holdings (i.e. partial or complete holdings, legitimate proprietary interests or rights) that are necessary to execute the tourism project in Culebra Bay, must be used for public purposes. Furthermore, through this law, ICT is authorized to directly acquire real estate in the mentioned area, provided approval of the Comptroller General of the Republic. For developments in such area, ICT will grant concessions, only to entities organized and domiciled in Costa Rica. Concessions in this zone are granted for a minimum of 10 years and a maximum of 50, which can be renewed.

Zoning and Building Permits

There is no law of general application in Costa Rica regarding building permits. Instead, requirements vary by municipality. Each municipality must have a regulatory plan that specifies the different potential uses of each zone. Based on this plan, the municipality will initially issue a land use certificate, indicating that the activity to be developed is permitted in the zone. After such certificate has been issued, and if the requesting party has met all legal requirements and filed the due documentation, a building permit is

issued, allowing the construction to begin.

Most municipalities classify land use in urbanized land, land that can be urbanized, and land that cannot be urbanized. Furthermore, land use is divided into the following main types of zone: residential, trade and service, parks and recreational areas, combined residential and trade zone, combined industry and trade zone and industrial zones.

Environmental permits

The National Technical Secretariat for the Environment (SETENA) grants environmental permits. New regulations published in June 2004 defined the procedure to obtain an environmental permit, also known as environmental feasibility. That procedure applies to all activities, including tourism ventures.

The aforementioned regulations separated activities into three categories based on impact, type, and nature. Additionally, some hotel activities were categorized as follows: Category A: High potential impact (includes all marinas not belonging to tourism complexes).

Category B: Moderate potential impact (includes golf courses not belonging to tourism complexes and small marinas with up to 50 boat slips). Category B is subdivided into two additional categories, namely B1: moderate-high potential impact and B2: moderate-low potential impact.

Category C: Low potential impact (includes small docks used for tourism activities where boats are not docked overnight).

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Activities classified as having a high or moderate potential environmental impact (A, B1, and B2 without a regulatory plan approved by SETENA) must file Environmental Assessment Form D1, while activities with a low or moderate-low impact (C and B2 with a regulatory plan approved by SETENA) must file Environmental Assessment Form D2.

The main purpose of the D-1 form is to serve as a technical tool for the first stage of the Initial Environment

Assessment (IEA), which determines the environmental feasibility of the proposed activity, work, or project, and whether a more in-depth analysis using a more detailed environmental assessment tool is required. For its part, the D-2 form is a less complex document that can be processed more expeditiously than the D-1 since it applies to low- and moderate-impact projects, activities, or works with regulatory plans that have been duly approved by SETENA.



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