



बौद्ध सर्किट THE BUDDHIST CIRCUIT

ADVISORY SUPPORT FOR THE DEVELOPMENT OF THE BUDDHIST CIRCUIT IN SOUTH ASIA

Enhancing Opportunities for Private Sector Investment
in the Buddhist Circuit in South Asia

TECHNICAL NOTE ON INVESTMENT ENTRY RESTRICTIONS
IN TOURISM RELATED SERVICES IN INDIA

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Acknowledgements

South Asian Buddhist heritage is indisputably one of the most important in the world.

Several places in the region are directly linked to the historical Buddha's life and the spread of his philosophy around the world. Despite the spiritual value of these places and their historical linkages, they have not been successfully developed, managed or promoted as an integrated whole in the way that other, similarly significant places around the world have.¹ As a result, only a small fraction (0.005%) of the world's 500 million Buddhists visit the key Buddhist sites of South Asia each year.

Recognizing this, South Asian countries are committed to developing their Buddhist heritage as a holistic and inclusive pilgrimage route and tourism product. To this end, countries across the region have requested the World Bank's advisory and technical support based on its long experience in unlocking tourism for lasting poverty reduction and inclusive growth goals. In response, the World Bank, with the financial support of the Government of Australia, has formulated and is implementing a Technical Assistance for the Development of the Buddhist Circuit, which this study is part of.

This report was prepared under the overall guidance of Stefania Abakerli (Sr. Urban Development Planner and Coordinator of the Program for the Development of the Buddhist Circuit at the World Bank) by the Investment Policy and Promotion Team of The World Bank. The team was led by Priyanka Kher and comprised of Barbara Kotschwar, Matthew Stephenson and Maximilian Philip Eltgen. Research and the legal and institutional assessments in India were carried out by Kuriakose Varghese and Sanjay Saxena.

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Executive Summary

As India continues its path towards development, the tourism sector can significantly enable it to progress on various indicators. The sector directly contributed about \$72 billion dollars to the Indian economy in 2016, amounting to 3.3 percent of GDP, and directly employed 25 million people (5.8 percent of total employment). Its contribution to GDP is projected to rise by nearly 7 percent in 2017, according to the World Travel & Tourism Council.¹ India's steady growth in international tourists speaks to its vast cultural and natural resources and its price competitiveness. However, India has not yet fully exploited its vast tourism potential. India receives only slightly over 1 percent of international tourists – lower than the Netherlands, Poland and Canada, and much below France, with a domestic population nearly 20 times smaller than India's, but that boasts 7 percent of world tourists. This is even though it has 28 UNESCO World Heritage cultural sites and 8 natural sites, in addition to several sites of religious importance – in particular for Buddhism. India has the ninth largest population of Buddhists in the world, with over 9.2 million resident Buddhists in 2010. The population of the top 10 Buddhist countries, excluding India, amounts to an estimated 451 million. If India can attract about 13% of this population, India's tourism arrivals would become on par with Spain - the largest recipient of international travelers.

India currently ranks 40th out of 136 countries in the World Economic Forum's Travel & Tourism Competitiveness (TTC) Index 2017. India's main source of competitiveness is price, followed by its rich natural and cultural resources. India's lowest score, and major challenge, is in tourism service infrastructure - that is, key tourism services, such as quality accommodations, transport (e.g. car rentals), and access to services such as automatic teller machines.

Private sector investment can enable India to improve its tourism service infrastructure. This Report considers the policy, legal and regulatory barriers to greater private investment in select sectors², along the Buddhist Circuit. In addition to central level legal instruments, laws and regulations from Madhya Pradesh and Uttar Pradesh were also reviewed. The full list of laws reviewed for this report is provided in Annex 1. The report first examines national level laws and regulations applicable to businesses in most sectors of the economy and then goes on to examine sector specific laws and regulations.

Under the Constitution, legislative power is divided between the Union Legislature and State legislatures- Parliament has the exclusive power to legislate on topics enumerated in List I of the Seventh Schedule, State governments on topics in List II, and both Parliament and the State Governments can legislate on the topics in List III (with enactments by the Parliament having primacy). Tourism is not enumerated in any of the lists. Thus, tourism-related legal instruments fall across all three lists – leading to a confusing regulatory web. Experience has also shown that States generally have weak capacity to implement legislations on key aspects of tourism. Despite this, central government's

¹ World Travel & Tourism Council, 2017, Travel & Tourism Economic Impact 2017. India. <https://www.wttc.org/-/media/files/reports/economic-impact-research/countries-2017/india2017.pdf>

² Service sectors include: tour guide services, tour operator services, accommodation services for visitors, meal serving services, local transportation and sightseeing services of passengers, land transport services of passengers, scheduled road transport services, rental services of passenger cars with operators, sightseeing services by land, air transport services of passengers.

previous attempts to include tourism as a specific entry in the Concurrent List³ were opposed by state governments. Reconsidering this issue, to include tourism on the concurrent list, can help streamline and enable more comprehensive tourism investment policy making and implementation.

The recently passed Goods and Services Act of 2017 provides a unified approach to indirect taxation through a “one nation one tax” policy and replaces the previous plethora of taxes levied under different names. Yet, while GST lowers tax rates for some tourism activities (e.g. travel, tours, and transportation), it may increase it in other activities (e.g. hotels). For instance, tourists consuming food and beverages could see bills lowered by around 10-15%. Tourists staying in a good hotel, however, could see bills increase as the tax rate has doubled from 9% to 18%, while tourist staying in a luxury hotel will pay significantly more, with a 28% tax rate.⁴ These rates seem to be considerably higher than other Asian counterparts. Including a single point for tax registration can further simplify the new tax regime.

There are significant institutional challenges regarding land and property acquisition, for both domestic and foreign investors. Conducting accurate title search of a property is very challenging. There is also too much individual discretion regarding land conversion. Private sector consultations indicated that it can almost take up to 4-5 years before construction work can effectively begin. There is also inconsistency in classification of land into agricultural land, revenue land, forest land, etc. by the State government and what is provided in the title or registration record. Land bordering 2 states, which may be the case in MP and UP can throw up further challenges. Rationalization and digitization of land information would provide more clarity and consistency, boosting investor confidence and interest.

There is a shortage of tour guides in the Buddhist Circuit, and restrictions and multiple licensing requirements are exacerbating this problem.⁵ Guides wanting to operate in Buddhist Circuit sites need to obtain two licenses – first as an “ASI monument guide” and second as a regional/state guide, both issued by the Ministry of Tourism. The licensing regime for guides wanting to operate in centrally protected areas can be consolidated by requiring a single license issued by the Ministry. Currently, local-level guides can operate without a license, often leading to provision of sub-optimum guide services. Further, the licensing regime only provides for issuance of licenses to certain section of persons proficient in English and foreign language and thus only caters to foreign tourists⁶ and not to the domestic tourists visiting the monuments. Local guides with knowledge of Indian/vernacular languages can cater very well to the sizeable domestic market.

The tour operating services sector is largely unorganized - in part, due to the absence of a legal and regulatory framework governing it. There are guidelines issued by the government to be recognized as an approved inbound tour operator, that enable approved operators to receive certain incentives. There is however no statute governing tour operators. An attempt in 2010 to enact a bill regulating tour operators and travel agents was not successful. The Government of India could consider enacting legislation to make approval mandatory and to establish an authority to implement such regulation. It

³ See Government of India - Press Information Bureau, 2 August 2001, *Proposal to bring tourism in the Concurrent list*, available at <http://pib.nic.in/archieve/lreleng/lyr2001/raug2001/02082001/r0208200110.html>.

⁴ A good hotel is categorized as charging between INR 2,000 to 7,500 per night, while a luxury hotel is categorized as charging INR 7,500 or more a night.

⁵ See The Buddhist Channel, 25 January 2007, *Undeveloped Buddhist sites depriving India of over US \$ 1 Billion*, <http://www.buddhistchannel.tv/index.php?id=42,3660,0,0,1,0#.WbKUQcgjHIV>.

⁶ *Ibid.*

will lead to the sector being more organized and will likely encourage more global high standard tour operators to enter this sector- ultimately leading to improvement in overall quality of tour operating services provided.

The laws applicable to the accommodation sector fall under four broad categories: approval, construction, operation, and contractual relationships. The challenges to an investor-friendly business climate are similar across all categories, namely a need to introduce explicit timelines, provide clarity on requirements, and streamline licensing and compliance requirements. Sector representatives underscored the heavy regulatory burden that is holding back investment in accommodation along the Buddhist Circuit. During focus group discussions, private sector investors recounted that a hotel requires no less than 61 licenses in any state to begin running their operations, creating a huge bureaucracy, and scope for corruption.

To develop tourism in the Buddhist Circuit, it is important to create conditions for quality meal services and ensure ease in starting and managing a food business. Investment in the sector is being held back by multiple and overlapping regulatory authorities, the absence of clear regulatory instruments, and the lack of recourse mechanisms in the presence of disputes. For example, though the Food Safety and Standards Act of 2006 consolidated laws related to food and established the Food Safety and Standards Authority of India, businesses are still required to obtain myriad other licenses. Providing a single license at least covering all food safety aspects, would accelerate the timeline between project planning and project execution. Both Madhya Pradesh and Uttar Pradesh have legislation to regulate registration of commercial establishments, including the terms and conditions of employment, including working hours, overtime pay, intervals for rest, opening and closing hours, public holidays, paid leaves, maternity leaves, etc. However, both State acts provide insufficient clarity on criterion for registration and recourse mechanisms.

Removing quantitative limits or thresholds for road transport operation would facilitate investment and provide the needed capacity and connectivity for tourism along the Buddhist Circuit. For example, the All India Permit can only be issued for vehicles with a seating capacity of not more than 39 seats, which excludes many tourist vehicles from its ambit. At the state-level, Madhya Pradesh rules discriminate by vehicle size and road type: on ordinary roads (connecting cities and towns), passenger vehicles smaller than 22 seats are not permitted; on rural roads (connecting villages) passenger vehicles with 22 seats and larger are not permitted. Such restrictions impede transportation within the Buddhist Circuit, since both kinds of roads are used while traveling from Sanchi to nearby cities.

With respect to air transportation, lack of clear processes and timelines for regulatory actions is impeding development of the air transportation sector. For example, there is no clear binding timeline for obtaining Aircraft Operation Certificates (AOC), which makes it difficult for the airlines to obtain an AOC and start operating. This is particularly challenging since flying slots under the Regional Connectivity Scheme (RCS)⁷ are given on the condition that the bidder can start operations within 6 months of the date of winning the bid. There is also lack of clarity on certain aspects – for one, the process to

⁷ One of the key highlights of the National Civil Aviation Policy 2016 is the focus on Regional Connectivity. This has brought forth the UDAN (Ude Desh Ka Aam Naagrik) Scheme. The UDAN Scheme focuses on regional connectivity through the revival of existing airstrips and airports.

determine RCS seats (eligible for lower fares), resulting often in the full market fare for travelers who make last-minute purchases, irrespective of travelers' economic background.⁸ This ultimately renders the scheme ineffective for the very purpose it was designed to serve. The main challenge for road transportation seems to revolve around the lack of public sector capacity for project execution and the presence of barriers for private sector to fill in. This is illustrated in failure of several recent efforts to upgrade the Sanchi station. Since land around the Sanchi railway station remains in the hands of the Rail Land Development Authority, private sector commercial development in this area also cannot take place. Private sector consultations also indicated government interference in the commercial terms/conditions of operation for private rail transportation businesses.

The institutional framework for tourism investment, both at the central and State levels, can benefit from greater coordination, clear mandates and better processes. The efficacy of the Inter-Ministerial Coordination Committee on Tourism Sector is limited due to the Committee's meetings not being held regularly. National Tourism Advisory Council (NTAC) seems to be functioning well, though with lack of transparency. At the State level, although single window mechanisms for investment have been introduced in both Madhya Pradesh and Uttar Pradesh, it is still cumbersome to set up tourism sector business. For example, in Uttar Pradesh, despite the existence of the Nivesh Mitra Platform, clearances and no objection certificates need to be obtained from as many as 29 departments to setup any business. There are still several windows behind the single window system, because the industrial facilitation organization "Udyog Bandhu", while operating the Nivesh Mitra Platform, lacks a meaningful enforcement and implementation authority. In both states, great improvements have been made in reducing delays of issuing approvals and licenses, but a remedy in case of an unreasonable delay is lacking. In Uttar Pradesh, relevant institutions targeted at promoting tourism need to be activated and their focus directed at the Buddhist Circuit.

The development of a highly unregulated *Monastic Economy* running parallel to the regulated economy stunts growth and limits investments in the region. A significant concern for potential investors is that more and more, monasteries are run like commercial businesses providing accommodation and food services, thereby competing with the private sector. These monasteries enjoy significant competitive advantages due to income being tax exempt and different (less burdensome) regulatory standards applying to them. Legal instruments and institutions in place to control the unauthorized activities of some of the Monasteries are insufficient. There is no specific legal regime for Monasteries which is equipped to reign in Monasteries operating as lodging services. The failure of attempts to regulate foreign monasteries (most recently in Bodh Gaya, Bihar) in other parts of India shows that regulation needs to be complemented by effective enforcement authority.

⁸ See Bangalore Aviation ,11th of April 2017, *Seven key implementation challenges of UDAN the Regional Connectivity*, <http://www.bangaloreaviation.com/2017/04/seven-key-implementation-challenges-udan-regional-connectivity-scheme.html>.

Summary of main recommendations

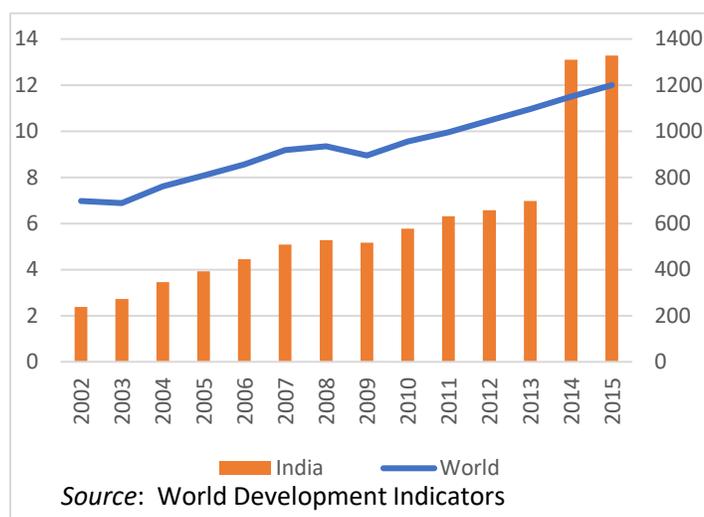
Constitution	<ul style="list-style-type: none"> • Include tourism in the Concurrent List to ensure effective legislation
Taxation	<ul style="list-style-type: none"> • Re-visit GST rates for tourism related services and remove multiple registrations • Ensure non-discriminatory income taxation rates for foreign companies
Land and Property	<ul style="list-style-type: none"> • Rationalization and digitization of land title search processes and land records • Clear demarcation of land parcels and review of overlapping territorial jurisdictions • Limit discretionary authority in the conversion of land use process by introducing clear guidelines and time frames for the Sub-Divisional Officer
Tour Guide Services	<ul style="list-style-type: none"> • Simplify and consolidate the licensing regime for tour guides operating in Centrally Protected Monuments • Introduce an approval process for local tour guides catering to the domestic market
Tour Operating Services	<ul style="list-style-type: none"> • Make approval of tour operators mandatory • Regulate tour operators and all activities thereto through a specific legislation
Accommodation and Meal Servicing Services	<ul style="list-style-type: none"> • Rationalize and streamline licensing requirements and processes for setting up and operating a business in the hospitality sector • Require a single license or certificate covering food safety • Increase the number of inspectors of the FSSAI • Mandate the online publication of (i) testing reports performed by FSSAI and (ii) written justification for the rejection of licenses by FSSAI's officers
Transportation	<ul style="list-style-type: none"> • Expand the scope of the 'All India' permit to vehicles with a seating capacity > 39 seats • Remove restrictions limiting different routes to certain types of vehicles • Introduce strict timelines for delay in the construction of the Kushinagar Airport • Install a time-bound redressal mechanism for complaints against Airlines (incl. for loss of baggage) • Create a single window certification process for the Aircraft Operation Certificate (ACO) to ensure a 6-month issuing time frame • Revive MPSRTC to improve connectivity- consider change in ownership structure to shared ownership between private stakeholders and the government
Institutional Framework	<ul style="list-style-type: none"> • Improve the single window mechanisms for investment in both MP and UP by empowering the operating institutions • Create a 'silent yes' under the MPIF Rules for license applications • Pass a unified law specifically addressing monasteries, providing for mandatory registration, regulating donations, and setting a cap on the maximum number of guests allowed to stay per month • Ensure the enforcement of existing laws on monasteries by increasing the resources of the enforcing authority

1. Introduction

India is the birthplace of several major world religions: Hinduism, Sikhism, Jainism, and Buddhism had their origins here. The latter has transcended India's borders and taken root in large parts of East, South, and Southeast Asia. India prides itself on maintaining an important part of the *Buddhist Circuit*, a route that traces the footsteps of Gautam Buddha from Lumbini in Nepal, where he was born a prince, to India, where he went in search of enlightenment, which he attained in Bihar under the Bodhi Tree. The Circuit continues to Sarnath and Kushinagar in Uttar Pradesh, where he delivered his sermons and died. The cultural richness and high religious significance of those holy places make the Buddhist Circuit one of the most compelling destinations for the followers of Buddhism, pilgrims and travelers worldwide.

Although its religious importance is without question, the economic development potential of Buddhist Circuit is largely untapped. While the route is well-traversed by pilgrims, it has not become a popular destination for other tourists. Investors and local communities have not been able to benefit fully from this cultural bounty. The reasons for this are explored in this study. Findings are that better-coordinated development plans and a supportive policy environment could unleash strong growth for the Buddhist Circuit and bring benefit to India's entire tourism sector.

Figure 1. International Tourist Arrivals, millions, 2002-2015



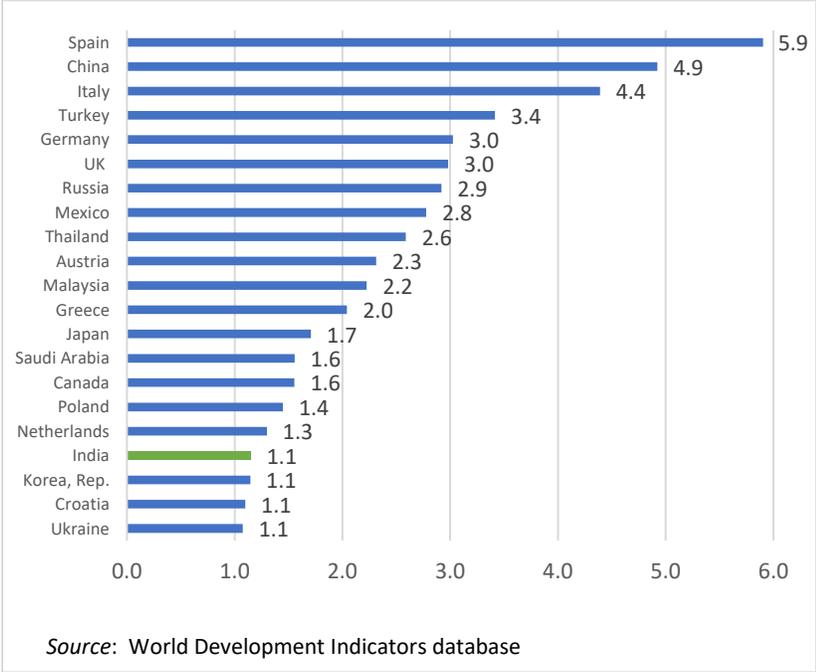
The travel and tourism sector contributed about 10 percent of India's GDP in 2016 and 2017.⁹ This includes indirect effects from investment, supply chain and induced income impacts. The sector directly contributed about 3.3 percent of GDP, and directly employed 25 million people (5.8 percent of total employment). Direct investment in the travel and tourism sector was about 6 percent of total Indian FDI in 2016. According to India's Ministry of Tourism, this sector was the 2nd largest foreign exchange earner for the country with a contribution of \$23 billion, an 8.8% growth from the year before.

⁹ World Travel & Tourism Council, 2017, Travel & Tourism Economic Impact 2017. India. <https://www.wttc.org/-/media/files/reports/economic-impact-research/countries-2017/india2017.pdf>

India currently ranks 40th out of 136 countries in the World Economic Forum’s Travel & Tourism Competitiveness (TTC) Index 2017. It is a growing market, as seen in Figure 1, which shows that, between 2002 and 2015, international arrivals to India grew by more than 3 times the world growth rate, increasing from just over 2 million per year to over 13 million tourists per year visiting India.

This growth speaks to India’s vast cultural and natural resources as well as its price competitiveness. India boasts a wide array of cultures, traditions and geographic beauty as well as potential for business travelers to witness emerging state of the art technology.

Figure 2. International tourist arrivals as a percent of total, 2015 (percent)



However, India has not yet fully exploited its vast tourism potential. As seen in Figure 2, India receives only slightly over 1 percent of international tourists – lower than the Netherlands, Poland and Canada, and much below France, with a domestic population nearly 20 times smaller than India’s, but that boasts 6 percent of world tourists.

India has taken several steps to enhance its tourism potential. It continues to enrich its cultural resources, protecting more cultural sites. India currently boasts 28 UNESCO World Heritage cultural sites and 8 Natural sites. It has recently made strides to ease entry of tourists, implementing both visas on arrival and e-visas. Enhancements to the country’s ground transport infrastructure, which has traditionally been a challenge to the sector, help to increase its potential.

The Buddhist Circuit is part of India’s rich potential as a keystone of regional tourism attraction and cross-border tourism movements. These include pilgrimages to holy cities (of Buddhist, Hindu, Muslim, and Jain significance) and sacred sites, such as Varanasi and Bodhgaya in India and Taktsang in Bhutan, which drive most unstructured intra-regional movement. Festival attendances, business trips, family and

friendship visits, as well as nature sightseeing linked to this circuit could bring additional visitors from the region and from around the world.

India has the ninth largest population of Buddhists in the world, with over 9.2 million resident Buddhists in 2010. The population of the top 10 Buddhist countries, excluding India, amounts to an estimated 451 million. However, India has not yet been able to exploit this great potential. For example, an increase of just 13 percent visitors from the external Buddhist population would bring India’s tourism arrivals on par to those of Spain.

Figure 3: India in comparison: 2017 Travel and tourism competitiveness elements (index score 1-7(best))

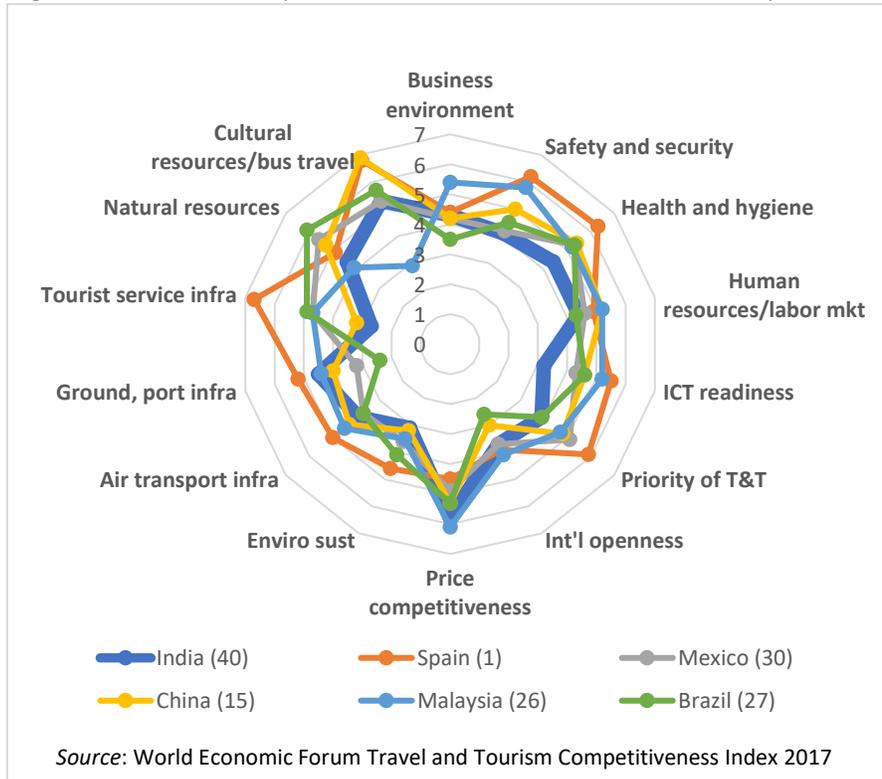
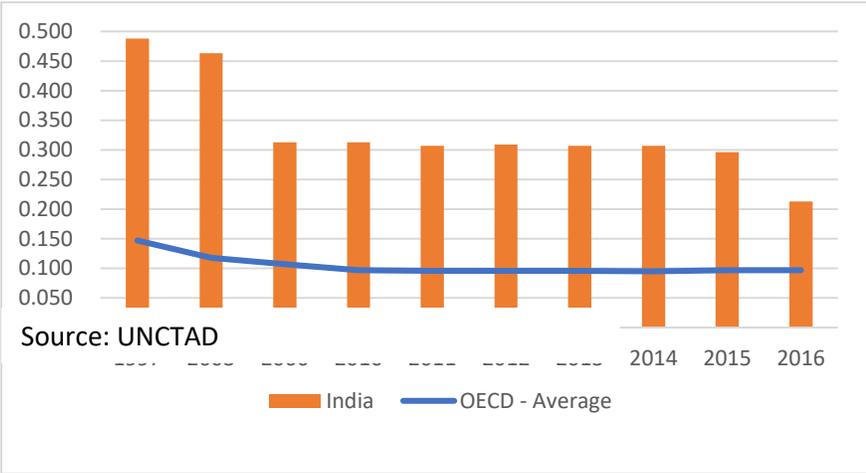


Figure 3 compares India to Spain, the leader in the travel and tourism competitiveness (TTC) index, as well as four other large emerging economies that also offer important religious travel circuits on a range of tourism competitiveness factors. Of these comparator countries, all but one attract a larger percent of world tourists than India: Spain (5.9 percent); China (4.9 percent); Mexico (2.7 percent); Malaysia (2.1 percent).

The aim of this study is to identify legal, procedural, and de facto constraints to investment in sectors related to Buddhist Circuit tourism. Investment, whether domestic or foreign, is needed to realize the potential of the Buddhist Circuit. Foreign investment can help to bring international capital and technology, including best practices and know-how to the circuit. In some cases, foreign investment is subject to additional barriers that domestic investors do not face. Addressing and removing the various barriers to investment would help support growth of sectors that feed into the Buddhist Circuit. Such reforms could have a multiplier effect on jobs, income and welfare for Indians both along the Buddhist Circuit and in the rest of the country.

Figure 4. India vs OECD average FDI restrictiveness index 1997-2016 (index, available data)



The government of India’s attitude towards foreign investment has been evolving. From Independence in 1947 until 1991, India’s industrial development strategy did not encourage the attraction of foreign direct investment (FDI), and FDI flows were relatively limited, except in certain high technology and other priority areas. Since 1991, structural economic reforms have led to a gradual liberalization of the foreign investment regime. This accelerated in the early 2000s and most recently in 2014, when the so-called “Make in India” program provided for the elimination of additional restrictions on foreign investment. India’s FDI policy reforms have propelled India from being the fourth most restrictive country in the OECD FDI restrictiveness index in 1997 to 13th in 2016. As seen in Figure 4, India has moved closer to the OECD average.

Although generally open, India continues to retain equity limits for foreign capital on certain sectors of the economy and the government retains the ability to raise FDI limits up to 100% without Parliamentary approval in certain sectors. Many sectors also continue to require multi-step processes for central and state government approval.

There are two channels for FDI to enter India: the automatic route and the government route. Investments entering via the automatic route are not required to seek overall approval from the central government. The investor is simply required to notify the Reserve Bank of India (RBI) - India’s Central Bank - of its intention to invest within 30 days of investing. Nearly all FDI enters India through the automatic route; eleven sectors, including defense, retail and telecom, enter through the so-called government route, which requires authorization from the principal ministry related to the sector.¹⁰ The rules regulating government approval for investments vary from sector to sector, and the approving government entity varies depending on the applicant and the product.

¹⁰ It formerly required approval by the Foreign Investment Permission Board (FIPB), which many investors found cumbersome and blamed for substantial delays. The FIPB was abolished by Cabinet in May 2017.

On paper the Indian tourism sector is open. The government allows one hundred percent foreign ownership on the automatic route. All construction development projects including construction of hotels and resorts, recreational facilities and city and regional level infrastructure also allow 100% FDI under the automatic route. Full foreign ownership is also permitted in all airport development projects subject to the condition that upgrades of existing airports require approval for any foreign ownership beyond 74 percent. In addition, the government offers a five-year tax holiday for companies that set up hotels, resorts and convention centers at specified destinations, subject to compliance with the prescribed conditions.¹¹

Despite the significant liberalization of the tourism regime, some restrictions remain. Even more importantly, de facto barriers may continue to exist – and these barriers tend to apply to both domestic and foreign investment. They include issues such as duplicative or overlapping administrative procedures and discretionary decision making power. The actual competitiveness of the final tourism sector relies not only on the stipulations for the main tourism subsectors, but also for the related services that are embodied into or feed into it.

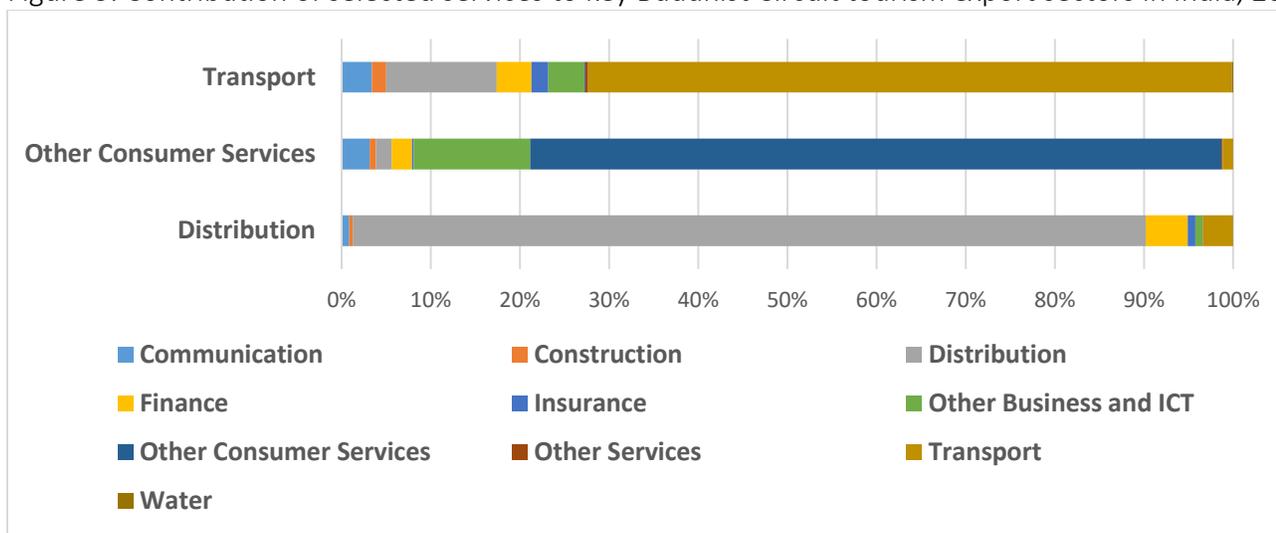
The World Bank's Export Value-added Database (EVAD) offers a useful tool to examine these sectoral linkages from a value-added perspective. Figure 5 shows the various services sectors that comprise the value-added content of exports of three tourism-related sectors: distribution, which includes hotels and restaurants as well as several categories of wholesale and retail trade, among others; transport, which includes land, water and air transport as well as activities of travel agencies; and other consumer services (OCS), which includes recreational and cultural and sporting activities.¹²

As Figure 5 indicates, the transport sector has distribution as a major input as well as communication, finance and other business and ICT services. Recreational, cultural, and sporting activities, included in the OCS sector, are also affected by restrictions in other service sectors. Finance, transport and, to a lesser extent, OCS and other business and ICT are important inputs to the distribution sector. Thus, restrictions in a sector such as accountancy or air travel can impact the competitiveness of travel agents, museums or hotels and restaurants.

¹¹ Sharma et al., 2012, *FDI: An Instrument of Economic Growth & Development in Tourism Sector*. International Journal of Scientific and Research Publications. Vol 2(10): 1-6.

¹² Data limitations prevent the disaggregation of these categories.

Figure 5. Contribution of selected services to key Buddhist Circuit tourism export sectors in India, 2011

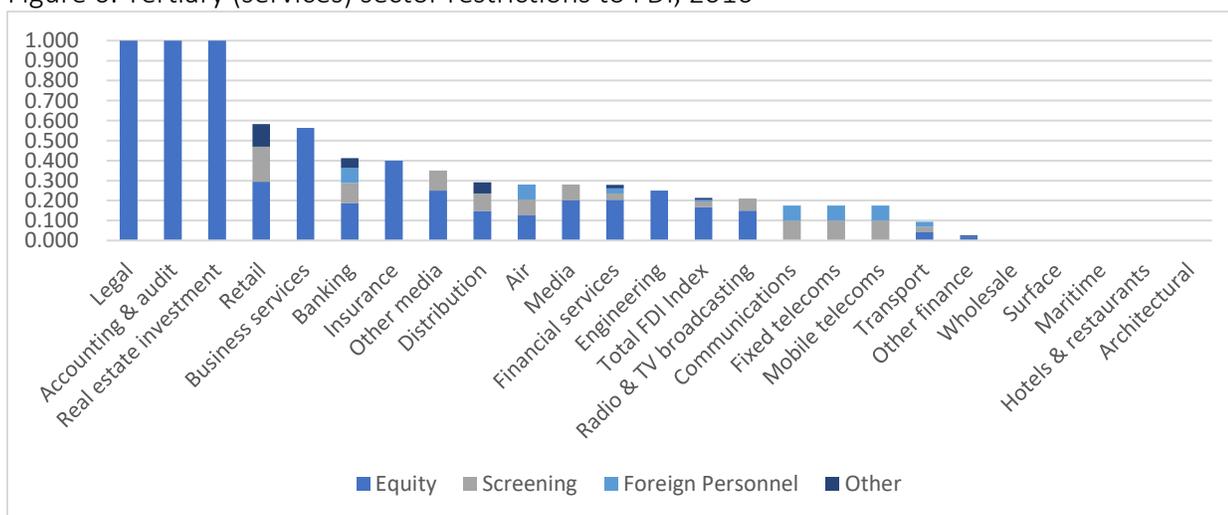


Source: EVAD database

The key lesson is that even if a sector is not directly a subsector of the tourism sector, restrictions to barriers to entry in that sector can affect the tourism sector. This is going to inform the approach taken when investigating investment restrictions impacting the Buddhist Circuit.

While several key components of the tourism sector are open to foreign investment – notably hotels and restaurants, which boast zero restrictions – foreign investors continue to face barriers to participating or fully participating in other services sectors that serve as inputs to the value addition of tourism-related services. Figure 6 illustrates some of these restrictions by type of barrier. For example, legal, accountancy and audit services, and real estate are all closed to FDI. Business services, banking, insurance, and distribution all have barriers to FDI entry.

Figure 6. Tertiary (services) sector restrictions to FDI, 2016



Source: OECD FDI restrictiveness index 2017

The extent to which such barriers affect particular sectors requires micro-level data analysis both in terms of the level of restrictiveness of the barrier and how it affects the sector as well as the impact on the particular subsector.

In this report, tourism-related services are examined, including tour guide services, tour operator services, accommodation services for visitors, meal serving services, local transportation and sightseeing services of passengers, land transport services of passengers, scheduled road transport services, rental services of passenger cars with operators, sightseeing services by land, air transport services of passengers. These, together, comprise the tourism sector.

The rest of the report is organized as follows: Section 2 presents findings regarding India's legal and regulatory framework across sectors that feed into tourism. The analysis covers national level laws and regulations, as well as relevant legal instruments from 2 states- Uttar Pradesh and Madhya Pradesh. Potential barriers to investment are identified, and suggestions for reform presented (Annex 3). The identification of potential barriers, reform suggestions and prioritization is based on inputs received from (i) local legal practitioners (ii) tourism sector experts and (iii) private sector representatives from the relevant sectors¹³. Section 3 examines good practices from across other leading tourism destinations that could be adapted to the Indian context. Countries selected include France, Spain, Singapore, South Korea, Turkey, Tunisia, Egypt, amongst many others. These examples can help inform India's own reform choices, as the experiences of other countries showcase what works well and less well in regulating tourism investment.

¹³ The World Bank convened a day-long consultation workshop in New Delhi on May 18, 2017 with members of the private sector in support of "Buddhist Sector Inclusive Development in India", with the aim of identifying policy and regulatory reforms to promote investment along the Buddhist Circuit (BC) in India.

2. Summary of Findings of the Legal and Regulatory Analysis

A. NATIONAL LEGAL FRAMEWORK

The national legal framework in India is governed by a range of legal instruments. The hierarchy of legal instruments in India is (a) its Constitution; (b) statutory law or legislation promulgated by the Union legislature (Parliament) or by state legislatures; (c) delegated legislation, which may be in the form of rules or regulations made by the central government or state governments; and (d) purely executive orders not made under any statute. As a result, there can be tourism-related legal instruments across these different levels. If a norm at a higher-level conflicts with a norm at a lower level, the former will prevail.¹⁴

The Constitution does not specify whether tourism is in the remit of the central government or state governments. Under the Constitution, legislative power is divided between Parliament and the state legislatures, with a “*strong tilt*” towards Parliament.¹⁵ The Constitution gives Parliament the exclusive power to legislate on topics in List I of the Seventh Schedule to the Constitution, while state legislatures have the same exclusive power in relation to the topics in List II. Both Parliament and state legislatures can legislate on topics in List III, dubbed the ‘Concurrent List’. The tilt towards Parliament is established by the fact that “[i]n the Concurrent List, Parliamentary enactments have been given primacy, irrespective of the fact whether such enactment is earlier or later in point of time to a State enactment on the same subject-matter” and because the power to legislate on topics not covered by any of the Lists lies with Parliament.¹⁶

Adding tourism to List III would facilitate development of the sector. As tourism is not enumerated in any list, tourism-related legal instruments fall across all three lists, making it more difficult to implement effective policy and regulation to develop the sector. To illustrate, List I includes “*pilgrimage to places outside India*”, “*passports and visas*”, “*ancient and historical monuments and archaeological sites of national importance*”; List II includes “*domestic pilgrimage*”, “*markets and fairs*”, “*inns and innkeepers*”, “*theatres, entertainment and amusement*”; List III includes all other archaeological sites and remains. This has led to a confusing regulatory web on tourism. Experience has also shown that States generally have weak capacity to implement legislations on key aspects of tourism. Including tourism in List III would enable Parliament to enact laws that would “*help in channeling the development of tourism in a systematic manner and enable the [sic] Central Government to legislate for tourism development*”¹⁷. However, the central government’s previous attempts to include tourism as a specific entry in the Concurrent List¹⁸ have been opposed by state governments who see this as an erosion of their power to legislate on topics ancillary to tourism, such as taxes levied on hospitality and transport.¹⁹

¹⁴ See Government of A.P. v. P. Laxmi Devi, 2008, 4 SCC 720, para. 32-34.

¹⁵ See SBI v. Santosh Gupta, 2017, 2 SCC 538, para. 10.

¹⁶ See State of W.B. v. Kesoram Industries Ltd. 2004 10 SCC 201, para. 50.

¹⁷ Government of India, Ministry of Tourism, 2002, *The national Tourism Policy* (2002), available at <http://tourism.gov.in/sites/default/files/policy/National%20Tourism%20Policy%202002.pdf>, p. 13.

¹⁸ Government of India, Press Information Bureau, *supra* note 3

¹⁹ The Financial Express, 19th of November 2002, *10 States still against bringing tourism under concurrent list*, <http://www.financialexpress.com/archive/10-states-still-against-bringing-tourism-under-concurrent-list/63571/>.

Systematic coordination and consultation between stakeholders to review and revise legal instruments can facilitate tourism development. A mechanism that brings together the central government and state governments to discuss and coordinate tourism matters can support achieving tourism development objectives. This mechanism could also help with the process of revising legal instruments at both the national and state-level that are holding back development of the Buddhist Circuit. This section focuses on laws and regulations passed at the national level and applicable across sectors. These include laws related to foreign direct investment, labor, taxation, and land and property acquisition.

Foreign Direct Investment

India has an open FDI policy for the tourism sector. FDI is governed by the provisions of the Foreign Exchange Management Act, 1999 (FEMA) and accompanying regulations.²⁰ Regarding tourism and most of its sub-sectors, there are no or minimal restrictions, and government approval is not required. Investment can flow in unhindered through what is known as the automatic route. The sectors where there are no restrictions and up to 100% FDI is permitted include construction, and explicitly within construction, hotels. In this context, the term 'hotel' includes restaurants, beach resorts, and other tourist complexes that provide accommodation or catering and food facilities to tourists. The rules require that a company that receives FDI under the automatic route should report this to the Regional Office of the Reserve Bank of India within 30 days, which includes providing certificates of receipt funds and a Know Your Customer report on any non-resident investor. Generally, the *de jure* requirements are not considered overly arduous or likely to deter FDI.

Labor Laws

Labor laws have often been cited as one of the primary obstacles for investors. The legal framework for employment comprises enactments from the 1940s and hasn't quite kept up with changing demands, such as the increase in contract workers and the significant informalization of the workforce in India.. Broadly, there are a large number of approvals and permissions related to employment and labor that are required to operate. India needs to rationalize labor laws by making laws more consistent with one another, as well as more consistently implemented on the ground.

Consolidating the myriad laws relating to labor issues into a single labor law will help bring in more transparency and clarity in the legal framework. At present, the relevant acts are scattered under various headings, which means there can be inconsistency between instruments and confusion regarding which act applies. A single law on labor relations and management can increase clarity and efficiency, and can be particularly helpful for the tourism sector which is one of the largest employers. More specifically, the EPF and Miscellaneous Provisions Act (1952), ESI Act (1948) and Payment of Gratuity Act (1972) can be consolidated under a Social Security Law.

As a starting point, a single-window system could simplify and streamline overly complex and burdensome labor procedures. For instance, the Employees State Insurance Act of 1948 aims to protect workers if they are sick, pregnant, or physically disabled. It applies to all establishments employing more than twenty people, including tourism establishments. However, private sector consultations indicated that

²⁰ Reserve Bank of India, 2015, *Strategic Circular on Foreign Investment in India* (Strategic Circular No. 15/2015-16 2015), <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/96MC7984B235BAB249D5ADCD6277CCD68D0D.PDF>.

registration under the Act is very complex, both for the employer and for the employee. A single window system could ease this process, making it easier for entrepreneurs to start, and grow, tourism-related businesses.

At the same time, systems to resolve labor disputes need to be more effective to increase investor confidence. A clear and transparent dispute resolution mechanism, which enjoys the confidence of both employers and employees, is crucial to a well-functioning labor market. Under the Industrial Disputes Act of 1947, dispute settlement between sector and labor takes place through representation by a registered trade union or an association of employers. However, the process of dispute resolution is extremely time consuming, decisions ineffective, and very costly in terms of foregone production. Introducing measures such as reconciliation and mediation committees at the local level could aim to stop the escalation of labor issues. Introducing, final offer arbitration as an option in the dispute resolution process could also serve to incentivize voluntary settlement. Decisions could be made binding to create enforceability.

In general, throughout labor law there is too much discretionary authority in the hands of officials; clearly spelling out rules and regulations and creating oversight mechanisms would help address this challenge. For example, in the context of contract workers, the Deputy Chief Labor Commissioner can decide on wage rates, holidays, hours of work and conditions of service of contractor workers, leading to arbitrariness and unfairness in decision-making. There are also no time limits for the issuance of certificates of registration or the granting of licenses for such contract workers. Another example, this time in the context of labor disputes, is that the Assistant Labor Commissioner has discretion on grievance redressals. In such contexts, where one person's judgment can sway economically important outcomes, there is temptation for corruption. Introducing clear rules and regulations – such as time limits for processing an application of registration and for issuing licenses – can remove one source of potential abuse of power. Adding an oversight committees can also help check any abuse.

Taxation

Tax reform can have a big impact on investment, and a simple system with low rates will help increase investor interest. The Goods and Services Act of 2017 provides a unified approach to indirect taxation through a “one nation one tax” policy under the new Goods and Services Tax (GST). GST replaces the previous plethora of taxes levied under different names. This process of rationalization and simplification is very welcome and should boost investor interest. Yet while GST lowers tax rates for some tourism activities (e.g. travel, tours, transportation, and certain restaurants), it increases it in other activities, e.g. hotels and restaurants in luxury hotels). For instance, tourists consuming food and beverages could see bills lowered by around 10-15%. Tourists staying in a good hotel, however, could see bills increase as the tax rate has doubled from 9% to 18%, while tourist staying in a luxury hotel will pay significantly more, with a 28% tax rate.²¹ These rates seem to be considerably higher than other Asian counterparts, such as Singapore and Japan, where taxes are 7% and 8%, respectively. Even South Asian countries such as Sri Lanka have capped rates at 18%. These differentials may make other

²¹ A good hotel is categorized as charging between INR 2,000 to 7,500 per night, while a luxury hotel is categorized as charging INR 7,500 or more a night.

destinations relatively more attractive for tourists. Similarly, there are significant differentials on corporate income tax between domestic and foreign firms.²² While the government needs to balance tax revenue with cost competitiveness, lower tax rates for the tourism sector, especially for hotels, are likely to help create more price competitive goods and services, which could increase tourist demand, and thus investor interest.

Including a single point for tax registration, and ensuring non-discriminatory standards, could be important dimensions of the current reforms. GST reform empowers states to collect GST on services. This means that service providers currently registered only at the central level may need to register in each state where they provide services. To address the potential multiplicity of registrations, the GST Council could consider a single-point registration that covers both the center and the states. Since registration requirements may be particularly onerous for small tax payers, they could also be supported by the creation of a Small Tax Payers Unit. In addition, tax rules are currently discriminating against smaller tourist accommodation: while hotels that are ranked two stars or higher can deduct capital expenditures from their taxes, smaller hotels or guest houses cannot, deterring investment in such businesses. While India may wish to encourage investment in higher standard hotels, targeting the high-budget market for developing the Buddhist Circuit, tax rules that discriminate against smaller accommodation establishments do not create a level playing field and may also lead to less upgrading and maintenance of budget accommodation. Further, the definition of “Export of Services” does not include the tourism and hospitality sector as a result of which, tourism services providers do not gain the benefits conferred on “exporters” after the finalization of the invoice/bill.

Land and Property

Foreigners are generally prohibited from purchasing land. Under the Foreign Exchange Management Act of 1999, however, they are permitted to lease land for up to 5 years. This is clearly an inadequate length of time for a foreign investor to secure title for an investment in Buddhist Circuit tourism. However, foreign investment in land is permitted through a company registered in India or a branch in India owned or controlled by a foreigner.²³ As these are frequent corporate arrangements, the restriction on foreign ownership is not considered a binding constraint on foreign investment in Buddhist Circuit tourism facilities.

However, there are significant institutional challenges regarding land and property acquisition, for both domestic and foreign investors. Before an investor is willing to purchase land, he or she must determine who really holds the title to that land, and whether the title is clear of claims. However, it is difficult to conduct an accurate title search of a property. In Madhya Pradesh, for example, the inquirer must provide full details on the property (e.g. name of the owner, volume number of the property, registration date, etc.) to receive such information, an overly demanding requirement that makes due diligence impossible. In addition, a ‘No Encumbrance Certificate’ is meant to provide evidence that the property in question is free from any monetary and legal liabilities. Officially this document should be

²² For tax year 2017-2018, the effective rate for domestic firms with a turnover less than INR 500 million ranges from 25.75% to 28.84%; the effective rate for domestic firms with a turnover of more than INR 500 million ranges from 30.90% to 34.61%; the effective rate for foreign firms ranges from 41.20% to 43.26%. The range depends on firm’s income.

²³ For a definition of “person resident in India”, see “Section 2 v) of The Foreign Exchange Management Act, 1999 (No. 42 of 1999).

provided by the Department of Stamps and Registration, but in practice the authorities do not issue such a certificate, and there is no other recourse to obtain it.

Relatedly, there is too much individual discretion regarding land conversion. This was identified by private sector focus group participants as one of the biggest challenges to developing the Buddhist Circuit. The process of conversion of land from agricultural to commercial use requires permission from a Sub Divisional Officer. There is no timeframe for providing such permission, and no reasons need be given if the application is rejected, giving tremendous discretionary power to the official. The decision regarding land conversion has a huge impact on land value, as land use and the presence or absence of development restrictions determines in large part the land's price. The penal provisions against the abuse of official power during land acquisition have not been described properly, leading to rent-seeking and corruption. Clear guidelines and rules regarding land approvals, accompanied by well-defined time frames and consequences for failing to abide by the rules, are necessary to limit the scope of individual discretion and incentivize right action.

Sector representatives in focus groups confirmed how long these processes take from their own experience. They relayed that if an investor starts looking for a piece of land, it will take about one year to close the deal before it is acquired, and then a further two years to settle on the terms of use. It will then take another year to secure financing. As a result, it can be four to five years from the start of the process before an investor can even break ground for construction. Construction might then take another two years to complete the project, before then approaching authorities for an operating license. This is clearly too long to tie up investment capital with no surety of success. Local hoteliers explained that big hotel chains wanted to open operations in places like Bodhgaya, but they were deterred by how long the process took and ancillary difficulties. If land is to be developed for the Buddhist Circuit to take off, then this critical challenge needs to be addressed.

Rationalization and digitization of land information would provide more clarity and consistency, boosting investor confidence and interest. At present, the classification of land into agricultural land, revenue land, forest land, etc. by the Department of Land Revenue often differs from what is provided in the title or registration record. This creates confusion and unfairness in enforcement. Looking specifically at the experience of Uttar Pradesh and Madhya Pradesh, the two states share a common border, sometimes causing confusion as to where the land needs to be registered when the land for an investment project falls in both states. This can lead to duplicity of registration or half of the land being registered in one state and half in the other. The territorial jurisdiction of each Registrar's office needs to be demarcated and parcels identified that fall in the jurisdiction of the two offices. In addition to rationalizing and clarifying classification/demarcation of land, digitizing information and placing it online can also help address these challenges, while also increasing transparency and thus decreasing the scope for rent-seeking behavior.

B. TOUR GUIDE SERVICES

Guide services in India have been divided into the following three-level system to serve different market segments: **regional guides (i.e. north, south, west, east), state guides, and local guides (municipal).** The

training and issuance of licenses is meant to take place at each respective level, whether national, state, or municipal.²⁴

Licensing requirements need to be clarified and rationalized. There is a shortage of tour guides in the Buddhist Circuit, and restrictions on guides is exacerbating this problem.²⁵ The Archaeological Survey of India (ASI) has directed that only an “ASI monument guide” will be allowed to work in centrally protected monuments, which includes most Buddhist Circuit sites. This means that guides are now required to get two different approvals: the regional or state-level approval and an ASI approval. In the medium term, the Ministry could simplify and consolidate the licensing regime for guides wanting to operate in centrally protected areas by requiring a single license issued by the Ministry.

Local-level guides can operate without a license.²⁶ The licensing guidelines issued by Ministry of Tourism are only for regional and state level tour guides. Training and issuance of local tour guide license is generally the responsibility of municipal authorities with the help of local-level institutions like NGOs or state tourism authorities, but no official guidelines have been provided.²⁷ During a field visit to Kushinagar, the team observed that there was only one ASI approved regional tour guide. He was unable to cater to all visiting groups. As a result, unlicensed local guides filled in the gap, often times providing sub-optimum guide services. Further, the Ministry of Tourism Guidelines only provide for issuance of license to certain section of persons proficient in English and foreign language and thus only cater to foreign tourists²⁸ and not to the domestic tourists visiting the monuments. Local guides with knowledge of Indian/vernacular languages can cater very well to a sizeable domestic market. To address this, a licensing process should be introduced for local guides in the Buddhist Circuit.

C. TOUR OPERATING SERVICES

The tour operating services sector is largely unorganized - in part, due to the absence of a legal and regulatory framework governing it. The Government of India has laid out conditions to be recognized as an approved inbound tour operator. These guidelines provide approved operators with certain incentives to get licensed.²⁹ However, since being recognized as an approved inbound tour operator is voluntary, the scheme does not regulate all operators. There is also no legal statute governing tour operators and no regulatory authority. An attempt in 2010 to enact a bill³⁰ regulating tour operators and

²⁴ See Prakash, M., & Chowdhary, N, 2010, *Tour guides: Roles, challenges and desired competences A review of literature*, International Journal of Hospitality & Tourism Systems, 3(1).

²⁵ The Buddhist Channel , *supra* note 5

²⁶ See Santosh Baghel and Others v. Union of India and Others 2014 (4) ALJ 675.

²⁷ See Prakash and Chowdhary, *supra* note 24

²⁸ *Ibid.*

²⁹ See Government of India - Ministry of Tourism, 2009, *Guidelines for Recognition/ Renewal as an Approved Inbound Tour Operator*, available at <http://tourism.gov.in/sites/default/files/Other/toguideline-operators.pdf>, p. 3.

³⁰ The Tour Operators and Travel Agents (Regulation) Bill, 2010. Its objective was to provide for regulation of tour operators and travel agents by providing for compulsory registration of these operators and agents by competent authority, and by prescribing norms and infrastructure for various tour and tourist related activities Section 4 of the Bill states that any person or establishment willing to work as a tour operator or tourist agent is required to apply to the competent Authority for the purpose of registration. The competent authority would inspect the infrastructure and facilities available with the tour operators and then provide the certificate of registration to the tour operator. The penalty provision in the Bill states that non-compliance to the provisions of the Bill would result in imprisonment which may extend to 2 years with a fine up to five lakh rupees.

travel agents was not successful. The Government of India could consider enacting legislation to make approval under the guidelines mandatory and to establish an authority to implement such regulation.

Discussions with sector representatives confirm the current ineffective regulatory regime. The lack of an effective regulatory regime for tour operators was brought up during focus group discussions. One tour operator loudly exclaimed: “For the past 30 years I have been doing this business very successfully, I am not licensed, and no police has come to me!” This underscored the little benefit to being licensed. Tour operators explained that a few years ago, an operator received a tax incentive for being registered, and many businesses registered to receive it, but that this incentive had lapsed. Some operators still register to increase credibility and legitimacy in marketing campaigns by publicizing to tourists that they are registered with the government, but apart from this tactic, operators stated there are few benefits to being registered. In fact, some tour operators relayed that it might be better not to be registered, as registration would generate more monitoring and more costs in the form of tax payments. There is clear scope for improving the situation. A better functioning regulatory framework for tour operators would likely increase consistency, quality, and safety of operator services, driving up demand for such services in the Buddhist Circuit. It will lead to the sector being more organized and will likely encourage more global high standard tour operators to enter this sector - ultimately leading to improvement in overall quality of tour operating services provided.

D. ACCOMMODATION

The laws applicable to the accommodation sector fall under four broad categories: approval, construction, operation, and contractual relationships. The challenges to an investor-friendly business climate are similar across all categories, namely a need to introduce **explicit timelines**, provide clarity on **requirements**, and **streamline licensing and compliance requirements**.

Timelines need to be clear and followed so that accommodation regulation takes place efficiently. To illustrate, the government issued guidelines in 2009 for the approval of guest houses that were being built to meet rising demand for budget accommodation from both domestic and foreign tourists.³¹ Approval for a guest house is provided by the Hotel and Restaurant Approval and Classification Committee (HRACC). However, no concrete timeline is provided for approval of a guest house by HRACC. The Guidelines state that “as far as possible, cases of approval would be finalized within 3 months of the application being made”. This lack of binding timeline is also a problem in the case of hotel approvals. In 2014 the government revised the guidelines on the approval and classification of hotels.³² The Guidelines state that “efforts will be made to ensure that all cases of classification are given final decision within three months from the date of application receipt complete in all respects”. In both cases, the three-month timeline for processing an application is only indicative. To improve the investment climate and thereby increase investor interest, a binding time-frame should be provided within which the HRACC must approve or reject an application. Other countries have successfully incentivized bureaucracies to respond within these timeframes by implementing a ‘silent yes’ system, whereby the lack of any response during the statutory timeframe means automatic approval. India

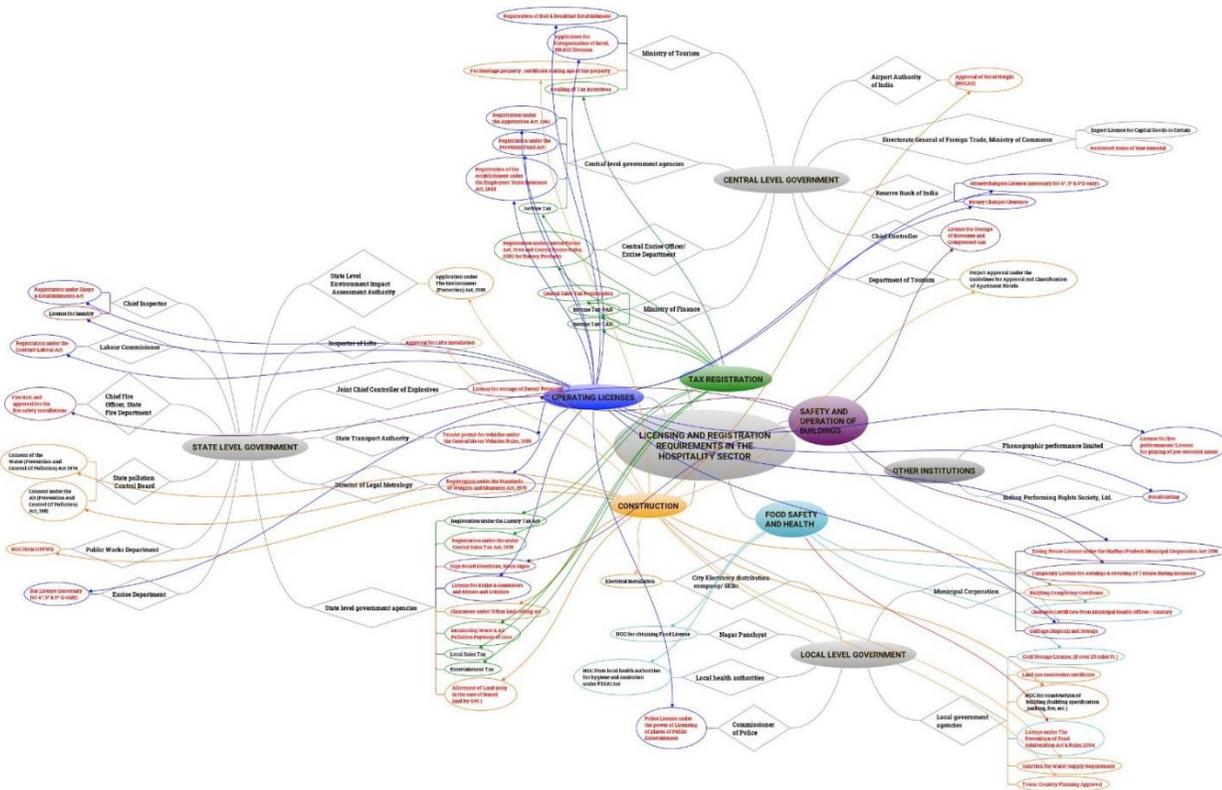
³¹ See Government of India - Ministry of Tourism, 2009, *Guidelines for Approval of Guest Houses*, available at <http://tourism.gov.in/sites/default/files/guideline/Guidelines%20GuestHouse.pdf>

³² See Government of India - Ministry of Tourism, 2014, *Guidelines for Project Approval and Classification/Re-Classification of Hotels*, available at http://tourism.gov.in/sites/default/files/HRACC%20Guidelines%20for%20Hotels2_0.pdf.

could consider adopting ‘silent yes’ measures as one regulatory reform that is likely to kick-start investment in accommodation along the Buddhist Circuit.

Requirements for approval need to be specified and simplified, and their enforcement made mandatory. At present, there is lack of clarity regarding the actual requirements for approval in the accommodation sector. For instance, both the Uttar Pradesh Regulation of Building Operations Act of 1958 and the Madhya Pradesh Shops and Establishments Act of 1958 fail to clearly specify the conditions under which approval or registration will be granted. Looking at the latter act, registration of an establishment is in the hands of an inspector. But the act does not mandate that the inspector register an establishment or lay down any criterion for the inspector to approve or reject the registration. The criterion for approval or registration should be explicitly stated, they should be clear and simple to understand, the regulator needs to be held accountable for following them, and an authority should exist to whom appeal against a negative decision can be made. Together, these changes will create more market confidence in the smooth functioning of the regulatory framework. Finally, extant guidelines, such as the National Building Code of India of 2016³³, need to be given teeth through making compliance mandatory – and not just a voluntary – requirement.³⁴

Figure 8. Licensing and registration requirements in the hospitality sector



For more detail, see Annex 2

³³ See Bureau of Indian Standards, *National Building Code of India*, 2016, available at <http://bis.org.in/sf/nbc.asp>.

³⁴ See *C.M Dinesh Mani Ex-Mayor v. State of Kerala*, ILR 2015 (4) Kerala 220.

Sector representatives underscored the heavy regulatory burden that is holding back investment in accommodation along the Buddhist Circuit. During focus group discussions, private sector investors recounted that a hotel requires no less than 61 licenses in any state to begin running their operations, creating a huge bureaucracy, and scope for corruption. Figure 8. illustrates the complex regulatory web that the private sector needs to navigate to set up a business in accommodation (including meal serving). The different licenses and registrations to be followed (**ellipses**) are grouped according to the respective level of government and agency (**diamonds**). Further, different functional groups of processes are indicated (tax, construction, etc.) in different colors. Processes that do not fall under an explicit legally stated time limit for completion are indicated in red.

Simplifying and streamlining the applicable licensing and regulatory regime will greatly improve the investment climate for investments in the accommodation sector. Chapter 3 provides some examples of initiatives taken by other countries towards process streamlining and creating a single window.

E. MEAL SERVING SERVICES

Food has a significant role in tourism. In order to develop tourism in the Buddhist Circuit, it is important to create conditions for quality meal services and ensure ease in starting and managing a food business. Investment in the sector is being held back by multiple and **overlapping regulatory authorities**, the absence of **clear regulatory instruments**, and the lack of **recourse mechanisms** in the presence of disputes.

There are a multiplicity of licenses and of licensing authorities with overlapping mandates. The Food Safety and Standards Act of 2006 consolidated laws related to food and established the Food Safety and Standards Authority of India (hereinafter referred to as FSSAI). Under the Act, the FSSAI grants licenses to food business operators who have to apply for a State or Central License depending upon the category and turnover³⁵ of the business and production capacity as set out in the Food Safety and Standards (Licensing and Registration of Food Businesses), Regulations 2011.³⁶

Any food business, including meal services in the tourism sector, needs to obtain licenses to start any business related to food products.³⁷ Though the Act is supposed to create a unified food law, licenses are still required (e.g. from the Bureau of Indian Standards, AGMARK (a certification mark for agricultural products), Packaged Commodity Rules, etc.).³⁸ In addition, food operators need to obtain myriad other licenses. For example, a health trade license issued by the Health Department, a fire safety certificate from the Fire Department, a liquor license from the Excise Commissioner, etc. This makes setting up meal services in the tourism sector extremely cumbersome, as multiple authorities need to be approached for setting up one establishment. Providing a single license at least for all food safety

³⁵ Turnover for licenses:

- a. State License, if the business turnover falls in the range of Rs. 12 lacs to Rs. 20 crores annually;
- b. Central License, if the turnover exceeds Rs. 20 crores annually.

³⁶ See Government of India - Ministry of Health and Family Welfare, 2011) *Food Safety and Standards (Licensing and Registration of Food Businesses), Regulations 2011*.

³⁷ *Ibid*.

³⁸ See CIFTI FICCI, 2010, *Sector Challenges in Food Regulation*, http://ficci.in/Sedocument/20057/FICCI_Survey_on_Sector_Challenges_in_Food_Regulations_F.pdf

would likely increase investor interest, by accelerating the timeline between project planning and project execution.

In some cases, rather than too many regulations, there are too few. For example, in order to open a restaurant (or a hotel) in Madhya Pradesh, a 'No Objection Certificate' or NOC is required from the local fire department. Since there is no law or rule that establishes the conditions under which the NOC should be issued, it is subject to a high level of arbitrariness. This creates uncertainty for investors, as well as opening the door to corruption. One way to combat this is to fill this void with clear rules and regulations; another is to place the information online, so that public scrutiny will limit the scope for arbitrariness and corruption.

Finally, there need to be specific criterion for approval of commercial establishments and availability of recourse mechanism in case of refusal. For example, both Madhya Pradesh and Uttar Pradesh have legislation to regulate the terms and conditions of employment in commercial establishments, including working hours, overtime pay, intervals for rest, opening and closing hours, public holidays, paid leaves, maternity leaves, etc. Restaurants have to register under the Act within a specified time after starting the business. These are, respectively, the Madhya Pradesh Shop and Establishment Act of 1958 and the Uttar Pradesh Dookan aur Vanjiya Adhishthan Adhinyam of 1962. However, the acts are silent regarding an appellate mechanism if an inspector rejects the application or refuses to register an establishment. Listing specific criteria for granting approval can reduce the possibility of discretion. If an inspector still refuses to register an establishment, availability of an appellate mechanism to resolve the situation, such as recourse to the local authority, in addition to existing just judicial review can further improve the process.

F. TRANSPORTATION

There can be no *circuit* in the Buddhist Circuit without an effective transportation network. Transportation takes various forms, including **road transportation** (cars and buses), **air transportation**, and **rail transportation**. There are a number of regulatory reforms that can be taken in each of these areas to facilitate investment in the Buddhist Circuit.

Road transportation

Removing quantitative limits or thresholds for road transport operation would facilitate investment and provide the needed capacity and connectivity for tourism along the Buddhist Circuit. There are national and state-level laws governing road transportation. At the national-level, the Motor Vehicle Act of 1988 provides for permits for tourist vehicles that are valid for the whole of India, dubbed 'All India Permit'. During focus groups with sector participants, the private sector indicated that the current permit system was adequate and worked fairly well, although implementation hiccups could arise. Yet one quantitative limit that could be relaxed is that the All India Permit can only be issued for vehicles with a seating capacity of not more than 39 seats, which excludes many tourist vehicles from its ambit. The size limit could be increased so that larger tourist vehicles are also included.

At the state-level, the Uttar Pradesh Motor Vehicle (Fourteenth Amendment) Rules of 2013 introduced rules for radio taxis. Taxi operators are required to have a minimum 10 brand new cars to start service in the state. The operators are also required to have a full-fledged office along with parking facility for the 10 taxis.³⁹ Together, these requirements create a high threshold to market entry. The minimum threshold of 10 brand new cars should be relaxed (either the number of cars, the newness of the cars, or both).

Again, at the state-level but turning to Madhya Pradesh, the Madhya Pradesh Motor Vehicle Rules of 1994 govern the procedure for obtaining a license for motor vehicles traveling in the state. The rules discriminate by vehicle size and road type: on ordinary roads (connecting cities and towns), passenger vehicles smaller than 22 seats are not permitted; on rural roads (connecting villages) passenger vehicles 22 seats and larger are not permitted. Such restrictions impede transportation within the Buddhist Circuit as both kinds of roads are used while traveling from Sanchi to nearby cities. If these quantitative restrictions were removed, there would be an overnight increase in the capacity and frequency of vehicles to provide tourist transportation along the Buddhist Circuit.

During the focus groups, investors indicated that the lack of consistency in regulatory approaches across states was a challenge, and could be improved. For example, they reported that in Uttar Pradesh one can pay for a permit online, but not in Bihar. The use of online payment systems is credited with less money as being lost to corruption. On the other hand, Bihar is issuing permits for up to three months, while Uttar Pradesh is not. These differences between states creates inconsistency, confusion, and cost, potentially hindering investment. Seamlessly connecting regulatory systems between one state to the next would facilitate the growth of a road transportation network in support of the Buddhist Circuit.

A review of the mandates and operations of different institutions that work on road transportation reveals that there is great scope for improving coordination and cooperation. The various departments and authorities, which together regulate road connectivity at the national and state levels in Uttar Pradesh and Madhya Pradesh, often work in isolation. This leads to gaps in overall development and poor connectivity to more remote tourist sites.⁴⁰ The actors include the Ministry of Road Transport and Highways, the National Highway Authority of India, the Central Public Works Department, the Madhya Pradesh Road Development Corporation, the Madhya Pradesh Public Works Department, and the Uttar Pradesh Public Works Department. Mechanisms for greater coordination and cooperation to align efforts will results in more effective planning, implementation, regulatory oversight, and ultimately a better-connected Buddhist Circuit.

Air transportation

Lack of clear processes and timelines for regulatory actions is impeding development of the air transportation sector. For example, there is no clear timeline for obtaining Aircraft Operation Certificates

³⁹ See Government of India - Office of Transport Commissioner Uttar Pradesh, *Guidelines for Applying under Radio Taxi Scheme*, <http://www.uptransport.org/radiotaxi.html>.

⁴⁰ See Government of India - National Transport Development Policy Committee, 2014, *India Transport Report: Moving India to 2032*, published by Routledge (Taylor & Francis), available at http://planningcommission.nic.in/reports/genrep/NTDPC_Vol_01.pdf, p. 20

(AOC), which makes it difficult for the airlines to obtain an AOC and start operating.⁴¹ According to the regulations, an application for AOC has to be processed within six months after obtaining a NOC from the Ministry of Civil Aviation. However, this timeline is not binding. Moreover, there is not even an indicative timeline for granting of the initial NOC, making the whole process opaque and time consuming.⁴² This is a particular challenge since flying slots under Regional Connectivity Scheme (RCS)⁴³ will be given under a bidding process. However, the issue which arises is that after winning the bid, the bidder must start the operations within 6 months of the date of winning the bid. This is nearly impossible for a new venture as it takes more than 6 months to receive all the permits. Another example of lack of clarity is a cap on airfares for a certain number of seats under the RCS.⁴⁴ There is no clear process to determine RCS seats and the scheme does not function as intended, benefiting those who book long in advance and often resulting in the full market fare for travelers who make last-minute purchases, irrespective of travelers' economic background.⁴⁵

Efforts are being made to increase air connectivity between sites along the Buddhist Circuit, but upgrading local airports to receive international flights would be a huge boost to growth of the Buddhist Circuit. The State Government of Uttar Pradesh released an Interstate Air Service Policy in August 2017.⁴⁶ In support of Buddhist Circuit tourism, Uttar Pradesh will start air services on various routes, including Lucknow-Varanasi-Lucknow, Lucknow-Gorakhpur-Lucknow, and Lucknow-Kushinagar-Lucknow. However, more international air connectivity to the Buddhist Circuit remains an outstanding and important objective. For example, the Bhopal airport received permission to operate international flights five years ago, yet there is still no international connectivity.⁴⁷ During focus group discussions with the private sector, it was suggested that the Buddhist Circuit would benefit from adopting an approach similar to Thailand, whereby smaller airports have an international status with direct links to other countries. Lumbini in Nepal (birth place of Buddha) is using this strategy to position itself as the entry point for the Buddhist Circuit. The plans are to make Lumbini's Gautam Buddha Airport Nepal's second international airport. It

⁴¹ Approval process for AOCs:

1. *Pre Application phase- which includes Pre Application -Statement of Intent, Pre Application meeting, Post Pre Application meeting*
2. *Formal Application*
3. *Document Evaluation*
4. *Demonstration and Inspection prior to certification and*
5. *Certification*

An applicant desirous of obtaining an Air Operator Certificate for scheduled passenger air transport services shall first apply for the No Objection Certificate (NOC) under CAR Section 3 from Ministry of Civil Aviation, which will be valid for 3 years before which the AOC has to be Obtained.

⁴² See Government of India - Directorate General of Civil Aviation, 2017, *Air Operator Certification manual - Scheduled Commuter NSOP Airplanes* (Second Edition - July 2017) CAP 3300 Chapter 2, available at [http://dgca.nic.in/manuals/CAP%203300%20Air%20Operator%20Certification%20Manual%20\(Sch_Commuter&NSOP\).pdf](http://dgca.nic.in/manuals/CAP%203300%20Air%20Operator%20Certification%20Manual%20(Sch_Commuter&NSOP).pdf)

⁴³ One of the key highlights of the National Civil Aviation Policy 2016 is the focus on Regional Connectivity. This has brought forth the UDAN (Ude Desh Ka Aam Naagrik) Scheme. The UDAN Scheme focuses on regional connectivity through the revival of existing airstrips and airports.

⁴⁴ According to the scheme this corresponds to 50% of the aircraft capacity to a minimum of 9 seats and maximum of 40 seats.

⁴⁵ See *supra*, note 7

⁴⁶ See UP Tourism Department, *Inter-State Air Service Policy*, available at http://www.uptourism.gov.in/pdf/revised_policy_eng_24122014.pdf

⁴⁷ See Hindustan Times, 17th of July 2015, *International Tag for Bhopal, Indore Airports but only domestic flights*, <http://www.hindustantimes.com/bhopal/international-tag-for-bhopal-indore-airports-but-only-domestic-flights/story-ew4cdMcVEAdl1Ut1nZhugL.html>

was emphasized that if India does not upgrade local airports to do the same, Lumbini may start acting as a *de facto* entry point for Buddhist Circuit tourism.

The absence of functioning redressal mechanisms is jeopardizing performance of the air transportation sector. For instance, the Carriage by Air Act of 1972 – which provides compensation for death, bodily injury, destruction of luggage or goods, or delay in carriage of passengers or goods – does not provide for a fixed time frame for redressal of complaints. In addition, there is no specifically designated authority to redress complaints⁴⁸ at the airport itself, so that passenger complaints are not resolved or are closed without resolution.⁴⁹ In the same vein, the Civil Aviation Requirements (CAR) provide the amount of compensation to be given in the cases of an incident occurring under the Act. However, the CAR only provides a grievance redressal mechanism for flight delays and cancellation but not for the loss of baggage, even though according to complaint statistics many complaints are about baggage loss.⁵⁰ Finally, a circular was issued May 26, 2014 that provides for timely redressal of complaints related to baggage through the nodal officers of the airlines itself; however, these guidelines are not binding and they do not establish accountability in case the complaint is not addressed.⁵¹ Clear redressal mechanisms, overseen by an empowered authority, would help tackle these problems, improving performance and boosting consumer demand.

Rail transportation

Among the different modes of transportation, rail transportation holds special importance because of its affordability coupled with particular complementarities with travel along the Buddhist Circuit. The Railways Act of 1989 gives power to the Railway Administration to perform all the acts necessary for making, maintaining, altering, repairing, and using the railway system in India. The Buddhist Circuit lends itself very well to the use of rail transportation, given its set-up as a circuit, where tourists can easily get on and off a train at their leisure as they visit different sites. As a result, the Mahaparinirvan⁵² Express was specially conceived for tourism along the Buddhist Circuit. The train starts and ends at Safdarjung Railway Station in Delhi.⁵³ It stops in Bodhgaya, Varanasi (to reach Sarnath), Gorakhpur (to reach Kushinagar) and Agra (to reach the Taj Mahal). Since Kushinagar does not have a railway station, tour services take tourists from Kushinagar to Lumbini by bus.

The main challenges seem to revolve around the lack of public sector capacity for project execution and the presence of barriers to private sector entry. To illustrate, there have been plans for many years to upgrade Sanchi's railway station, which is presently a poorly constructed platform that lacks basic facilities like water and sanitation. In 2014, the Rail Land Development Authority issued a project

⁴⁸ See Government of India - Union Ministry of Consumer Affairs, National Consumer Helpline, *Airline Sector*, <http://www.nationalconsumerhelpline.in/Airlines.aspx>

⁴⁹ See Daily Mail, *India's airlines receive a complaint once every HALF HOUR and a quarter are about lost baggage* (2 April 2015) <http://www.dailymail.co.uk/indiahome/indianews/article-3023603/India-s-airlines-receive-complaint-HALF-HOUR-quarter-lost-baggage.html#ixzz4sTkaWnQh>

⁵⁰ See Office of the Director General of Civil Aviation, *Civil Aviation Requirements*, Section 3- Air Transport Series 'M' Part iv, issues I, DGCA dated 5 August 2010, effective 01.08.2016

⁵¹ See Office of The Director General of Civil Aviation, *Air Transport Circular 01 of 2014*, dated 26 may 2014

⁵² The train gets its name from Buddha's final explanation of his teachings.

⁵³ See Indian Railways, *Rail Tourism*,

http://www.indianrailways.gov.in/railwayboard/view_section.jsp?lang=0&id=0,1,304,366,535,1419#ME

proposal to make Sanchi railway station a multifunctional complex equipped with traveler amenities; however, there is no record that any development took place.⁵⁴ Then in 2016, the Ministry of Railways named Sanchi one of the cities for development of a multifunctional railway station complex.⁵⁵ Though an executive board was established under the Rail Land Development Authority, there has been no implementation. At the same time, since land around the Sanchi railway station remains in the hands of the Rail Land Development Authority, private sector commercial development in this area cannot take place.

Space should be made for more private sector involvement in rail transportation, free of government pressures to influence ways of doing business. During focus groups held with private sector investors, participants relayed that there were ways to improve the situation. According to them, the challenge is that government authorities are dictating terms by which the private sector can operate the Mahaparinirvan Express train service, reacting to the pressures of vested interests. The investors indicated that authorities tell the private sector where to source supplies, who to hire, etc. This creates inefficiencies, poor service, and a less viable business model. Finally, the investors reported that the government is not open to private sector management of rail stations or track maintenance. Yet it is likely that private sector participation in railway services management would help improve current performance.

G. INSTITUTIONAL FRAMEWORK

At the central government level, while there has been progress in coordinating and improving policies by setting up relevant institutions, their functioning can still be improved. The efficacy of the Inter-Ministerial Coordination Committee for Tourism Sector (IMCCTS)⁵⁶ is limited due to the Committee's meetings not being held regularly. Further, structural issues that inhibit the Committee's functioning are that inputs from stakeholders such as trade associations or investors in the tourism sector are not considered. The National Tourism Advisory Council (NTAC) seems to be functioning well, though with lack of transparency. To address these issues, proper guidelines for the functioning of the IMCC should be created which prescribe regular meetings, the preparation of minutes of the meetings, as well as the creation of an agenda which describes the issues and allots specific time periods to resolve them. Further, it is advisable for the IMCC to invite stakeholder inputs and comments in writing and release reports which set out the inputs and the reasons for their rejection or incorporation. Availability of NTAC's agendas and minutes online will increase its transparency.

At the State level, although single window mechanisms for investment have been introduced in both Madhya Pradesh and Uttar Pradesh, it is still cumbersome to set up tourism sector business. In Uttar Pradesh, despite the existence of the Nivesh Mitra Platform, clearances and no objection certificates

⁵⁴ See Rail Land Development Authority, *Project Information Memorandum for Multifunctional Complex at Sanchi*, [http://www.rlda.indianrailways.gov.in/works/uploads/File/Sanchi\(1\)\(1\).pdf](http://www.rlda.indianrailways.gov.in/works/uploads/File/Sanchi(1)(1).pdf)

⁵⁵ See Government of India - Ministry of Railways, 2nd of March 2016, *Multi-Functional Complexes at Railway Stations*, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=137197>

⁵⁶ The IMCC has been created in 2012 to resolve disputes arising in the functional area of different ministries involved in the development of tourism

must be obtained from as many as 29 departments to set up any business⁵⁷. There are still several windows behind the single window system⁵⁸, because the industrial facilitation organization “Udyog Bandhu”⁵⁹, while operating the Nivesh Mitra Platform, lacks a meaningful enforcement and implementation authority. It does not have the power to mandate the different departments to enforce relevant provisions governing the approval process, such as time limits. Similarly, TRIFAC, the organization operating the single window mechanism in Madhya Pradesh, also lacks that authority. To improve the single window mechanisms, a statute should be promulgated in Uttar Pradesh to provide Udyog Bandhu with a meaningful enforcement and implementation authority. Likewise, the MPIF Act should be amended to provide TRIFAC with the same power.

In both states, great improvements have been made in reducing delays of issuing approvals and licenses, but a remedy in case of an unreasonable delay is lacking. Through passing the Uttar Pradesh Janhit Guarantee Act (UP JG Act) 2011, it has become mandatory in Uttar Pradesh for multiple departments to ensure timely service, failing which the concerned departmental officers face stiff penalties. Likewise, in Madhya Pradesh progress has been made in reducing delays in granting licenses by including clear time limits under the Madhya Pradesh Investment Facilitation Rules, 2010 (MPIF Rules). Nevertheless, the consequences of not adhering to the indicated time frame are unclear in both states. To reduce uncertainty and delays for businesses, a ‘silent yes’ mechanism should be considered, with the effect that approvals not granted within the stipulated time will be deemed to have been provided. In the case of UP, not all departments⁶⁰ directly related to tourism have been brought under the ambit of the UP JG Act.

Further, departments directly related to tourism are not covered by the UP JG Act, thus lacking incentives to decrease processing times. To ensure timely procedures, the departments directly affecting tourism should also be included under the scope of the Act. In Madhya Pradesh, the MPIF rules introduce a three-tier committee structure with the aim to ensure quick and timely disposals of investor applications. Yet, there is uncertainty as to whether these committees will be successfully established, especially at the District level.

In Uttar Pradesh, relevant institutions targeted at promoting tourism need to be activated and their focus directed at the Buddhist Circuit, The Tourism Promotion Council(s)⁶¹ have only been meeting irregularly. Further, the Uttar Pradesh State Tourism Development Corporation Limited (UPSTDC) has to a large extent neglected the Buddhist Circuit in its attempts to promote tourism. For example, while it has

⁵⁷ Business Standard, 3rd of April 2017, *A single window clearance system for sector under Yogi govt in UP*, http://smartinvestor.business-standard.com/pf/Pfnews-450058-Pfnewsdet-A_single_window_clearance_system_for_sector_under_Yogi_govt_in_UP.htm

⁵⁸ CUTS-C-CIER, 2016, *Ease of Doing Business in Uttar Pradesh* (5/2016), available at http://www.cuts-ccier.org/STATE-COMP/pdf/Ease_of_Doing_Business_UP_Briefing_Paper.pdf

⁵⁹ See Government of Uttar Pradesh - Department of Infrastructure and Industrial Development, *Udhyog Bandhu*, available at <http://udyogbandhu.com/topics.aspx?mid=About%20Udyog%20Bandhu>

⁶⁰ The key departments under the Uttar Pradesh Janhit Guarantee Act are the Departments of Electrical Safety, Pollution Control Board, Directorate of Factories, Small-scale Industries, Labour, Registration, Forest, Public Works Department, Commercial Tax Department, Housing and Urban Planning, Entertainment Tax and Power Department.

⁶¹ The Tourism Promotion Council (TPC), which seeks to promote and coordinate tourism development at various levels, has the important functions to create dialogue with stakeholders and private entrepreneurs, preserve monuments and launch new initiatives.

proposed giving a special rebate to the tourists visiting from Mauritius⁶², no such proposal has been offered to tourists visiting the Buddhist Circuit. Additionally, its website lacks a focused effort to promote the Buddhist Circuit, and no printed materials could be found at official tourism information centers⁶³. To effectively promote the Buddhist Circuit, the TPC should have regular meetings, with details provided online to constantly review challenges that arise from having multiple agencies and overlapping jurisdictions. The UPSTDC needs to make the Buddhist Circuit a clear priority. Specifically, the website should incorporate a specific section on the Buddhist Circuit.

By being directly involved in the hospitality sector and having the mandate to generally promote tourism, the UPSTDC is at risk to develop conflicts of interest. One of the ways the UPSTDC seeks to promote tourism in Uttar Pradesh is by operating and marketing hotels, restaurants and recreational centers to tourists. Yet, while the Corporation's general purpose is to foster tourism in the entire Uttar Pradesh region, it is in the current structure incentivized to focus its marketing efforts on the regions and the specific services that it offers itself. Discussions with the private sector have shown that the existence of a state-led competitor has dissuading effects for making investments, because of concerns regarding distortion of competition. In order to generate investment and foster private-sector development, it is therefore advisable for the UPSTDC, following the recommendation from the "20 years Perspective Plans for Uttar Pradesh" issued by the Government of India, to gradually divest its assets. It would allow the agency to focus on generally promoting the Buddhist Circle in Uttar Pradesh.

The development of a highly unregulated *Monastic Economy* running parallel to the regulated economy stunts growth and limits potential investments in the region. A significant concern for potential investors is that more and more, monasteries are run like commercial businesses providing accommodation and food services, thereby competing with the private sector. These monasteries enjoy significant competitive advantages due to income being tax exempt and different (less burdensome) regulatory standards applying to them. Some monasteries work under the guise of registered Charitable Trusts⁶⁴ set up under the Indian Trusts Act, 1882 or under the Societies Registration Act, 1860, while others are unregistered. Especially Foreign Monasteries⁶⁵ are in some cases virtually sealed from all outside influence. Foreign tourists often come by chartered planes from their country of origin and straight away go to the monasteries of their country of origin. Lower costs and operational advantages have in fact led to crowding out the private sector from major Buddhist Circuit destinations. For example, recent field visits to Kushinagar showed that such monasteries have stifled the entire tourism infrastructure, leading to extremely low levels of occupancy in the private hotels.

Legal instruments and institutions in place to control the unauthorized activities of some of the Monasteries are insufficient. There is no specific legal regime for Monasteries which is equipped to reign in Monasteries operating as lodging services, providing accommodation and meal services. Laws specifically concerning them are only for regulating the construction and usage of the Monastery

⁶² See NYOOZ (27 Nov 2016), *Tourists from Mauritius get Special Package*, <https://www.nyooz.com/news/allahabad/677448/tourists-from-mauritius-to-get-special-package-in-upstdc-run-hotels/>.

⁶³ See International Finance Corporation (IFC), *Investing in the Buddhist Circuit*, https://www.ifc.org/wps/wcm/connect/a0b004004618b490804eb99916182e35/Buddhist+Circuit+Tourism+Strategy+Final.pdf?MOD=AJPERES_

⁶⁴ Dharmadhar Mahasthvir, Rev. vs. Bengal Buddhist Association (1976) ILR 1Cal57.

⁶⁵ Foreign monasteries are monasteries run by monks from foreign countries.

building. Generally, monasteries fall under the Sarais⁶⁶ Act, 1867, which empowers the District Magistrate to regulate them and imposes, amongst others, duties of registration. Yet, the Act is of limited scope - for example it does not govern the provision of meal services, or donations made directly by foreign tourists. The Foreign Contribution (Regulation) Act, 2010⁶⁷ also does not regulate foreign currency donations which are made directly by foreign tourists. Further, the Sarais Act has more often been applied as rent-seeking device by public authorities targeting other forms of accommodation, like hotels, rather than using it to regulate monasteries. Monasteries technically also fall under other types of regulations, such as the Food Safety Act, but the enforcement of these is impeded by the monasteries' ad-hoc nature. Income is usually in the form of donations. The Foreign Contribution (Regulation) Act, 2010⁶⁸ does not regulate foreign currency donations which are made directly by foreign tourists.

To reign in the Monasteries from preventing private-sector development in the hospitality sector, they need to be regulated by a unified law specifically addressing them. This law should provide for mandatory registration, regulate donations received by the Religious institutions and set a cap on the maximum number of guests allowed to stay per month⁶⁹.

Legal enforcement is largely ineffective. The power to sanction religious institutions for unauthorized constructions as well as to oversee the registration of foreign tourists is with the District Collector. However, the Collector does not only lack a clear statutory framework to enforce, but is also typically short of resources and staff to be effective. For example, per Section 7 of the Foreigners Act, 1946, the Ministry of Home Affairs makes it compulsory for all the Hotels/ Guest Houses/ Dharmshalas /Individual Houses/ Universities/ Hospitals/ Institutes who provide accommodation to foreigners to submit the details of the residing foreigner in Form C to the Registration authorities⁷⁰ within 24 hours of the arrival of the foreigner at their premises. In practice, private sector consultations indicated that this

⁶⁶ According to Art.2 of The Sarais Act, 1867, "Sarai means any building used for the shelter and accommodation of travelers"

⁶⁷ The purpose of the Foreign Contribution (regulation) Act, 2010 is "to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto."; Government of India (2010), *Foreign Contribution (regulation) Act 2010*, https://fcraonline.nic.in/home/PDF_Doc/FC-RegulationAct-2010-C.pdf.

⁶⁸ The purpose of the Foreign Contribution (regulation) Act, 2010 is "to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto."; Government of India (2010), *Foreign Contribution (regulation) Act 2010*, https://fcraonline.nic.in/home/PDF_Doc/FC-RegulationAct-2010-C.pdf.

⁶⁹ It could be considered whether the Sarais Act of 1867 is a suitable legal basis to address at least some of the concerns raised. The Act has been earmarked by the 248th Law Commission Report as an Act to be repealed, for the reason that it also covers other types of accommodation such as hotels, lodges, inns or guest houses, which are covered by other legal instruments and have in some cases been unduly burdened by the requirements of the Sarais Act. Yet, a re-evaluation considering the Act's potential to address the issue of monasteries being insufficiently regulated could show its potential use. The UP Regulation of Public Religious Buildings and Places Bill, 2000 was proposed by the State of UP for regulating the use of a building as a public religious building and the use of a place as public religious place and the matters connected therewith. However Section 8 of the Bill bars judicial review and therefore potentially is constitutionally untenable.

⁷⁰ "The authorities concerned with registration etc. of a foreigner in India are the Foreigners Regional Registration Officers (FRROs) at New Delhi, Mumbai, Chennai, Kolkata, Amritsar, Lucknow, Bangalore, Hyderabad, Trivandrum, Calicut, Cochin, Goa and the District Superintendents of Police in all other districts." See *Where to Register*, Bureau of Immigration, Government of India available at <http://boi.gov.in/content/where-register> accessed on 09.09.2017.

requirement is not being implemented. Thus, there is a gap between the de facto enforcement on the ground and the existing de jure framework.

The failure of attempts to regulate foreign monasteries in other parts of India shows that regulation needs to be complemented by effective enforcement authority. In Bodh Gaya, both the Bodh Gaya Nagar Panchayat and the circle office have led separate inquiries into unlawful practices of monasteries, after the local Hoteliers' Association and the Bodh Gaya Mukhiya Sangh had filed a petition in the Patna high court against "violation of building rules and conversion of monasteries into guest houses and hotels"⁷¹. Allegedly, a requirement of not having more than 10 guests was oftentimes neglected by Monasteries, with some accommodating up to 50 guests. Further allegations made were that the Monasteries conceal identities of their visitors by not filing correct forms. Consequently, in September 2016, notices were served on more than 50 monasteries, including to Sri Lankan, Bangladeshi, Chinese, Thai, Cambodian and the Japanese monasteries. Yet, but for a few, the notices were largely ignored. Members of the hoteliers' association attribute the failure of enforcement to lack of will and political caution by the authorities⁷². While the results of the process are yet to be determined, strict enforcement of the law is necessary to prevent monasteries from unlawfully accommodating tourists and thereby impeding private-sector development in the hospitality sector.

H. VISA REGIME

India has made huge progress in providing a supportive visa regime for tourism. However, further reforms are needed to unlock the full potential of the Buddhist Circuit. The principal outstanding issue is tourist re-entry into India from Nepal, although further simplifying the e-visa online process would also strengthen India's visa regime.

Restrictions on re-entry are causing problems for Buddhist Circuit tourists between India and Nepal. There is no problem with obtaining a visa to travel into Nepal, which can easily be done at the border. However, India's immigration rules require a tourist exiting the country to remain outside of India for at least two months before re-entering on a tourist visa. If a tourist intends to reenter India from Nepal before the two-month period elapses, then a special permit must be obtained from the Indian Embassy in Kathmandu. Foreign visitors who wish to make a short stay in Lumbini and do not intend to visit Kathmandu are required to obtain a special permit from one of the Foreign Regional Registration Offices (FRRO) in India. The FRRO offices are located in Delhi, Mumbai, Chennai, and Kolkata. Such stringent visa rules are a threat to the promotion of a joint India-Nepal Buddhist Circuit since most tourists following the Circuit visit Nepal, but their international arrival and/or exit might be via India. From media reports it appears that the 2-month restriction may have been removed for most foreigners except those from specific countries⁷³ including, most relevantly for Buddhist Circuit tourism, China.⁷⁴ To address this, e-

⁷¹The Times of India, 21st of June 2017, *Foreign monasteries served notices for 'misuse' of laws*, <https://timesofindia.indiatimes.com/city/gaya/foreign-monasteries-served-notices-for-misuse-of-laws/articleshow/59241165.cms>.

⁷²Hindustan Times, 21nd of June 2017, *Notice served on 55 Bodh Gaya monasteries for alleged violation of building rules*, <http://www.hindustantimes.com/india-news/notice-served-on-55-bodh-gaya-monasteries-for-alleged-violation-of-building-rules/story-kuF76W9wg20kIV0lbsBINJ.html>

⁷³Afghanistan, China, Iran, Pakistan, Iraq, Sudan, and Bangladesh.

⁷⁴See The Times of India, 4th of December 2012, *Government eases visa norms for tourists*, <http://timesofindia.indiatimes.com/india/Government-eases-visa-norms-for-tourists/articleshow/17471324.cms>.

visas for re-entry through Nepal for Chinese tourists should be introduced as soon as possible, since Chinese tourists are likely to present the greatest growth potential for the Buddhist Circuit in terms of both volume of visitors and spending power.

Despite the great progress made, the way tourists obtain visas can still be improved. Focus group participants described how the current system of double-entry tourist visas was an improvement over previous single-entry tourist visas. They stated that it is also possible to get multiple-entry tourist visas, but not as e-visas, only if one applies in an Indian Embassy in person. However, participants said that these multiple-entry visas are easy to obtain, and that procedures had improved. However, participants relayed that e-visas are not available for those entering India by road, and suggested that e-visas should also be made available at border posts, and not only airports. In addition, functionality of the online process could be enhanced. While e-visas are laudable, a non-user-friendly online process can be an obstacle to tourism growth.⁷⁵ There is scope for further simplification of the multi-step online process.

⁷⁵ See World Tourism Organization, 2013, *Visa Facilitation: Stimulating Economic Growth and Development through Tourism*, available at http://www3.weforum.org/docs/TTCR/2013/TTCR_Chapter1.3_2013.pdf, p. 49.

3. Experiences from Other Countries - Examples of Good Practices

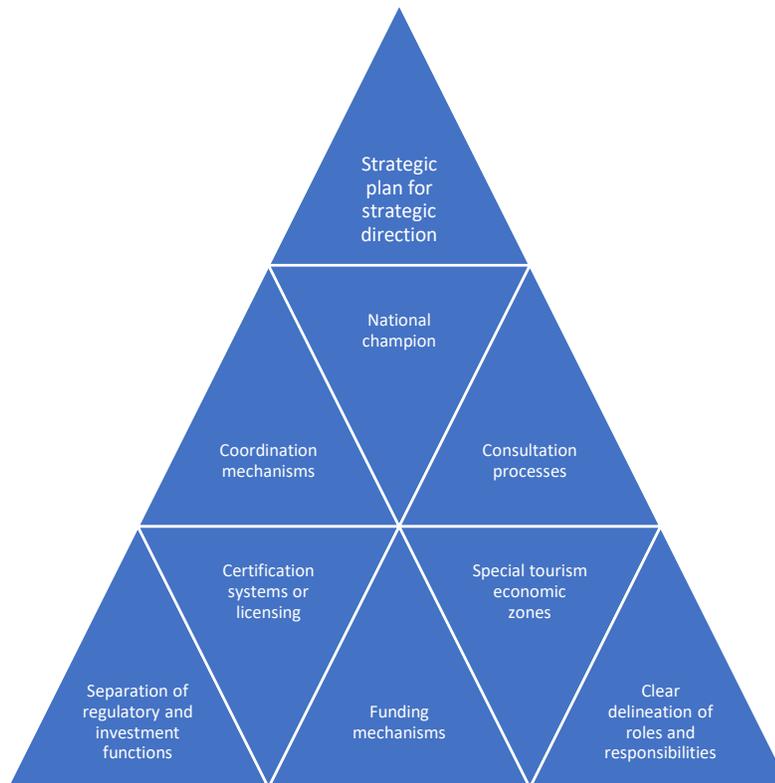
Other countries where tourism is an important economic sector have dealt with similar issues before, and can provide examples of good practices from which India can draw in undertaking and formulating reforms. This chapter provides examples of good practices in four key issue areas that underpin a successful investment policy and regulatory framework for tourism: creating the right institutions, providing licenses where needed, addressing land allocation issues, and considering monastic interests.

A. INSTITUTIONAL FRAMEWORK

What institutional arrangements are needed to best regulate and facilitate tourism investment?

There are nine different elements to a successful tourism investment institutional framework, which fit together in an inter-locking, mutually supportive system. These include: i) articulating a strategic direction, for instance through a strategic plan; ii) clearly delineating roles and responsibilities between different institutional actors, including empowering a national champion to advance the sector's development and interests; iii) providing coordination mechanisms for these actors to share information and align efforts; iv) establishing consultation mechanisms, especially between governmental authorities and non-government stakeholders; v) separating regulatory responsibilities from other operational roles; vi) ensuring certification systems, licensing frameworks, establishing quality controls where needed; vii) considering the use of special tourism development zones; viii) ensuring public funding mechanisms that can help leverage and cascade private sector investment; ix) relying on performance indicators to guide decision making. These are illustrated in the triangle below, which shows how these different elements interlock to create a well-functioning system. In the remainder of this section, these nine elements will be developed in more detail.

Fig. 9 Tourism Investment Institutional Framework Triangle



1. Strategic plan for direction of institutional activities

Most countries seeking to develop their tourism sector help orient the operations of their institutions through a strategic plan. Providing strategic direction can ensure that activities of the various national and subnational government agencies are aligned. It can also help the private sector identify areas for prospective investment by making clear where the government plans to support tourism development. Furthermore, a strategic strategic plan can aid tourism institutions with the allocation of finite resources, and with sequencing and prioritizing reform measures. It can help identify land for tourism development, one of the most sensitive issues for tourism investment, as well as guarantee the protection of cultural assets, especially those with religious and spiritual significance. In short, it serves as a roadmap to ensure that activities across tourism investment institutions are aligned by providing coherence and focus for institutional efforts and resources.

Countries that have launched tourism investment efforts before developing such a strategic plan have faced subsequent challenges. For instance, **Turkey** began tourism investment in the South Antalya region before the strategic plan was fully in place. Most of the land to be developed belonged to the Turkish government, and so it was expected that access to land would not delay the project. However, a small amount of land belonged to individuals, who successfully argued that proper procedures had not been followed in the acquisition process, especially since the strategic plan had not been finalized prior to project launch. As a result, when the project moved forward, land values had increased, and the negotiated prices were invalidated. The process had to be restarted. A few cases were even taken to the

Supreme Court, a time-consuming process. If the strategic plan had been finalized before the project began, this might have obviated many of these complications.⁷⁶

France, the leading tourism destination in the world, introduced its most recent Tourism Development Strategy in 2015 with a focus on 2020.⁷⁷ The strategy identifies six priority tourism areas, 20 actions to promote these areas, and sets out quantitative targets. As such, French tourism institutions can orient the focus of their activities on these priority areas and targets. But France is by no means alone. Almost all other economies for which tourism is an important sector, or where policymakers hope to develop its potential, also have developed strategic plans as roadmaps, endorsed at the highest level, to help orient the activities of institutional actors. For example, **Dubai's** Tourism Vision 2020 aims to increase annual visitors to 20 million by 2020, and was approved in 2013 by the Ruler of Dubai. It is worth noting that development of tourism in **Bali**, which also has a significant Buddhist cultural dimension, began with the formulation and implementation of a tourism strategic plan to lay out a development strategy while protecting the island's unique cultural and environmental assets.⁷⁸

The Strategic Plan can be used to proactively address land issues by setting aside sites specifically for tourism development (known as preferential zoning). Sites should be cleared of regulatory and planning approvals for tourism projects, and declared as "investment ready".⁷⁹

2. Clear delineation of roles and responsibilities, with authority emanating from specific legal source

The various institutional actors should have clearly delineated roles and responsibilities, with this division of labor laid out in a clear source (legal) document. To avoid overlapping mandates and jurisdictions, a tourism investment institutional framework needs to clearly spell out the roles of different bodies, and ensure that these are complementary and not duplicative. For instance, several countries have set up one-stop tourism promotion agencies that consolidate the information needs of investors.⁸⁰ The work of such an agency needs to be clearly coordinated with traditional one-stop investment promotion agencies, which may also have focused on tourism-related industries in their promotional efforts.

For example, **Egypt** created the Tourism Development Authority (TDA) in 1991 as an agency of the Ministry of Tourism, but with the authority of a one-stop shop for investors. TDA was able to play the role of champion that the sector had been lacking. While there had been *de jure* changes to the legal and regulatory framework, there was also inertia as well as interests that fought to maintain traditional rights, such as those of the petroleum sector, the military, the ministries of the interior and agriculture, and the Egyptian Environmental Affairs Agency.⁸¹ However, with the empowerment of such a champion,

⁷⁶ Christie et al., 2014, *Tourism in Africa: Harnessing Tourism for Growth and Improved Livelihoods*. Africa Development Forum. Washington, DC: World Bank and Agence Française de Développement., available at <https://openknowledge.worldbank.org/handle/10986/18688>, p. 274

⁷⁷ Government of France, 2015, *A tourism development strategy*, 12 June 2015. <http://www.gouvernement.fr/en/a-tourism-development-strategy>

⁷⁸ Christie et al., 2014, *supra* note 76, p. 181

⁷⁹ Government of Australia, 2011, *Framework guide to facilitate tourism investment: companion report*. National Long-term Tourism Strategy. The Allen Consulting Group., June 2011.

⁸⁰ Christie et al., 2014, *supra* note 76, p. 49

⁸¹ *Ibid.*, p. 178

in addition to the clear delineation of roles and responsibilities, Egypt was able to establish sites for tourism investment cleared of impediments and easements. TDA also evaluated investment proposals, and helped investors with approvals for investment projects. As a result of these efforts, private investment surged, including from top international firms such as Hyatt Regency, Accor, Marriott, Le Méridien, Four Seasons, and the Ritz-Carlton.⁸² However, when **Egypt's** investment promotion agency (GAFI or General Authority for Investment and Free Zones) was created in 2004⁸³ as an agency of the Ministry of Investment, the new respective roles and responsibilities had to be clearly delineated to avoid overlap of mandates. GAFI is now the one-stop shop for investment, both regulation and promotion, across all sectors, including tourism.⁸⁴ TDA's mandate has evolved to managing and exploiting the lands allocated to tourism development.⁸⁵ While it is possible for either a tourist development authority or an investment promotion agency (IPA) to lead efforts at attracting tourism investment, it is likely preferable for the IPA to lead such efforts, given how it can leverage experiences with promoting investment in other sectors of the economy, as well as operational economies of scale. However, it is vital that the tourist development authority provide insights to the IPA given its intimate knowledge of the sector. Close coordination and cooperation between the two institutions on tourism investment is therefore essential.

The source of authority of these various bodies also needs to be clearly identified, obviating potential disagreement over role and responsibility interpretation. In the case of Egypt, these roles and responsibilities were outlined in national laws, presidential decrees, and prime ministerial decisions.⁸⁶ This seems like the right level of authority, as it provides some stability while also keeping flexibility. Including these authorities in a more foundational document, such as a national constitution, would probably lose the flexibility needed for fine-tuning institutional authorities as economies evolve. However, the source of authority needs to be significant to provide clarity across the government and for prospective investors. Therefore, delineating these authorities through national legislation and decrees at the level of the executive branch seems to provide a good balance between clarity, flexibility, and stability of institutional authorities.

3. Empowerment of an institutional lead for national tourism development

⁸² Christie et al., 2014, *supra* note 76, p. 178

⁸³ The original decree dated from 2001, but it was substantially revised in 2004, changing GAFI's mandate Stone, A. (2006) *Establishing a Successful One Stop Shop: The case of Egypt*. Presented at IMF/AMF High-Level Seminar on Institutions and Economic Growth in the Arab Countries. Abu Dhabi, United Arab Emirates. December 19-20, 2006.

<https://www.imf.org/external/np/seminars/eng/2006/arabco/pdf/stone.pdf>, p. 6

⁸⁴ GAFI (General Authority for Investment and Free Zones), 2017, "About GAFI". Government of Egypt.

<https://www.gafi.gov.eg/English/AboutUs/Pages/default.aspx>

⁸⁵ TDA (Tourism Development Authority (2017) "The Tourism Development Authority TDA". Government of Egypt. Accessed on September 10, 2017. <http://www.tda.gov.eg/MainPages/HomeEn.aspx>

⁸⁶ TDA was established by Law No. 7 (dated 03/12/1991) and Presidential resolution of the Arab Republic of Egypt no. 374 for the year 1991, with subsequent prime ministerial decision no. 2908 in 1995 to declare the governing rules of managing, exploiting and using TDA allocated lands. GAFI was established by Presidential decree 79 in 2002, and Prime Minister decree 636/2002 that organized its work. However, Law No. 14 of 2004 fundamentally changed GAFI's mandate and procedures. Further, to clarify the different authorities, under this 2004 reform the Companies' Authority that had been used to establish companies under law 159/191 was abolished and GAFI was mandated to perform registration procedures for both Law 159 for 1981 (non-incentive) and Law 8 for 1997 (incentive) companies; Stone, 2006, *supra* note 83, p. 7

An institutional lead can help cut through bureaucratic red tape and promote investment in the tourism sector. There are numerous examples where setting up a lead (champion) was able to catalyze tourism investment. **Egypt's** experience provides one such example through creating the TDA. However, other economies with important tourism sector potential have done so as well to accelerate investor interest. This includes **Indonesia** setting up the Bali Tourism Development Corporation, **Jordan** setting up the Aqaba Development Corporation, **Trinidad and Tobago** setting up the Tourism Development Company, etc. **India** was a trendsetter in this regard by setting up the India Tourism Development Corporation (ITDC) in 1966. However, the ITDC is playing a role quite different than the other institutional champions. The ITDC is “running hotels, restaurants at various places for tourists, besides providing transport facilities”⁸⁷, thereby in effect competing with private sector investors and thus crowding out potential investment. Institutional champions should play the role of promoting tourism investment, but not investing themselves, which can lead to conflicts of interest as well as inefficiencies. It is recognized that the role and responsibility of the ITDC has been evolving – moving to a focus on establishing tourism infrastructure and consulting services to help leverage its expertise – and that already 18 hotels have been divested.⁸⁸

4. Coordination mechanisms

A well-functioning tourism investment institutional framework will include coordination mechanisms at the national level and between the national and subnational levels. Given India's federal nature, there is a need to ensure that there are effective coordination mechanisms in place for national and state-level tourism investment policy and promotion efforts. Such coordination mechanisms are particularly important where there are overlapping functions and mandates. While the national government may be best placed for an overall vision, states – being closer to tourism sites and activities – may have important insights and capacity for specific tourism investment interventions that national efforts can integrate and support.

A mechanism for tourism policy coordination, including on investment issues, is essential for investment in the tourism sector to be successful. Tourism, like investment, is a cross-cutting issue, and so deals with many different economic sectors, government agencies, and stakeholders. Therefore, there needs to be coherence between efforts aimed at generating and regulating tourism investment.

Coordination can be inter-ministerial, inter-state, whole-of-government, or whole-of-society; regardless of which approach is adopted, the views of the following are essential: national, regional, and local authorities; the private sector; civil society and the community. The main decision a country needs to take is whether it prefers to institute one larger statutory body for tourism policy coordination or a couple of smaller bodies that together serve a coordination function. Some of the tourism policy coordination mechanisms are thus first inter-ministerial, generally chaired by the head of government; others are whole-of-government, with representatives of the national government, regional government, and local government coming together. There is evidence that economies that adopt a whole-of-government approach to tourism development and management are among the most

⁸⁷ ITDC (India Tourism Development Corporation) *About Us*, <http://tourism.gov.in/india-tourism-development-corporation-itdc>.

⁸⁸ Atherton Advisory, 2013, International Finance Corporation Buddhist Circuit Program: Review of Legal and Institutional Framework of the Tourism Sector. Final Report. January 2013, p. 97.

successful in terms of tourism performance.⁸⁹ This coordination leads to greater policy coherence and clear decision-making when there are tradeoffs between competing priorities. Still others are whole-of-society in one large statutory body, providing a platform for information exchange and deliberation for all of the stakeholders mentioned above.

The exact form of coordination will depend on the particular culture and context of an economy. Yet, regardless of the form of specific coordination mechanisms selected, two dimensions are structurally important across economies: a) the body in charge of coordination needs to be empowered to make and implement decisions; b) a holistic approach that brings to the table multiple perspectives and voices is more likely to result in informed, actionable decisions with potential for buy-in from across the range of tourism investment actors.

Leading tourism destinations that are federal countries generally adopt a whole-of-government approach to tourism policy formulation through standing bodies that bring together representatives of national and subnational entities. This is especially important when there can be overlapping mandates between national and subnational tourism agencies, such as in India. Federal countries, with powers shared between the central government and states, have generally recognized the importance of coordinating tourism investment policy. The more decentralized a country, the more tourism investment responsibilities are held by state or regional governments⁹⁰. Coordination mechanisms attempt to integrate the efforts of different levels of government through a whole-of-government approach.⁹¹

Canada provides an excellent example, as tourism is incredibly important to Canada's economy⁹² and Canada is a federal country with three levels of government: the federal government, ten provincial governments, and three territorial governments. Tourism policy coordination between the three levels, including on investment policy, is conducted through the Council of Tourism Ministers. This is seen as a partnership approach across levels of government.

The Council provides a forum for discussion and decision making on tourism policy as well as the formulation of Canada's national tourism strategy.⁹³ Importantly, meetings of the council welcome representatives of different stakeholder groups, including sector representatives, indigenous groups, and aboriginal groups.⁹⁴ Issues of concern to the Canadian tourism sector are discussed and the members work together to seek common solutions. The latest meeting of the Council, in November 2016, agreed on three priority areas: First, strengthening competitiveness through collaboration on marketing, broadening understanding of the sharing economy, facilitating communication on the importance of air competitiveness and access, and identifying potential solutions for labor and workforce challenges. Second, growing tourism offerings through exploring opportunities to collaborate

⁸⁹ WTTC (World Travel & Tourism Council), 2015, "Governing National Tourism Policy". <https://www.wttc.org/-/media/files/reports/policy-research/governing-national-tourism-policy-final.pdf>.

⁹⁰ WTTC, 2015,, *supra* note 89, p. 29.

⁹¹ Government of Australia, 2011, *supra* note 79, p. 91

⁹² In 2015 tourism was Canada's top service export with international tourism revenues of over \$18 billion, while total tourism revenue from domestic and international travelers exceeded \$90 billion; Government of Canada (24th of November 2016), *News Release: Canada's tourism ministers meet and agree to tourism declaration*, <https://www.canada.ca/en/innovation-science-economic-development/news/2016/11/canada-tourism-ministers-meet-agree-tourism-declaration.html>

⁹³ Government of Australia, 2011, *supra* note 79, p. 86

⁹⁴ Government of Canada, 24th of November 2016, *supra* note 92. Specifically, these include representatives of Indigenous and Northern Affairs Canada, the Tourism Sector Association of Canada, Destination Canada, and the Aboriginal Tourism Association of Canada.

on Indigenous tourism, festivals and events, and sustainability and economic development from federal, provincial and territorial parks visitation. Third, supporting a tourism statistical system in Canada that meets decision makers' information needs.⁹⁵ All of these issues include an investment dimension- and illustrate coordination at higher levels on key issues, even though specific policy or regulatory interventions are implemented at the sub-national levels.

The **United States** provides another example of how a federal country goes about making tourism policy. The United States' Tourism Policy Council (TPC) comprises high-level representatives from over 18 agencies and government offices. The TPC meets every quarter to carry out coordination across federal agencies in consultation with state, territorial, tribal and local governments as well as the private sector. Through this multi-level, whole-of-government, synchronized approach, the United States developed in 1995, and now updates, its National Travel and Tourism Strategy.

A number of federal European countries have implemented coordination mechanisms between national and subnational levels given overlapping functions and mandates, especially in countries where state governments are particularly prominent. In **Germany**, the national government is primarily responsible for tourism policy, with the Federal Ministry of Economics and Technology as lead agency. The German National Tourist Board has about 30 offices around the world to oversee international tourism marketing on behalf of the federal government. However, the 16 states (Länder) are responsible for the development, shaping, and promotion of tourism in their states.⁹⁶ The Federal Länder Committee on Tourism meets twice a year to coordinate on any issues involving more than one state. As a result of this potential overlap in functions, the Advisory Council on Issues of Tourism brings together both levels of government (as well as other stakeholders) to coordinate tourism policy.⁹⁷

In **Austria**, there is also potential overlap in mandates between the national government and the nine states (Länder). At the national level tourism policy is the responsibility of the Federal Ministry of Science, Research and Economy. However, the federal constitution gives the nine states legislative and executive competencies over tourism. To foster coordination between the national and subnational levels, in 2010 the country developed a tourism strategy that strengthens co-ordination between the two levels.⁹⁸ In **Spain**, there is similar overlap in mandates between the national and subnational levels. The national government is responsible for tourism policy and the promotion and marketing of tourism abroad, and overall regulation of the tourism sector. However, Spain's Constitution gives the autonomous regions responsibility for the promotion and regulation of tourism within their own territories. Subnational governments (provinces and municipalities) thus manage tourism policy at the local level. This is generally implemented through a Local Tourism Board (located in most major cities) that undertakes tourism promotion and information dissemination efforts. This overlap in mandates has thus precipitated a network of inter-administrative co-operation instruments.⁹⁹ Spain's experience points in particular to the importance of coordination between the national and subnational levels on

⁹⁵ *Ibid.*

⁹⁶ WTTC, 2015, *supra* note 89, p. 21

⁹⁷ *Ibid.*

⁹⁸ OECD (Organization for Co-operation and Development), 2014., *OECD Tourism trends and policies 2014* OECD Publishing, Paris, p. 117

⁹⁹ WTTC, 2015, *supra* note 89, p. 21

statistics, as there can sometimes be discrepancies, hampering evidence-based policy making.¹⁰⁰

5. Consultation processes

A well-functioning tourism investment institutional framework will include consultation processes with both the private sector and local communities. Such consultation is important at both early stages and advanced stages of tourism development. Absent such consultation, tourism development may not be (i) able to leverage the private sector to fill in gaps that public sector investment is unable to fill effectively and (ii) fully integrated into the local economy, and is much more likely to fail. These consultations therefore aim to help inform tourism investment policy in a way that makes it more strategic, inclusive, and sustainable.

Consultation with the private sector is key for the public sector to understand market opportunities and facilitate investment-driven tourism growth. There is wide variation across countries regarding the form such consultation mechanism takes, but some form of consultation is widespread. Consultation with the private sector should involve all sectors in the tourism value chain, from banking and insurance to food production and distribution, automobile and other vehicle manufacturers, and retail. In many cases, public-private consultation and cooperation has been limited to marketing and promotion, but this seems to limit the potential inputs and feedback of the private sector for investment policy formulation. In general, it seems that governments that welcome and encourage private sector input into strategic planning and policy-making are more likely to achieve tourism investment and development objectives.

It is a clear best practice for there to be consultation and coordination between tourism investment policy makers, regulators and private sector representatives. There are number of reasons why the private sector can help with the development of tourism policy. First, the private sector generally has more information regarding opportunities and bottlenecks, and by bringing these to the attention of the authorities, can help identify measures to catalyze tourism-based development. Second, many of the issues that may hamper tourism development are derived from related sectors, such as labor laws, building codes, food safety, commercial regulations, etc. Representatives of the tourism sector that work with these issues daily can therefore inform policymakers who regulate these various areas. A multi-sectoral stakeholder coordination committee is therefore best, as it can bring multiple perspectives and insights to the table, in a way that no single sector representative could have provided. Third, by listening and reacting to private sector views in regularly scheduled meetings between the public and private sectors, greater buy-in and follow-through of whatever decisions are made is generated. It is thus more likely that policies become practice.

¹⁰⁰ The UNWTO, 2013. quotes a study that reports data discrepancies between the Canary Islands (a major Spanish tourism destination) and Spain's National Statistical Office, both of which provide concurrent data from their own sources: "Sometimes the information obtained may be contradictory and may result in misleading tourism data, and the reason behind this is the importance given to accurate tourism information at the very local level: the closer each public administration is to a tourism hotspot the more they try to collect their own data, and the more they defend the claim that their own data is more useful and accurate than other data. This situation has been fostered by the absence of clear international standards and recommendations for tourism statistics at both regional and local levels" ; Hernandez et al. 2012 in International Network on Regional Economics, Mobility and Tourism and World Tourism Organization, 2013, *A Closer Look at Tourism: Sub-national Measurement and Analysis – Towards a Set of UNWTO Guidelines*, UNWTO, Madrid., available at <http://www.e-unwto.org/doi/pdf/10.18111/9789284414963>

Before providing details on the potential modalities of such private sector consultation, it is useful to briefly convey the widespread nature of these practices.¹⁰¹ In OECD countries where tourism has long played an important economic role, there is active private sector consultation, such as in Australia, Canada, France, Germany, New Zealand, the United Kingdom, and the United States¹⁰². In the **Middle East**, a number of leading tourism countries have also instituted coordination mechanisms between the central government and the private sector, including Turkey, Morocco, and the United Arab Emirates.¹⁰³ There is thus little doubt of the ubiquity of private sector consultation in the development of tourism policy.

There are two fundamentally very different ways to structure private sector consultation. Some countries opt to have a large coordinating body that includes a big meeting of representatives across government and across stakeholders, including from the private sector. A leading example is **Turkey's** National Tourism Council. The Council was set up in 2012 and meets a minimum of twice a year, coordinated by the Tourism Ministry. It is composed of representatives across line ministries, as well as other bodies (e.g. the Supreme Board of Radio and Television, the Press Council), as well as tourism sector organizations. These represent a range of sectors: different transportation sectors, travel agencies, hoteliers, hotel investors, and tourist guides.¹⁰⁴ Another leading example is **Latvia**. It first set up a Tourism Advisory Council in 1997, which is a forum for partnership between the public sector, private sector, and NGOs to develop and implement tourism policy. Later, Latvia set up a Tourism Committee in 2013, coordinated by the National Economy Council. It brings together representatives of sector associations as well as local and regional governments.¹⁰⁵

Other countries, however, opt to separate government coordination from private sector consultation. These countries first have a committee structure that only includes government representatives, and then some form of mechanism that brings the stakeholder perspective, especially that of the private sector, to the table. There are a few prominent examples of this approach. In **Canada**, as mentioned above, there is a Council of Tourism Ministers that coordinates between different levels of government. In addition, there is a separate consultative body that brings together private sector advocacy groups, including representatives from regional and local tourism associations, which is called the Tourism Sector Association of Canada. **Chile** likewise has separated these two bodies into the Tourism Ministerial Committee and the Consultative Council for Tourism Development, the latter of which brings together seven government bodies and seven sector associations. **Japan** has adopted a similar approach, with the Ministerial Committee on the Promotion of Japan as a Tourism Oriented Country providing inter-ministerial, whole-of-government coordination, while the Advisory Council on Tourism National Promotion is comprised of individuals selected from leading tourism-related private groups and firms.¹⁰⁶

¹⁰¹ Some important tourism destinations do not, however, have a private sector consultative body for tourism policy. For instance, Mexico does not seem to have such a body, nor Portugal, nor Finland (WTTC (2015), *supra* note 89, p. 25; OECD (2017a) "A review of the policy framework for tourism marketing and promotion", OECD Tourism Papers, 2017/01, OECD Publishing, Paris. <http://dx.doi.org/10.1787/096d0ace-en>). However, it should be noted that this lack of a consultative mechanism with the private sector is anomalous relative to the general trend around the world.

¹⁰² WTTC, 2015, *supra* note 89, p. 22

¹⁰³ Christie et al., 2014, *supra* note 76, p. 22, 37-38

¹⁰⁴ WTTC, 2015, *supra* note 89, p. 22

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*, p. 24

Both consultative approaches (one large body or two smaller ones) seem to have their merits, and there does not seem to be consensus that one approach is better than the other. However, it is important to emphasize that in both approaches the private sector's view is welcomed and fed into policy discussions, either through the large plenary consultative body, or in a smaller more targeted consultative body. **Who represents the private sector can also vary considerably from country to country.** The private sector can be represented through trade associations or through the appointment of specific individuals, most often sector leaders.

Finally, Bulgaria can serve to illustrate in much more detail the way that such a consultative body can work in practice. International Trade Center (ITC) commissioned a report on best practice case studies in tourism concluded that Bulgaria's National Tourist Council (NTC) "is an excellent example of a functioning public-private partnership, representing with [sic] both the public and private interests of Bulgaria's tourism sector".¹⁰⁷ It is thus worth exploring in a bit more detail the particular attributes of the NTC, as these might inform other countries in creating similar bodies. The NTC was established in 1997 as a consultative body to assist the government implement its national policy for tourism. Chaired by the Ministry of Economy, the NTC includes representatives from the central government, state commissions, agencies dealing with tourism, tourism associations, and chambers of commerce.

What are its functional responsibilities? 1) It presents an annual state budget to the Minister of Economy; 2) It adopts (with Minister of Economy for approval) and later implements and reports on a national tourism advertising program; 3) It submits concepts for tourism development; 4) It comments on draft acts and proposes amendments or repeals; 5) It discussed infrastructure issues and attracting FDI; 6) It coordinates the implementation of national and regional projects.¹⁰⁸

What are its operational modalities? For it to pass a decision, there must be a majority of more than half of its members. The Chairman of the Council may form working groups when an issue or problem connected with the development of tourism requires further research. Working groups are made up of experts, specialists from administrations, and representatives of tourism associations and unions to give statements and make evaluations of tourism-related activities. The administrative activities, organization and financing are provided by the Ministry of Economy¹⁰⁹

In many cases, countries engage in consultation with local communities during the development of tourism policy. At early stages, the emphasis of consultation is on expected impacts of tourism; at advanced stages, the emphasis is more on how much tourism should continue to grow. Consultation should not be one-off, but present mechanisms for ongoing dialogue, especially as economic and social conditions evolve. These consultations can inform policymaker decision making, ensuring policies are grounded in local communities' realities and expectations. By articulating their needs and preferences, it is more likely that policies will benefit the local communities. As a result, tourism investment is more likely to receive local support rather than resistance, increasing the likelihood of tourism investment

¹⁰⁷ Williams and Riddle ,2004,, *Best Practice Case Studies in Tourism*, Background paper prepared for the International Trade Center (ITC) for the January 2004 Forum on National Export Strategies www.intracen.org/WorkArea/DownloadAsset.aspx?id=52372.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

successfully driving economic development. For example, in **Rwanda** development of tourism to visit the gorilla silverbacks was done in consultation with the local Kinigi community, which owns the land. This consultation has led to decisions that have made for greater collaboration between the tour operators and the local community.¹¹⁰ In **Tanzania**, another leading African tourism destination, the Kilimanjaro National Park general management plan was developed using public involvement to ensure the community's interests and traditions were respected. In both cases, the success of consultation with local communities hinged on the ability of subsequent tourism policy development to generate revenue for the local community.¹¹¹

6. Separation of regulatory and investment functions

Across many economies, government regulators have been divesting from owning and running hotels and other tourism services. The reason is two-fold: on the one hand, there is potential conflict of interest when the regulator is also operating in the market; on the other hand, the public provision of these tourism services has generally been at a higher cost and at a lower quality than when provided by a competitive private sector. It seems that government investment can play an important catalytic, market-creation early on, but once the tourism sector has demonstrated its viability and private sector interest picks up, then the government should play the role of sector regulator, but no longer participate as operator, except in rare cases. These cases would be where a certain tourism subsector is nascent and has not yet shown its financial viability, and in this case the government can help to grow the subsector through pioneer investments.

Tunisia provides a good example of this trend. In the 1960s, the government created a state-owned chain, the Tunisian Tourism Hotel Company, responsible for building four- and five-star hotels.¹¹² As a result, between 1960 and 1965 the Government of Tunisia was responsible for building 40 percent of hotels. However, after that the private sector started to invest and the development of tourism was taken over by both domestic and foreign investors. These accounted for almost all new construction after the end of the 1960s, which increased rapidly.¹¹³ For instance, in the decade from 1972 to 1982, the number of hotels increased by almost 50 percent.¹¹⁴ Given the strong growth in private sector interest, the Government undertook a privatization plan announced in 1987 and implemented in 1989 through Law 899. During the first phase of privatization (of smaller and less profitable firms) from 1989 and 1994, half of the 45 firms were hotels. During the subsequent phase (of larger and more profitable firms) after 1994, another equal number of hotels have been privatized for a total of 45 tourism-related enterprises were privatized, the largest services sector to go through privatization.¹¹⁵ Today, the Government of Tunisia only owns (wholly or partially) investments in underdeveloped 'launch' activities, such as golfing and boating.¹¹⁶

¹¹⁰ Christie et al., 2014, *supra* note 76, p. 245

¹¹¹ *Ibid.*, p. 260

¹¹² Christie et al., 2014, *supra* note 76, p. 264

¹¹³ Poirier, R., and S. Wright, 1993, The Political Economy of Tourism in Tunisia. *The Journal of Modern African Studies* 31(1): 149-162. <http://www.jstor.org/stable/161348>, p. 156

¹¹⁴ *Ibid.*

¹¹⁵ See Government of Tunisia, 2017, *Privatization in Tunisia: Breakdown of privatization and restructuring revenue by sector of activity*, <http://www.privatisation.gov.tn/www/en/doc.asp?docid=225&mcats=1&mrub=49&msrub=2>

¹¹⁶ Christie et al., 2014, *supra* note 76, p. 266

7. Certification systems and licensing regimes

Licensing and certification systems are important tools within the institutional framework to regulate and facilitate private sector investment. With regards to licensing, best practices are discussed below in Section B, particularly in the context of hotel licensing. With regards to certification, the World Tourism Organization, based on a comprehensive worldwide study, has issued recommendations to governments on supporting or establishing national certification systems.¹¹⁷ Such certification provides quality standards that create greater confidence for consumers of tourism services, leading to greater demand. This in turn increases the attractiveness of private sector investment in higher quality goods and services, given the ability for consumers to discern differences. In a context where preserving cultural or environmental patrimony is particularly important, such as the Buddhist Circuit, such certifications can create the mechanisms and incentives to help protect these assets. In short, certification systems help create a higher quality tourism market by encouraging investors to meet certification standards to attract consumers.

Costa Rica provides a good example of how implementing a Certificate for Sustainable Tourism (CST) dramatically turned around the country's environmental trajectory while increasing tourism investment and revenue. Launched in 1996, it was the first program in the world that certified the environmental and socioeconomic sustainability of hotels.¹¹⁸ The program is voluntary and the certificate is free. The more effort a firm puts into sustainability, the more "Leaves" it gets on a one to five scale, as with stars. The program has been so successful that it has now been extended to tour operators, restaurants, theme parks, and car rental companies.¹¹⁹ Investors are investing to meet higher certification levels, as consumers are willing to pay a premium for services that receive a high number of leaves. As a result, the CST approach has broadened to all of Central America and has even been proposed as an action to help achieve the Sustainable Development Goals (SDGs), especially Goal 17.¹²⁰

Trinidad and Tobago provide another good example of how a certification system has helped spur investment in the country's tourism sector. The Trinidad & Tobago Tourism Sector Certification (TTTIC) program was established in 2001 as a mechanism to improve the quality of tourism products and services by certifying firms as Approved Tourism Operators (ATO).¹²¹ A firm that receives certification can use the brand logo as a mark of quality assurance for consumers, receives marketing help through promotions on website and brochures, is eligible for preferential rates from banks and insurance companies, and receives advice on training and human resource development.¹²² This creates market

¹¹⁷ UNWTO (UN World Tourism Organization), 2003, *Recommendations to Governments for Supporting and/or Establishing National Certification Systems for Sustainable Tourism*, <http://sdt.unwto.org/sites/all/files/docpdf/certification-gov-recomm.pdf>

¹¹⁸ Gamper, Mario, 2011, *How Five Leaves are changing Tourism Marketing in Costa Rica: Costa Rica's Certificate for Sustainable Tourism (CST)*, <https://www.slideshare.net/mario.gamper/how-five-leaves-are-changing-ecotourism-marketing-in-costa-rica>

¹¹⁹ As of September 2017, the certification program includes 241 hotels (with 57 receiving Five Leaves), 85 tour operators (26 receiving Five Leaves), eight restaurants (none yet receiving Five Leaves), 19 theme parks (two at Five Leaves), and nine rental car firms (three at Five Leaves). See Certificación para la Sostenibilidad Turística en Costa Rica, *Turismo Sostenible CST: Certificación para la Sostenibilidad Turística en Costa Rica*, <http://www.turismo-sostenible.co.cr/index.php?lang=en>

¹²⁰ Partnerships for SDGs, 2003, *Certificate for Sustainable Tourism (CST)*, SDG Action1495. <https://sustainabledevelopment.un.org/partnership/?p=1495>

¹²¹ It is a joint effort of the Trinidad & Tobago Bureau of Standards, the Tourism and Industrial Development Company of Trinidad and Tobago, and the Tobago House of Assembly, with the Trinidad & Tobago Hospitality and Tourism Institute as the recognized body for training; Williams and Riddle, 2004, *supra* note 107, p. 3-4

¹²² *ibid.*

segmentation between the firms that are certified and those that are not, and encourages greater investment by firms in order to reach this level of certification, since it will help them run a successful business.

8. Tourism development zones

Many countries have used tourism development zones (TDZs) as a way of attracting investment, and the Government of India may wish to carry out analysis of the pros and cons of using a TDZ for the Buddhist Circuit. A TDZ is a designated geographical area where investors who locate there receive certain incentives, such as tax and fee deferral, marketing and training support, preferential financing, infrastructure provision, etc. While these incentives cost money, they can also increase investor interest, and thus potentially increase and accelerate investment in priority areas, such as the Buddhist Circuit.

For example, **the Philippines** has used what the country calls Tourism Enterprise Zones to encourage and manage investments in areas with at once high cultural value and economic potential. Firms that locate in these zones receive: a) an income tax holiday for a number of years; b) a 5% gross income tax after that, in lieu of any national and local taxes; c) tax and duty-free importation; d) zero VAT on local purchases of capital equipment. The program has been so successful that in 2012 the Philippine Economic Zone Authority (PEZA) decided to remove the first two benefits for four zones: Metro Manila, Cebu City, Mactan Island, and Boracay Island.¹²³ The aim was to encourage investors to develop other tourism destinations in the Philippines, but the fact that these four zones had successfully leveraged the TDZ concept provides a good example of how it can help boost tourism investment.

Another example is **Mozambique**, where the IFC's Mozambique Tourism Anchor Program has helped the country create Tourism Interest Zones to encourage investment in areas with natural, cultural, or historical qualities. An interesting innovation is that regulatory reforms undertaken through the program allow individual, integrated tourism-resort projects to apply for special economic zone status and special benefits. Through this new initiative, which won the 'Tourism Investment Program of the Year' Award by Africa Investor, Mozambique has designated over 13,000 hectares of land as tourism interest zones and attracted over USD 33 million in investment.¹²⁴

9. Funding mechanisms

One final aspect that can be instrumental in catalyzing private investment in the tourism sector is the existence of a state funding mechanism. Such a mechanism can help cascade investment in the sector through de-risking investment climates. It can also take more risk and show that a sector is viable before the private sector is willing to invest, such as where sunk costs are considerable. The Tourism Finance Corporation of India Limited (TFCI), as a specialized institution that provides financial assistance to tourism-related projects, plays this role in India. India therefore already has in place this part of the

¹²³ (Tax and Accounting Center Philippines, 2017, *Tax Incentives of Tourism Economic Zone Enterprise in Philippines*, <http://taxacctgcenter.org/tax-incentives-tourism-economic-zone-enterprise-philippines/>)

¹²⁴ IFC (International Finance Corporation), 2017, *Helping Attract Investment in Mozambique's Tourism Sector*, http://www.ifc.org/wps/wcm/connect/news_ext_content/ifc_external_corporate_site/news+and+events/news/helping+attract+investme nt+in+mozambique

tourism investment regulatory framework, and can direct its efforts, so that assistance from the TFCI helps leverage private sector investment.

B. LICENSING REGIME

What is the best way to provide licenses, especially for hotels?

An effective regime determines where licensing is needed on a risk-based approach. In some cases licensing will not be necessary, or voluntary codes of conduct can be developed with minimal monitoring by the public authorities. Where licensing is deemed necessary, the process should be as efficient and streamlined as possible, preferably through a single-window system to make the licensing process as simple and inexpensive as possible. A clearly identified and empowered focal point can help implement such a system. A digital one-stop shop allows to create an efficient interface with several agencies.

There are several general best practices when thinking about how to design and implement a licensing regime. The Australian government has identified some of these best practices, particularly with respect to implementation and training processes. Several best practices are suggested, including: 1) clearly identify the licensing/regulatory authorities and key stakeholders; 2) ensure engagement by the licensing/regulatory authorities; 3) bring key players together, including the regulators and peak sector groups; 4) establish a national agreement to collaborate; 5) link licensing requirements with competencies/qualifications; 6) develop training materials to help meet competencies/qualifications; and 7) provide feedback on the process to licensing authorities so they can improve the system and their performance (adapted from Australia National Training Institute and Queensland Government 2004: 7-11). Moreover, best practices in licensing design and administration processes vary with the sub-sector in which they are applied: **hotel and meal service** licensing as well as the licensing of **tour operating services**.

Hotel and meal serving service licensing

Hotel licensing regimes require regulators to consider a number of sector-specific regulatory questions. These include: 1) whether there should be national standards to receive a hotel license, or whether subnational entities can develop their own standards; 2) whether all facets of the hotel business require regulation, or only certain facets (following a risk-based approach); 3) how often licenses need to be renewed, and how inspections or other quality control mechanisms should be implemented; 4) whether licenses should aim to regulate quality standards or simply to ensure health and safety objectives; 5) the exact role of the peak sector groups in helping to design and implement these standards.

Most importantly, the licensing process needs to be streamlined: the number of licenses required to set up and operate a hotel should be reduced to a minimum and overlaps between different agencies and across government levels avoided. The potential benefits of streamlining are demonstrated by a project in Peru¹²⁵. In 2012 the Hotel Association in Peru found that regulatory obstacles had been delaying half of expected investment in new hotels in Cusco worth US\$776 million. The opening of hotels had at

¹²⁵ IFC, 2016, *Peru: Easing Business Regulations in one of the World's Most Famous Tourist Destinations*, <http://www.worldbank.org/en/results/2016/11/01/peru-easing-business-regulations-in-one-of-the-worlds-most-famous-tourist-destinations>

times been delayed up to 8 years. The Government of Peru decided to streamline processes that businesses seeking to enter the tourism sector - including hotels, restaurants, tour operators and others enterprises – must follow to obtain a license and operate in Cusco. Bringing together four government agencies operating at local, regional and national levels, it was possible to simplify, integrate and automate licensing processes, ultimately eliminating 150 unnecessary business registration requirements such as duplicative forms, official letters to mayors, photos of buildings in process and copies of worker IDs. As a result, 3 years could be shaved off the business registration process and private sector companies saved US\$760,000 in registration fees in the first 8 months, a figure which is expected to rise up to US\$1.9 million by 2019.

One-stop shops/single window mechanisms provide for a means to make the licensing process more efficient, to save time and resources and thereby to facilitate FDI in the hotel sector. One of the most proven tools to streamline any kind of administrative procedure involving several agencies from potentially different government levels who are in contact with the private sector is to concentrate the interaction in a single point of access. This point is often called a one-stop shop, where dialogue takes place through one single window. In the context of licensing, a single window mechanism is desirable, but requires coordination of the different agencies or departments to make it viable. A good example of such a mechanism for the hospitality sector is one created by the City of Amsterdam.

The City of Amsterdam’s (Netherlands) creation of a one stop shop for the hospitality sector illustrates the positive effects it can create. In 2008, the regulations for acquiring a bar, hotel or restaurant license in Amsterdam were deemed to be too complicated. Because the processes required licenses and dispensations from more than 18 different authorities, the regulations were obstructing companies from being created and the private sector to be developed. In order to simplify and streamline the process, the City of Amsterdam created the “One Stop Shop for Hotel Restaurant Café Licenses” (abbreviated HoReCa1). This mixture of an online-system with physical facilities allows applicants, by answering a set of 20 questions concerning the desired activity, to receive a tailored response as to what licenses are required for the respective process, and to make a single application to obtain them¹²⁶. As result of the introduction of the one stop shop, the administrative burden and administrative costs have been lowered by approximately US\$2.16 per online application, which is estimated to save around US\$ 30 million per year¹²⁷.

A digital one-stop shop may add additional benefits to physical facilities. Implementing HoReCa1 in Amsterdam has, next to reducing costs, further increased the transparency of assessment criteria, revealed contradictions and overlaps in bureaucratic legislation, and served as a basis for similar reforms in other sectors¹²⁸. An important lesson has been that to overcome civil servant inertia or even hostility, it was important to invest in people through knowledge transfer and training and thereby giving them ownership, increase motivation and decrease reluctance. In conclusion, the example shows that to improve the licensing regime in the hospitality sector, changes to the process of granting licenses is just

¹²⁶ Van Erven, Maurice, 2017, Case Study: HoReCa1 - One-stop-shop for Hotel Restaurant Café licences, City of Amsterdam - Urban Program on Regulation and Enforcement, <http://unpan1.un.org/intradoc/groups/public/documents/unpan/unpan032274.pdf>

¹²⁷ *Ibid.*

¹²⁸ Harvard Innovations, 2008, *Case: A One Stop Shop for Small Businesses in Amsterdam An interview with Erik Gerritsen*, <https://www.innovations.harvard.edu/sites/default/files/90501.pdf>

as important as the substantive subject matter that is covered, and it highlights the advantages digitization may bring.

Similarly, the example of Ireland shows how competitiveness can be enhanced by integrating the licensing application process as well as by promoting digitalization. Ireland has recently climbed on the 6th place in IMD's 2017 Global Competitiveness Ranking¹²⁹ and the 4th place in Forbes' Best Countries for Business Ranking¹³⁰, and one of the reforms that forms part of this success has been the introduction of an Integrated Licensing Application System. In a review and audit of licenses across key sectors of the Irish economy¹³¹, the Irish government had found that the burden of numerous licenses, especially in the food and drink as well as in the hospitality and leisure sector, were unnecessarily high. The reasons for this had been high license fees, a lengthy application and renewal process, long compliance time and a renewal frequency that was too high. Furthermore, multiplicity of licenses had been seen as an issue. Therefore, in its Action Plan for Jobs 2013¹³², the government not only set out to reduce the total number of licences, but also created an Integrated Licensing Application System spanning 40 licensing authorities and 29 core licenses. The system was Launched in 2015 under the name "licenses.ie". The aim is to gradually create a digital one-stop-shop for all licensing requirements by getting regulatory authorities as well as private certification agencies involved. The Government quarterly reviews the licenses and authorities that have signed up and actively promotes increased coverage. The example thus shows the potential to ease the process of doing business, and thereby to increase the competitiveness by gradually rolling out a digital service facilitating the application process, spanning several sectors and both public and private authorities.

Another good example for the creating a multi-agency information management system is Singapore. In 2004, the Singaporean government launched an Online Business Licensing Service (OBLS), which is a one-stop portal to apply for all required Singapore government license in a single transaction. In 2005, the application won the "2005 United Nations Public Service Award" for application of information and communication technologies (ICT) in government and contributes to Singapore being ranked 2nd in the world for its business environment in the latest World Economic Forum (WEF) Travel and Tourism Competitiveness Report¹³³. The program, now replaced by the newer version LicenceOne¹³⁴, integrated more than 70 licenses across 30 agencies. It requires the entry of information from the applicant only once, thereby reducing data entry effort, it improves data integrity and reduces costs both for businesses and the public sector. Through the introduction, the average approval processing time could

¹²⁹ Burke-Kennedy, E., May 31st of 2017, *Ireland moves to sixth place in global competitiveness rankings*, The Irish Times, <https://www.irishtimes.com/business/economy/ireland-moves-to-sixth-place-in-global-competitiveness-rankings-1.3103043>

¹³⁰ Forbes, 2017, *Best Countries for Business*, <https://www.forbes.com/best-countries-for-business/list/#tab:overall>

¹³¹ Forfas, 2012, *A review and audit of licenses across key sectors of the Irish economy*, http://www.neci.ie/wp-content/uploads/2012/12/Forfas_Review_of_Licences-Publication.pdf

¹³² The Government of Ireland ,2013), *Action Plan for Jobs 2013*, <http://www.oireachtas.ie/parliament/media/committees/jobcenterpriseandinnovation/Action-Plan-for-Jobs,-2013.pdf>

¹³³ Business environment is one of 14 travel and tourism pillars on which the WEF evaluates the competitiveness of 136 economies, and this pillar is the most relevant when considering the efficiency of licensing regimes. Singapore was ranked just after Hong Kong SAR, China, but the latter was not chosen because of the potentially confounding factors of having been under a British legal system for much longer, and of currently being a Special Administrative Region of China.

¹³⁴ For an overview, see <http://www.mom.gov.sg/~media/mom/documents/services-forms/licenceone/licenceone-new-features-guide.pdf?la=en>

be reduced by 65% from 21 to 8 days¹³⁵. Further, in the process of creating the application, the licensing regime was streamlined: 11 licenses were eliminated and two converted to life-time licenses¹³⁶. Next to creating an application OBLs additionally enables to manage ongoing licenses, to amend data, re-apply, receive alerts on payments and keep track of correspondences. Another useful tool is an eAdvisor: it guides user to the license required based on a list of questions.

In Singapore, the multi-agency project was made possible by engaging all different stakeholders. In developing and implementing OBLs, the Singaporean government was cognizant that it was necessary to have buy-in both at the highest and working levels in each of the agencies, because some degree of standardization was required. To generate full support and cooperation, the managing team addressed as much as possible, the different needs and concerns – in particular on funding, and internal processes. Further, what proved to be very effective was to achieve quick and early successes, because once the agencies experienced the benefits of OBLs, they became more inclined to participate¹³⁷, thus contributing to the success of the project.

Experience also shows that length of the license validity needs to be adapted to administrative capacities. A shorter period has the advantage that there is a higher level of control on the licensee. Yet, this results in a higher administrative burden. Singapore, for example, has the scale and resources to require a physical presence and annual renewal for hotel licenses to be issued. India, however, may wish to consider a regime where licenses are issued for a relatively longer period – and which takes advantage of IT solutions –to avoid creating a backlog and other inefficiencies that could delay tourism investment.

Efforts have also been made by local/State governments in India towards streamlining hospitality licensing. Notably, in November 2016 the Municipal Corporation of Greater Mumbai¹³⁸, in an effort spanning several departments, issued a circular that with immediate effect eliminated and consolidated 19 licenses in the hospitality sector and limited them to three¹³⁹. While the licenses that were deemed outdated were removed, the ones seen as repetitive were merged under a single classification. Furthermore, the process of applying for licenses was simplified by creating a single application form (the Combined Business Application, CBA) which is to be submitted through a one window system (Ward One Window). This system consists of both an online tool and physical presences to allow on-the-spot clarifications. Additionally, the reform stands out as being in line with good practices because it implements strict timelines for the different parts of the license provision process. For example, Ward One Window is required to forward the combined business application to the relevant department within two working days from submission. If additional information is sought from the applicant, the concerned department is mandated to inspect the premises within seven days from the date of

¹³⁵ Teo, T. S., & Koh, T. K., 2010, *Lessons from multi-agency information management projects: Case of the Online Business Licensing Service (OBLs) Project, Singapore*, International Journal of Information Management, 30(1), 85-93, p. 87

¹³⁶ *Ibid.*

¹³⁷ Teo, T. S., & Koh, T. K., 2010, *Lessons from multi-agency information management projects: Case of the Online Business Licensing Service (OBLs) Project, Singapore*, International Journal of Information Management, 30(1), 85-93., p. 91

¹³⁸ Also known as the Brihanmumbai Municipal Corporation (BMC)

¹³⁹ Chaturvedi, A., 1 7th of July 2017, *HRAWI welcomes MCGMs decision to streamline licensing process for hospitality sector*, The Economic Times, http://economictimes.indiatimes.com/articleshow/59632517.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cpst

submission. Similarly, *the State of Punjab has launched the Punjab Bureau of Investment Promotion (“PBIP”) to “serve as a single point of contact for giving all regulatory clearances and applicable financial incentives and assist the investor in setting up the projects”*. The one-stop clearance envisaged by PBIP has a 100-working day associate time - frame from starting to finally commence the operations. Consultations with stakeholders indicate varying degrees of success in implementation of both these models. Nonetheless, these sub-national experiences in India can be particularly useful for any initiatives that are considered for the Buddhist Circuit.

Licensing of tour operating services

In the licensing regime for tourism operators it is important have mandatory requirements that are of a facilitative nature. On the one hand, licenses need to be mandatory so as to ensure the best possible use of public resources, maintain standards as well as to prevent externalities such as environmental pollution. On the other hand, policy makers need to be mindful of the burden imposed and therefore not be unduly prescriptive, but facilitative and cooperative towards the private sector so as to enhance overall competitiveness¹⁴⁰.

The underlying rationale of the regime should be facilitation and cooperation rather than intervention and control. Australia is a good example because it creates the opportunity for the private sector to contribute and share the burden of ecological sustainability, but also requires it to meet certain quality standards. Although trying to essentially achieve the same objectives, the Tanzanian regime focuses on maximizing revenue for the government and to exert extensive control to achieve those aims. This is reflected in Tanzania¹⁴¹ having much higher licensing fees than Australia¹⁴², and in the differences concerning licenses for exceptional activities such as to run a fishing safari: Whereas in Tanzania this requires large additional payments, in Australia proof of knowledge through certification suffices. Additionally, Australia’s cooperative approach is reflected in the design of its dispute resolution process, in which a notice is sent to the operator in case its failing to comply with the conditions of the license upon which the operator may remedy such failure. Only after a specific period, the license may be suspended. In Tanzania, on the other hand, penalties are mainly in the form of fines and it provides for possibilities to sue the operator. This goes beyond the good practice of only using a minimum penalty where needed to achieve a given objective. While trying to ensure that public assets are protected, they give the right to the government to step in at any time and thereby indicate a level of mistrust towards the operators. If India decides to regulate tour operator services, including imposing a license requirement, it is important to ensure the regime is not unduly restrictive and the end objective is to organize the sector and thereby encourage larger/global private sector participation to ultimately lead to better protection of country’s resources and higher quality services to consumers.

¹⁴⁰ FIAS, 2009, *Licensing Case Studies: Tourism Sector*, p. 26 and the following

¹⁴¹ Fees: a) Where the applicant is citizen of the United Republic and a company incorporated in the United Republic = US \$ 2000 or its equivalent amount in Tanzanian shillings.

b) In the case of a joint venture where the majority participation is Tanzanian with 50% or more shares and the company is incorporated in the United Republic = US \$ 2000 or its equivalent amount in Tanzanian shillings.

c) In the case of joint venture where the minority participation is Tanzanian with less than 50% shares = US \$ 5000 or its equivalent amount in Tanzanian shillings.

¹⁴² Fees: All applications incur a non-refundable application fee of \$50, with the license fee additional depending on the length of the license period being applied for (which is dependent on the amount of accreditation). This total amount must be paid upfront on application. The current license fees are as follows:

2 months: \$100; 1 year: \$300; 3 years: \$900; 5 years: \$1,500

The application process needs to be transparent and time-efficient. Whereas in the Australian case, the applicant is required to fulfill clearly described requirements on a 2-page form, in the Tanzanian case the form is 8 pages long with a very long list of requirements. Some of them allow the reviewer to make subjective judgments, such as “Have you made every effort to employ a Tanzanian?”¹⁴³. This creates delays and a lack of transparency, which is why a shorter form with clearly described requirements would be preferred. Furthermore, the Australian regime achieves a time-efficient process by setting a time limit of 7 days for the license to be granted from the day of submission of the application. In case no contact is sought by the licenser, the license is assumed to have been granted (the “silence is consent” rule applies).

C. LAND ALLOCATION

How can one reform land allocation regimes?

A number of elements are needed for a successful land allocation strategy, including identification of land, registration of land, registration of title, process of title change, and process of land use certification change. Together, these elements will allow access to and operation of a land market, a sine qua non of tourism investment.

There are a number of land allocation regime elements that could be considered to help develop the Buddhist Circuit. A good land allocation regime for tourism development is simultaneously one of the most complex and one of the most important elements for successful investment, and so should be amongst the first priorities in any reform sequence. There is no international best practice land allocation regime, because it depends on local landownership laws and regulations. However, there are approaches that have worked well in other countries, and could be adapted to developing the BC. These include setting up a land development agency, empowering a tourism development agency with land authorities, government selection and development of land plots, clearing land of any legal imbroglio before it is offered for development, streamlining and standardizing land-use zones, leasing where outright sales are not possible, using auctions to foster transparency and maximize revenue, and considering community-based joint ventures.

The first step is to determine at what stage the government wishes to welcome investment: at the land-development stage, at the infrastructure-development stage, or at the tourism facilities development stage. This will determine the approach taken to land allocation. In the first case, the government leases land to a developer or brings it to a partnership as equity; in the second case, the government contracts with the private sector for infrastructure, construction, or operation; and in the third case, the private sector comes in at the stage where hotels or other facilities are being built.¹⁴⁴ It seems that so far India has favored the third approach to develop the BC.

Setting up a land development agency

¹⁴³ FIAS, 2009, *supra* note 140, p. 23

¹⁴⁴ Christie et al., 2014, *supra* note 76.

One popular and effective approach is to set up a tourism land development agency to manage this process. The tourism land development agency can identify land to be used for tourism projects, and then proactively review the status of the land and take any necessary steps to remove legal claims or other encumbrances that would complicate investment, either *ex ante* (first preference) or *ex post*. This clears one of the major areas of concern when considering private investment in tourism, which is that land rights can often be unclear, and result in costly and complicated legal wrangling.

Tunisia provides a good example of using a specialized tourism land development agency. The Tourism Real Estate Development Agency (Agence Fonciere Touristique or AFT) was created in 1973 to help develop land for tourism investment. It is a public institution with financial autonomy. The AFT has a six-fold mandate: 1) Acquire land in tourism zones; 2) Determine ownership rights of land in planned tourism development areas, and regularize the legal conditions; 3) Reorganize lands located in planned areas into parcels; 4) Build needed infrastructure; 5) Place the parcels for sale for tourism investment; 6) Ensure the conditions of real estate and provide beneficiaries with property certificates.¹⁴⁵ The AFT is thus legally liable to manage lands for tourism investment and provide these lands to investors promptly. The AFT declares that this approach has “enabled investors to focus on technical studies of their projects without spending much effort in often burdensome and complex land acquisition and regularizing procedures”.¹⁴⁶

Egypt provides an example of placing land allocation responsibilities within a larger tourism development agency. Egypt aimed to diversify away from cultural heritage of the Pyramids and other historical sites by developing Red Sea tourism as a complement to its traditional tourism offerings. However, access to land was an issue, as well as competing interests (e.g. the petroleum sector, the military, ministries of interior and agriculture, and the Egyptian Environmental Affairs Agency, all with different views on the appropriate use of land). The solution was to create and empower a specialized agency within the Ministry of Tourism, the Tourism Development Authority (TDA) (discussed above). The TDA can establish sites for tourism development cleared of impediments and easements. The TDA’s mandate is to execute national tourism strategy, prioritize areas for development and management, decide on the disposition of public lands for tourism development, prepare needed infrastructure, and promote private investment. Its stated goal is to gradually limit “the role of the government from ... economic competition into a supervising and controlling role that provides the appropriate climate for investment in tourism development”.¹⁴⁷ However, it is worth noting that individuals or private companies are not allowed to apply to own land in Egypt for tourism investment.¹⁴⁸

Sales, leasing, and auctions

Private sector investors ideally want to own land outright, and so allowing the commercial market to allocate land for tourism projects through commercial sales is the first-best option. Under the Indian Foreign Exchange Management Act, 1999, foreign natural persons are generally prohibited from

¹⁴⁵ AFT (Agence Fonciere Touristique), 2017, *Government of Tunisia*. <http://www.aft.nat.tn/>.

¹⁴⁶ *Ibid.*

¹⁴⁷ TDA (Tourism Development Authority, 2017, “*The Tourism Development Authority TDA*”. Government of Egypt. Accessed on September 10, 2017. <http://www.tda.gov.eg/MainPages/HomeEn.aspx>

¹⁴⁸ *Ibid.*, Global Property Guide, 2017, <http://www.globalpropertyguide.com/>

purchasing land, but are permitted to lease land for not exceeding five years.¹⁴⁹ However, foreign investment in land is permitted through a company registered in India, and so restriction on foreign ownership is not considered a constraint on foreign investment in BC tourism development.

In cases where foreign ownership of land is not possible, long-term leasing through auctions can be used.

Such long-term leases can attract investment so long as the lease is for a sufficiently long period for the investor to recoup the investment outlay. Land lease will be longer than retail lease. The former can range from 25 to 50 years, while the latter can range from 15-25 years.¹⁵⁰ It is good practice to allocate leases through auctions, as this allows for all interested parties to participate equally in a transparent manner, while maximizing revenue for the state. Criteria for the auctions should be published in advance and evaluated by independent and disinterested persons. The bidding process can also be designed to give weight to other public policy priorities, such as environmental considerations of the involvement of local partners.

D. MONASTIC INTERESTS

How have other countries addressed the role of religious economic interests in the tourism sector?

Focus groups and other consultations revealed that the economic activities of Buddhist monasteries are a challenge to private sector investment in the Buddhist Circuit. Monasteries set up by nationals of certain Buddhist countries often provide all-inclusive services (lodging, food, etc.) to pilgrims and tourists from those countries, thereby displacing investor interest. The experiences of other major pilgrimage destinations show how the entry of the private sector can increase the quality and availability of services and coexist with monastic economic activities. The two can occupy different market segments, with monasteries catering to purely religious pilgrims who travel on a low budget and the private sector catering to other, multi-motivated pilgrims who tend to travel on a moderate or higher budget. The key is to ensure the equal application of the law to all parties, including regulatory requirements, so that there is a level playing field between all providers of services to pilgrims.

Spain's experience with El Camino de Santiago de Compostela provides a good example of how new private sector investment can boost tourism revenue while coexisting with established religious interests.

Growth of tourism along El Camino has been extraordinary. In 1986, 2,491 pilgrims were certified to have arrived in Santiago. Thirty years later, in 2016, this number had grown more than one hundred times to 277,854.¹⁵¹ Pilgrim numbers spike on Holy Years¹⁵² or The Year of the Saint¹⁵³, but the growth trend is clear and especially remarkable considering Spain's 2008-2016 financial crisis.

¹⁴⁹ Atherton Advisory, 2013, *International Finance Corporation Buddhist Circuit Program: Review of Legal and Institutional Framework of the Tourism Sector*. Final Report. January 2013, p. 22

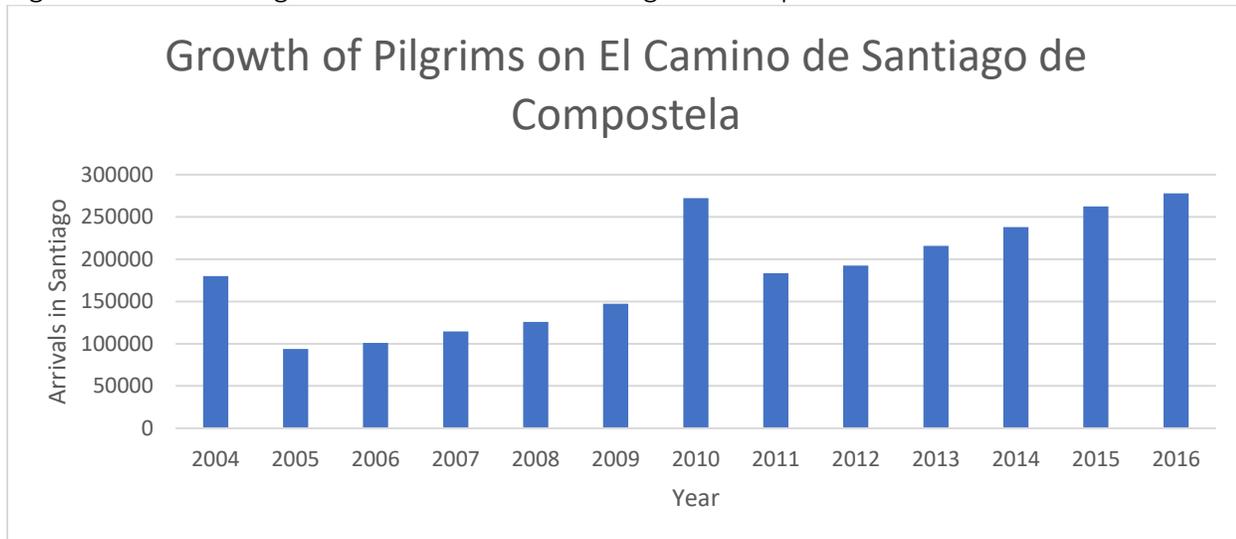
¹⁵⁰ Christie et al., 2014, *supra* note 76, p. 127-129

¹⁵¹ Oficina de Acogida de Peregrinos. *Santiago de Compostela, Spain*. Estadísticas. <https://oficinadelperegrino.com/estadisticas>

¹⁵² In Catholicism, Holy Years now occur every 25 years, or by special Papal designation.

¹⁵³ This is any year in which Saint James' Day, July 25th, falls on a Sunday.

Fig. 10. Growth of Pilgrims on El Camino de Santiago de Compostela



Source: based on data from the Oficina de Acogida de Peregrinos, Santiago de Compostela.

This growth has come with a boom in private sector investment, especially in the hospitality sector. In 2005 there were 158 lodgings for pilgrims (known as *albergues*) along the Camino's French Way¹⁵⁴. Just five years later, in 2010, the number jumped to 242, an increase of over 53 percent (Valentin 2017). Another five years later, in 2015, it jumped to 392, an increase of 62 percent.¹⁵⁵ By 2017 this number had climbed another 23 percent, to 481.¹⁵⁶ What is particularly noteworthy is that this growth has been driven by private sector investment and the opening of private *albergues*. Along the Camino, *albergues* can be *municipales* (run by the local authorities), *parroquiales* (run by the local church) or *privado* (run by the private sector). However, there is no tension between the state and church-run incumbents and the new *albergues privados*, as the two offer very different services and cater to different market segments. The state-run *albergues* charge either EUR 5 or 6, depending on the province. The church-run *albergues* often work by donation, so there is no minimum payment. The private *albergues*, however, charge at least EUR 10 for a bunk bed and EUR 20 and up for a private room. This extra cost is justified by the differences in flexibility and services: it is not possible to reserve the state or church-run *albergues*, with beds distributed on a first-come, first-served basis, and so there is no guarantee of finding accommodation. In addition, in these *albergues* there is an early curfew, no place to lock up one's belongings, and if a meal is offered it takes place at one single designated time and with no menu options. In contrast, the private *albergues* offer reservations, more flexible opening hours, internet

¹⁵⁴ The Camino is comprised of a network of routes, amongst which the French Way is the most popular and famous, and, in 1993, was the first route to be inscribed on the UNESCO World Heritage list.

¹⁵⁵ Federación Española de Asociaciones de Amigos del Camino de Santiago, 2015, *Informe Campaña Annual 2015*, <http://www.caminosantiago.org/cpperegrino/asociaciones/campa05.asp>

¹⁵⁶ Eroski Consumer, 2017, *Etapas y albergues, Todas las etapas y albergues uno a uno, Camino Francés*, <http://caminodesantiago.consumer.es/albergues/#camino-frances>; All works cited use the same data, the Spanish newspaper Eroski Consumer, to avoid any discrepancies from different sources of data.

access, laundry facilities, and other amenities.¹⁵⁷ These are all examples of market innovations – vis-à-vis the public sector incumbents – that increased the supply of quality lodging available and thus created the market for greater and great arrivals.

The key to this success is that the government has allowed the entry of new private sector actors, thereby driving supply of quality accommodation and providing the capacity to welcome greater and greater number of pilgrims. These higher quality hospitality services co-exist side-by-side with traditional government and church-provided services. The *New York Times*, reporting in an article on this renaissance entitled “Lifting the Soul, and the Spanish Economy, Too”, found that “dozens of private establishments have started to compete with the network of government-owned hostels”.¹⁵⁸ There is no fear, however, of the private sector displacing the monastic activities, or vice-versa, because they cater to different market segments. Visitors can be categorized according to their motivation for traveling, purely religious on one end, and purely touristic on the other, with a mixed motivation in between.

Yet it is essential to provide a level playing field between providers of services at either end of the continuum. Otherwise, this impedes the entry by new private investors to provide quality hospitality services and thus promote pilgrimage-driven economic growth. The importance of providing a level playing field between private sector investors and religious incumbents was underscored by a very recent ruling by the Court of Justice of the European Union regarding the Spanish Catholic Church and tax exemptions.¹⁵⁹ In June 2017 the Court found that there should be no unlawful State aid in the form of tax exemptions “if and to the extent to which the activities carried on in the premises in question are economic activities” as opposed to religious in nature.¹⁶⁰ In other words, private and religious economic activities should compete on a level playing field.

Studies have attempted to quantify the economic costs of lack of private sector investment in pilgrimage services. For instance, studies have looked at Zion Christian Church (ZCC) in Africa, one of the largest and most significant religious movements in Southern Africa.¹⁶¹ ZCC members undertake an annual four-day pilgrimage over Easter to Moria City in the Limpopo Province of **South Africa**, drawing well over a million people each year.¹⁶² Questionnaires aimed to determine the spending habits of pilgrims have been used to estimate the economic costs and benefits of the largest single event in South Africa on the local economy, especially looking at items such as accommodation, food, transport and souvenirs. On the one

¹⁵⁷ Brierly, John, 2017, *A Pilgrim's Guide to the Camino de Santiago: St. Jean - Roncesvalles – Santiago*. Camino Guides. Findhorn Press, <http://www.caminoguides.com/>

¹⁵⁸ NYT (New York Times), 2014, *Lifting the Soul, and the Spanish Economy, Too*, August 31, 2014. By Raphael Minder. <https://nyti.ms/1u4Ohyx>

¹⁵⁹ The Concordat between the Spanish State and the Holy See of 1979 includes an economic agreement in which “The Holy See, the Episcopal Conference, the Diocese, Parishes and other territorial Districts, religious Orders and Congregations and religious Institutions and their Provincials and their convents and monasteries are entitled to ... total and permanent exemption from excise duties, income tax and capital gains taxes.” (Government of Spain (1979) Agreements Between the Spanish State and the Holy See [Selections].” Translation prepared by the Spanish Ministry of Justice. <https://www.religlaw.org/content/religlaw/documents/agrsphs1976.htm>, Section IV, 1, B)

¹⁶⁰ CJEU (Court of Justice of the European Union), 2017, “*Tax exemptions for the Catholic Church in Spain may constitute unlawful State aid if and to the extent to which they are granted for economic activities.*” Press Release No 71/17. Luxembourg, 27 June 2017. <https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-06/cp170071en.pdf>

¹⁶¹ (Muller 2013 in Kruger, M., and Saayman, M., 2016, *Understanding the Zion Christian Church (ZCC) Pilgrims*, *Int. J. Tourism Res.*, 18: 27–38., link: 10.1002/jtr.2030.

¹⁶² Saayman, A., Saayman, M. and Gyeke A., 2014, *Perspectives on the Regional Economic Value of a Pilgrimage.*, *Int. J. Tourism Res.*, 16: 407–414. doi:10.1002/jtr.1936

hand, the church provides lodging in tents and sells a number of items directly, such as blessed tea and coffee, holy water, and other products.¹⁶³ While the local economy benefits from the ZCC pilgrimage¹⁶⁴, church rules forbid pilgrims to visit other tourist sites or attractions during the pilgrimage (in order to remain focused on spiritual growth), and low-cost services are provided on site by the church.¹⁶⁵ The study looked at total spending and the direct and induced impacts on the local economy, and found that the benefit was quite low, due to the private sector not being able to enter and provide goods and services. To apply this to the Buddhist Circuit context, the lesson is that private sector investment should be able to thrive side-by-side with the monastic economy, if the benefits of Buddhist religious tourism are to accrue widely to the local economy.

Figure 11¹⁶⁶. Aerial view of the ZCC pilgrims to Moria during Easter.



In contrast, the Hajj pilgrimage to Saudi Arabia shows how the private sector can play a key role in growing a market and thus contributing to the economic growth of a country. While maintaining management of the key pilgrimage sites, the Saudi state has allowed the entry of the private sector to provide hospitality services, and manages to combine religious management side-by-side with modern private sector services. As a result, the gamut of Western hotel chains is present in Mecca, along with national private chains, and the local private sector provides most pilgrim services.¹⁶⁷ Today, revenue from the Hajj is

¹⁶³ Anderson 2000 in *Ibid.*

¹⁶⁴ According to the 800 completed questionnaires, the benefits accrued as follows: trade and accommodation (43.9%), transport and communication (37.1%), financial and business services (11.8%), manufacturing (2.1%) Saayman, Saayman, and Gyeke (2014), *supra* note 162

¹⁶⁵ Saayman, Saayman, and Gyeke (2014), *supra* note 162

¹⁶⁶ Kruger, M., and Saayman, M., 2016, *Understanding the Zion Christian Church (ZCC) Pilgrims. Int. J. Tourism Res.*, 18: 27–38., link: 10.1002/jtr.2030, p. 28

¹⁶⁷ To illustrate, the eponymous Saudi Binladin Group, a private multinational conglomerate, has been providing construction and management services for religious sites across Saudi Arabia since almost the founding of the Kingdom. In 1950 King Abdul Aziz awarded

estimated to make up 3 percent of GDP, but the state aims to increase this figure. Some travelers stay in religious accommodation by sleeping at the Grand Mosque, but the majority choose to rest in the ‘tent city’ of Mina where the average cost is USD 500 (although it can go up to several thousand dollars per night for a luxury tent).¹⁶⁸

Saudi Arabia was estimated to have made as much as USD 8.5 billion from the 2016 Hajj, with the average pilgrim spending USD 4,500, although this can reach USD 12,000 to fulfill the religious duty.¹⁶⁹ Pilgrims either purchase travel packages or purchase accommodation, airfare and transportation separately, and once *in situ* pay for sacrificial animals, gifts, and communication.¹⁷⁰ This revenue benefits the local economy, with private sector actors providing most of these goods and services. Just the gifts have been estimated at costing annually USD 500 million.¹⁷¹ In addition to this seasonal revenue, real estate values have skyrocketed, benefiting the owners of land: thirty years ago one square meter of land cost USD 3; today, the same land can reach USD 22,000, which corresponds to an annual growth rate of over 24,000 percent.¹⁷² While the Hajj presents notable differences to the Buddhist Circuit – being a religious requirement and only taking place during a specific time of the year – it shows the level of expenditure from pilgrims and powerful economic impact if the state creates the space for the private sector to provide quality goods and services.

The South Korean Temple stay program is an example of how religious tourism can be a means to diversify and increase tourism demand and thereby foster local development without interfering with the development of other private accommodation facilities. A Temple stay in South Korea is a cultural experience program designed to promote tourists’ understanding of Buddhism in Korea with the aim to enhance attractiveness and competitiveness of local territories as a cultural tourism centers¹⁷³. Activities offered include meditation, tea ceremonies, Buddhist meals, communicative tours, hikes to nearby hermitages as well as attending Buddhist ceremonial services. The South Korean government has been actively promoting Temple stay programs to differentiate the tourism offer by creating a Tourism Development Fund. In 2007, more than KRW 1.5 billion (USD 1.3 million) was provided to develop infrastructure (roads, toilets) as well as publicize promotional materials such as guide books, magazines, videos, trainings programs¹⁷⁴. Overall, the South Korean government has financed the Temple stay program with more than KRW 248.9 billion (USD 219.3 million) within a ten-year period. With the provision of public funds, technology and human resources, the program seeks to enhance the attractiveness of sites and thereby create benefits for local territories. The OECD sees the program as having a “huge potential to be a competitive tourism product as a cultural resource”¹⁷⁵. Attracting

them the contract for the extension of the Prophet’s Mosque in Madinah, followed in 1955 by a contract for the extension of the holy Mosque in Makkah, the first for the thousand years Saudi Binladin Group, 2017, *Welcome to SBG*, <http://www.sbg.com.sa/>.

¹⁶⁸ Sequeira, J., 2016, “How Does the Hajj Impact the Saudi Economy?”. Law Street Media. September 16, 2016.

<https://lawstreetmedia.com/blogs/world-blogs/commercializing-pilgrimage-hajj-impacts-saudi-economy/>

¹⁶⁹ *Ibid.*

¹⁷⁰ Pinter, A. R., 2014, *Religious tourism in Mecca, Saudi Arabia*, Budapest Business School, College of Commerce, Catering and Tourism. Dissertation for Bachelors of Arts in Tourism and Hotel Management.

<http://dolgozattar.repozitorium.bgf.hu/1065/1/Szakdolgozat%20Pint%C3%A9r%20Anna%20Rita.pdf>, p. 45

¹⁷¹ SME Times News Bureau, in *Ibid.*, p. 46

¹⁷² Sarfraz, 2013, in *Ibid.*, p. 47

¹⁷³ OECD, 2008, Temple Stay Programme, Republic of Korea, in *The Impact of Culture on Tourism*, OECD Publishing, Paris.

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*, p. 118

visitors and creating a positive image for the Korean tourism destination as an example of sustainable tourism.

In South Korea, religious lodging facilities prosper alongside secular facilities, both modern and traditional.

The South Korean Government's strategy to promote Korean Temple stays has the aim to create a competitive tourism product that diversifies tourism demand, but also creates spillovers for other sectors. Temple stay lodging facilities are not seen as a competitor to modern hotel facilities, but as a complement that are aimed at generally making Korea more attractive as a tourism destination, increase the number of visitors and thereby promote the growth of both segments. The success of this strategy is supported by recent growth rates: Korean Temple stay lodging has seen strong growth. Whereas in 2008 there were around 80,000 visitors experiencing a Temple stay programs, this has increased to almost 190,000 visitors, with an annual average growth rate of 9%¹⁷⁶. At the same time, the number of tourist hotels has increased by 21%, side-by-side with the emergence of hostels (from 0 to 75) and traditional Korean Hanok lodgings¹⁷⁷ (0 to 668) as alternatives¹⁷⁸. Generally, the number of tourists in that time has almost doubled from 7.8 million in 2009 to 14.2 million in 2014¹⁷⁹. This shows that when trying to attract different consumer segments, religious accommodation can coexist with both modern and more traditional forms of accommodation.

A level playing field ensures competition and fosters private-sector development. Initially, the South Korean government's plan had been to only indirectly benefit from an increased number of tourists experiencing Temple stay programs. The focus was on local development caused by tourists spending on related services, rather than tax income, because for almost 70 years, religious institutions had been exempt from any taxes. Payments to the temples had been classified as non-taxable "honorarium", not as taxable income¹⁸⁰. Yet, in 2015 a law was passed which, with effect from January 2018, will reform the South Korean tax code in that it abolishes the exemption, introducing taxes for religious institutions: income taxes for the clergy, property taxes, taxes on gifts and "illegal benefits", as well as business taxes if the religious institution were to engage in commercial activities¹⁸¹. Having been debated for more than 50 years, the reform was made because some churches were seen to have operated like businesses, investing in property and media companies, with rising wealth upsetting public opinion¹⁸². Notably, both the Catholic Church and Buddhist institutions including the Jogye Order of Korean Buddhism showed support for the reform, with other religious groups heavily contesting.¹⁸³ The Korean example shows that it is advisable to create a level playing field between private enterprises and religious organizations if the latter operate as profit-making enterprises. Otherwise, the tax exemption distorts competition by creating a competitive advantage for religious organizations, which can have

¹⁷⁶ UNWTO Publications, 2016, *Case Studies of Traditional Cultural Accommodations in the Republic of Korea, Japan and China*, Published by the World Tourism Organization (UNWTO) and Korea Culture & Tourism Institute (KCTI), <http://www.e-unwto.org/doi/book/10.18111/9789284417407>, p. 34

¹⁷⁷ Hanok lodgings are Korean traditional style houses.

¹⁷⁸ UNWTO Publications, *supra* note 176, p. 22

¹⁷⁹ Ministry of Culture, Sports and Tourism, in *Ibid.*, p. 25

¹⁸⁰ Asia News, 12th of March 2015, *S Korean parliament to require religions to pay income tax*, <http://www.asianews.it/news-en/S-Korean-parliament-to-require-religions-to-pay-income-tax-36050.html>

¹⁸¹ *Ibid.*

¹⁸² The Straits Times, 4th of December 2015, *South Korean clergy to become taxpayers*, <http://www.straitstimes.com/asia/south-korean-clergy-to-become-taxpayers>

¹⁸³ *Ibid.*

negative effects even though the customer segments targeted by the different forms of accommodation are different. Unequal application/enforcement of laws and regulations can have a similar market distorting impact.

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Annex 1 – Key Policies and Laws Reviewed (not exhaustive)

Sr. No.	STATUTES
1.	Laws related to Land and Property
(i)	The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (No. 30 of 2013)
(ii)	The Indian Stamp Act, 1899 (No. 2 of 1899)
(iii)	The Uttar Pradesh Stamp Act, 2008 (U.P. Act No. 17 of 2008)
(iv)	The Registration Act, 1908 (No. 16 of 1908)
(v)	The Transfer of Property Act, 1882 (No. 4 of 1882)
(vi)	The Madhya Pradesh (Rajya) Bhumi Vikas Nigam Adhiniyam, 1976 (M.P. Act No. 2 of 1976)
(vii)	The Eviction of Unauthorized Occupants) Act, 1971 (No. 40 of 1971)
2.	Laws related to Employment and Labour
(i)	The Employees’ State Insurance Act, 1948 (No. 34 of 1948)
(ii)	The Equal Remuneration Act, 1976 (No. 25 of 1976)
(iii)	The Trade Union Act, 1926 (No. 16 of 1926)
(iv)	The Industrial Disputes Act, 1947 (No. 14 of 1947)
(v)	The Employees Provident Fund and Miscellaneous Provisions Act, 1952 (No. 19 of 1952)
(vi)	The Contract Labour (Abolition and Control) Act, 1970 (No. 37 of 1970)
(vii)	The Employee’s Compensation Act, 1923 (No. 8 of 1923)
(viii)	The Payment of Wages Act, 1936 (No. 4 of 1936)
(ix)	The Minimum Wages Act, 1948 (No. 11 of 1948)
(x)	The Child Labour (Prohibition and Regulation) Act, 1986 (No. 61 of 1986)
(xi)	The Payment of Gratuity Act, 1972 (No. 39 of 1972)
(xii)	The Employer’s Liability Act, 1938 (No. 24 of 1938)
(xiii)	The Apprentices Act, 1961 (No. 52 of 1961)
(xiv)	The Building and Other Construction Workers’ (Regulation of Employment and Conditions of Service) Act, 1966 (No. 27 of 1966)
(xv)	The Employees’ Provident Fund Scheme, 1952
(xvi)	The Employees’ Pension Scheme, 1995
(xvii)	The Employees’ Provident Funds Appellate Tribunal (Procedure) Rules, 1997
(xviii)	The Employees’ State Insurance (Central) Rules, 1950
(xix)	The Employees’ State Insurance (General) Rules, 1950
(xx)	The Employees’ State Insurance Corporation (General Provident Fund) Rules, 1995
(xxi)	The Employers’ Liability Act, 1938 (No. 24 of 1938)

- (xxii) The Equal Remuneration Rules, 1976
- (xxiii) The Central Advisory Committee on Equal Remuneration Rules, 1991
- (xxiv) The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishment) Act, 1988 (No. 51 of 1988)

3. Laws governing Foreign Investment

- (i) The Foreign Trade (Development and Regulation) Act, 1992 (No. 22 of 1992)
- (ii) The Foreign Exchange Management Act, 1999 (No. 42 of 1999)
- (iii) The Madhya Pradesh Investment Facilitation Act, 2008 (No.21 of 2008)
- (iv) The Foreign Exchange (Authentication of Documentation) Rules, 2000
- (v) The Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000
- (vi) The Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000
- (vii) The Foreign Exchange Management (Export and Import of Currency) Regulations, 2000
- (viii) The Foreign Exchange Management (Export of Goods and Services) Regulations, 2000
- (ix) The Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000
- (x) The Foreign Exchange Management (Investment in Firm or Proprietary Concern in India) Regulations, 2000
- (xi) The Foreign Exchange Management [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003

4. Laws related to Taxation

- (i) The Income Tax Act, 1961 (No. 43 of 1961)
- (ii) The Customs Act, 1962 (No. 52 of 1962)
- (iii) The Central Goods and Services Tax Act, 2017 (No. 12 of 2017)

5. Laws related to Accommodation

- (i) The Uttar Pradesh (Regulation of Building Operations) Act, 1958 (U.P Act No. 34 of 1958)
- (ii) The Madhya Pradesh Shop & Establishment Act, 1958 (M.P Act No. 25 of 1958)
- (iii) The Uttar Pradesh Dookan aur Vanjiya Adhishthan Adhiniyam, 1962 (U.P Act No. 26 Of 1962)
- (iv) The Regulation of Building Operations Act, 1958 (No. 34 of 1958)

- (v) The National Building Code of India, 2016
- (vi) The Uttar Pradesh State Industrial Development Area Building Regulations, 2004
- (vii) Uttar Pradesh Urban planning and Development Act, 1973 (U.P. No. 11 of 1973)

6. Laws related to Environment and Sustainable Development

- (i) The Environment (Protection) Act, 1986 (No. 29 of 1986)
- (ii) The Air (Prevention and Control of Pollution) Act, 1981 (No. 14 of 1981)
- (iii) The Water (Prevention and Control of Pollution) Act, 1974 (No. 6 of 1974)
- (iv) The Air (Prevention & Control of Pollution) Rules, 1982
- (v) The Bio-Medical Waste (Management and Handling) Rules, 1998
- (vi) The Noise Pollution (Regulation and Control) Rules, 2000
- (vii) The E-waste (Management and Handling) Rules, 2011

7. Laws related to Sites, Monuments, and Protected Areas

- (i) The Ancient Monuments Preservation Act, 1904 (No. 4 of 1904)
- (ii) The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (No. 24 of 1958)

8. Laws related to Transport

- (i) The Motor Transport Workers Act, 1961 (No. 27 of 1961)
- (ii) The Motor Vehicle Act, 1988 (No. 59 of 1988)
- (iii) The Uttar Pradesh Motor Vehicles Taxation Act, 1997 (U.P Act No. 21 of 1997)
- (iv) The National Highways Authority of India Act, 1988. (No. 68 of 1988)
- (v) The Road Transport Corporations Act, 1950 (No. 64 of 1950)
- (vi) The Carriage by Road, Act 2007 (No. 41 of 2007)

9. Laws related to Connectivity

- (i) The Aircraft Rules, 1937
- (ii) The Aircraft (Public Health) Rules, 1954
- (iii) The Carriage by Air Act, 1972 (No. 69 of 1972)
- (iv) The Railways Act, 1989 (No. 24 of 1989)

10. Laws related to Food and Hygiene

- (i) The Food Safety and Standards Act, 2006 (No. 34 of 2006)

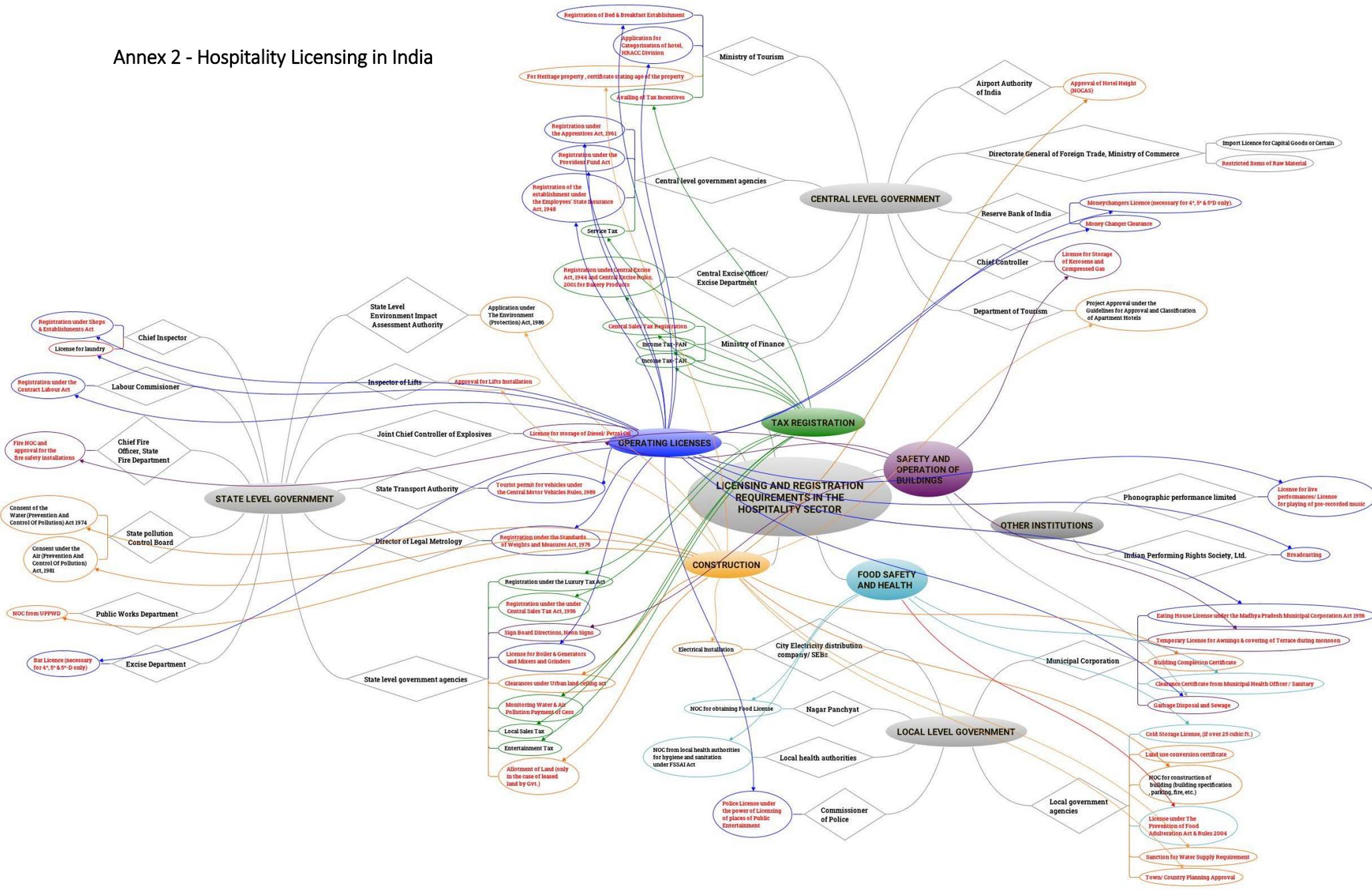
11. Laws related to Sightseeing Services

- (i) The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (as amended in 2010) (No. 10 of 2010)

12. Other Applicable Laws

- (i) The Companies Act, 1956 (as amended in 2013) (No. 18 of 2013)
- (ii) The Competition Act, 2002 (No. 12 of 2002)
- (iii) The Copyright Act, 1957 (No. 14 of 1957)
- (iv) The Information Technology Act, 2000 (as amended in 2008) (No. 21 of 2000)
- (v) The Passports Act, 1967 (No. 15 of 1967)
- (vi) The Registration of Foreigners' Act, 1939 (No. 16 of 1939)
- (vii) The Foreigners' Act, 1946 (No. 31 of 1946)
- (viii) The Passport (Entry into India) Act, 1920 (No. 34 of 1920)
- (ix) The Uttar Pradesh Janhit Guarantee Act, 2011 (No. 3 of 2011)
- (x) The Religious Endowments Act, 1863 (No. 20 of 1863)
- (xi) The Foreign Contribution Regulation Act, 1976 (No. 49 of 1976)
- (xii) The Himachal Pradesh Tourism Development and Registration Act, 2002 (H.P Act no. 15 of 2002)
- (xiii) The Arbitration and Conciliation Act, 1996 (No. 26 of 1996)
- (xiv) The Bureau of Indian Standards Rules, 1987
- (xv) The Charitable and Religious Trusts Act, 1920 (No. 14 of 1920)
- (xvi) The Consumer Protection Act, 1986 (No. 68 of 1986)
- (xvii) The Consumer Protection Rules, 1986
- (xviii) The Consumer Protection Regulations, 2005
- (xix) The Indian Contract Act, 1872 (No. 9 of 1872)
- (xx) The International Copyright Order, 1999
- (xxi) The Designs Act, 2000 (No. 16 of 2000)
- (xxii) The Designs Act, 2001
- (xxiii) The Information Technology (Other Standard) Rules, 2003
- (xxiv) The Information Technology (Qualification and Experience of Adjudicating Officers and Manner of Holding Enquiry) Rules, 2003
- (xxv) The Information Technology (Intermediaries Guidelines) Rules, 2011
- (xxvi) The Legal Practitioners Act, 1879 (No. 18 of 1879)
- (xxvii) The Legal Services Authorities Act, 1987 (No. 39 of 1987)
- (xxviii) The Passport (Entry into India) Act, 1920 (No. 34 of 1920)

Annex 2 - Hospitality Licensing in India



Annex 3 - Issue Areas and Recommendations

Sr. No.	Issue	Recommendation	Type of action (legal amendment, issue clarification/guidelines/circulars, others.)	Main agency counterpart	Time frame needed	Priority
Constitution						
1.	Tourism has not been placed in any of the lists in the Seventh Schedule, leading to a multiplicity of laws being passed by Parliament and the State Governments. There currently exists a confusing regulatory web on tourism.	For tourism to develop symmetrically, bringing it within the Concurrent List should be considered.	Amendment of Constitution to include tourism in the Concurrent list.	Parliament	One year	High
Tax						
2.	Particularly high rates for AC/5 star hotels: 18-28% . This is substantially higher than other Asian countries (Singapore -7%; Japan-8%)	Re-visit prescribed rates	Amendment in the GST Act	GST Council, Parliament	6 months	Medium
3.	Service providers need to register in each State they provide services in.	GST Council should consider doing away with multiple registrations and facilitate a single-point registration.	Notification	GST Council	6 months	Medium
4.	FY 2017-2018 the effective rate of Corporate Income Tax for domestic companies is 25.75% - 28.84 (depending on the income of the Companies) whereas for foreign companies it is as high as 43.26%.	Amend legislation to ensure non-discriminatory income taxation rates for foreign companies	Amendment to the Income Tax Act	Parliament	6 months	High
5.	Section 35AD of the Income Tax Act 1961, provides for 100 percent investment linked deduction on any capital expenditure incurred by companies engaged in specified business. But	Make the benefit accessible to small businesses.	Department Rules should be issued in this regard.	Central Board of Direct Taxes, Department of Revenue	6 months	High

	this does not apply to smaller category of hotels/ guesthouses etc.					
Land						
6.	Land acquisition and conversion of use processes (also see issue 11 below) are time consuming. A rough summation of timelines indicated in sections 4 to 9 of the Land Acquisition, Rehabilitation and Resettlement Act (LARRA) indicates an average time of 48 to 60 months from inception of land acquisition process till the payment of the award. Private sector consultations reported that it can take upto 4-5 years before which construction can begin.	The process for approving the acquisition/conversion of use should be streamlined. / In the shorter term, issuance of guidelines detailing the entire land acquisition and conversion of use process to bring about greater transparency in the process.	Amendment / Guidelines	Department of Land Resources	6 months	Medium
7.	Section 101 of the LARRA provides for the return of unutilized acquired land back to their owner/(s) or legal heirs. It further provides for such unutilized land to be acquired by the Land Bank of the respective State Government - this gives arbitrary powers in the State Government to acquire a piece of unutilized land.	Consider implementing a proper mechanism for inclusion of acquired property in the State's Land Bank keeping in view the rights/interests of the original owners and their legal heirs.	Notification	Department of Land Resources	1 year	High
8.	Land title search procedure is complex – requiring more details than available to even conduct the search (MP). In addition, registration authorities do not issue non-encumbrance certificate.	Rationalization and digitization of search process and mandatory issuance of non- encumbrance certificate after the process	Government Order/ Rules should be notified	Department of Land Revenue, Department of Information Technology of State Governments, State Legislature	3 Months	High

9.	Lack of clarity on territorial jurisdiction for land bordering 2 states – leading to unclear and sometimes double registration requirements	The State Government can form District Level Committees comprising District Commissioner, officials of the Revenue, Public Works, Legal, Town Planning Departments for reviewing overlapping territorial jurisdictions. The rules in States need to be harmonized in consonance with the Registration Act. Land parcels need to be clearly demarcated to identify the right territorial jurisdiction.	Circulars	District Commissioner , Department of Registration and Department of Revenue, State Government	3 Months	High
10.	Inconsistent classification of land by State government and title/revenue records	The State Governments of UP and MP should move towards digitization of land records. Determine exact border demarcations rather than <i>ad hoc</i> classification done by local government authorities (Patwari/Tehsildar).	Bill should be passed for digitization of land records	State Legislature	One Year	High
11.	Conversion of land use process is time consuming and unpredictable	There should be a time frame within which the Sub Divisional Officer should be required to grant permission. In case of refusal, reasons for the same should be provided in writing. Guidelines should be framed to lay down steps, criterion, time frame within which the Sub Divisional Officer should grant permission. This will limit discretionary authority.	Guidelines	Revenue Department, State Government	6 Months	High

<i>Tour Guide Services</i>						
12.	Guides operating in Centrally Protected Monuments need to obtain 2 licenses – state/regional and ASI licenses from the same authority (MOT)	Simplify and consolidate the licensing regime	Notification/Circular	Ministry of Tourism and ASI	3 months	Medium
13.	Absence of Licensing Guidelines for Local Level Tour Guides	Approval process should be introduced for local guides to prevent sub-optimal provision of guide services and allow more guides with knowledge of Indian/vernacular languages to cater to the domestic market.	Guidelines should be issued by the Ministry of Tourism for establishing a license procedure for local guides.	Ministry of Tourism and Department of Tourism of the concerned State Government.	3 months	Medium
<i>Tour Operating Services</i>						
14.	Guidelines for Recognition of an Approved Inbound Tour Operator issued by Ministry of Tourism provide for voluntary registration of tour operators	Revise Guidelines of the Ministry of Tourism to make approval of tour operators mandatory	Guidelines	Ministry of Tourism	3 months	High
15.	The tour operating services sector is largely unorganized, not governed by a specific statute or regulatory authority. Previous attempt to pass the Tour Operators and Travel Agents (Regulation) Bill, 2010 were unsuccessful.	Enact a legislation for the regulation of tour operators and all activities connected thereto; or reintroduce 'The Tour Operators and Travel Agents (Regulation) Bill, 2010.	Legislation	Parliament	1 year	High
<i>Accommodation and Meal Serving Services</i>						
16.	Guidelines for Approval of Guest Houses (2009) and for Project Approval and Hotel Classification (2017) do not prescribe any binding timelines.	A time-frame should be provided within which the Hotel and Restaurant Approval and Classification Committee must approve or in the absence of an	Revised Guidelines to be issued by the Ministry of Tourism to provide a concrete time-frame and also	Ministry of Tourism	3 months	Medium

		express written disapproval, should be deemed to be accepted.	incorporate the deemed acceptance provision.			
17.	The UP/MP Shops and Establishment Acts do not mandate that the Inspector must register an establishment nor do they lay down any particular guidelines on the basis of which the inspector can reject the registration.	Guidelines should be laid down which stipulate the conditions under which application for registration can be rejected.	Guidelines	State Government	6-9 months	Medium
18.	The UP Regulation of Building Operations Act, 1958 does not prescribe the conditions based on which the permission can be granted (to develop particular areas). Further, it does not allow for appeal of decisions of the 'Controlling Authority' in Courts (Section 15(1)). The UP Planning and Development Act, 1973 also does not allow for judicial review of decisions by Vice Chairman (Section 41(4)).	Rules specifying the conditions should be explicitly laid down. Amendment of Section 15(1) of the Act. Amendment of Section 41(4) of the Act	Rules Amendment Amendment	State Government	6 months 1 year	Medium
19.	To run a hotel about 61 licenses/approvals are needed.	Process streamlining and a single window system can greatly simplify the investment climate for the hospitality sector.	In the short term, publish manual on regulatory requirements. In the medium term, streamline procedures and improve single window system.	Ministry of Tourism/State Authorities	6 months -1 year	High
20.	The Food Safety and Standards Act of 2006 consolidated laws related to food and established the Food Safety and Standards Authority of India . Though the Act is supposed to create a unified food law, other mandatory certifications need to be taken from different departments with respect to different food products. This defeats the purpose of having	A single license/certification covering food safety should be issued by the Designated Officer.	Notification, Circular	Chairman of FSSAI	1 year	High

	FSSAI function as a focal point for quality control of food items					
21.	Underutilization of funds leading to poor infrastructure of labs [Department of Health and Family Welfare noted that there has been a “consistent trend” of underutilization of funds in 2014-15, 2015-16 and 2016-17 that support the FSSAI. This underutilization of funds often leads to outdated laboratories and untrained staff.]	Funds should be used effectively by making advance plans for developing the Food safety sector.	Departmental Circulars should be issued for proper allocation of funds on regular basis and submitting of reports regarding the utilization.	FSSAI	3 months	Medium
22.	Lack of implementation and coordination – There is a low number of highly trained food safety inspectors which impacts the timely disposal of applications. The administrative ministry for the implementation of FSSAI is the Ministry of Health and Family Welfare and the involvement/coordination with the Ministry of Tourism is negligible.	Increase the number of trained food safety inspectors. Consultations indicated lack of transparency in allotting of licenses. Making it mandatory for officers to publish the reasons for rejection of the license online can help address these challenges. Further, proper guidelines need to be laid down requiring laboratories to follow standard procedures and display the reports of testing on their official website. Regular monitoring of up-gradation of the laboratories and staff.	Office memorandum	Food safety Commissioner , FSSAI, State Governments	3 months	High
Transportation						
23.	Cap on seating capacity for issuing all India tourist permit under the Motor Vehicles (All India Permit for Tourist Transport Operators) Rules, 1993	An all India permit or national permit for the buses with seating capacity of more than 39/ Long haul buses. ¹⁸⁴	Amendment in the Act to change the arbitrary cap.	Parliament	One year	High

¹⁸⁴ The 36th Meeting of the Transport Development Council acted upon the issue of National Level Permit but was met with resistance by various State Governments.

	An All India Permit for Tourist Transport Operators is issued only in respect of vehicles with a seating capacity of not more than 39 seats, excluding the driver and the conductor. Such a cap excludes most tourist vehicles from its ambit.					
24.	Under the Uttar Pradesh Motor Vehicle (Fourteenth Amendment) Rules of 2013 radio taxi operators (which have gained a lot of popularity) are required to have a minimum 10 brand new cars to start service in the state.	The Limit of having 10 brand new cars should be relaxed to 5 or if kept at ten, 5 cars should be allowed which are not older than 5 years at the time of applying for the permit.	Notification amending the requirement.	Transport department of Uttar Pradesh	6 months	Medium
25.	Rule 116 A of the Madhya Pradesh Motor Vehicle Rules, 1994, prescribes different sets of rules (on number of passengers allowed) for different routes (ordinary and village), which practically impacts transport businesses.	Section 116-A restriction should be dispensed off for the Buddhist circuit sites, in order to increase the capacity as well as the frequency of the vehicles.	Notification/Circular to amend the Section	Department of Transport of Madhya Pradesh	3 months	High
26.	Flying Slots under Regional Connectivity Scheme (RCS) are given under a bidding process. However, the bidder has to start operations within 6 months of the date of winning the bid- this is difficult since on average it takes more than 6 months to receive all the permits to begin operations.	There should be a proper procedure with a fixed time frame for allotting of permits – to allow starting of operation by the Airliner within 6 months. Preference should be given to airlines connecting Buddhist Circuit in allotting slots.	Notification/Circular	DGCA	1 year	High
27.	Per the Standards of Service documents of DGCA, an application for Aircraft Operation Certificate should be disposed within a period of 6 months after obtaining of No Objection Certificate from Ministry of Civil Aviation. However, there are no timelines for grant of this NOC – which ultimately delays grant of AOCs (which ultimately impacts ability to meet the RCS 6 months condition- see above).	A single window certification process to keep the time frame to 6 months for issuing of AOC.	Notification/Circular amending Rule 134 and Schedule XI of the Aircraft Rules 1937, CAR Section 3 Series C Part II/ IV/ VIII and CAP 3100	DGCA	1 year	High

28.	Inadequate redressal mechanism for customers under the Carriage by Air Act, 1972 and AIR transport Circular 01 of 2014, CAR I for loss of baggage	There should be a time-bound redressal of complaints against the Airlines (incl for loss of baggage).	Notification/Circular	Ministry of Civil Aviation and Parliament DGCA	6 months	High
29.	The Bhopal airport had got permission to operate international flights five years ago, and in spite of infrastructure there are no international flights yet. This is because of the absence of business/demand. Lack of a comprehensive and integrated State Level Civil Aviation Policy document (in fact State of UP has promulgated a comprehensive State level policy in 2017) as well as absence of visa-on-arrival facility were reported as some factors impacting the less international demand.	The MoCA and the State of MP may promulgate Aviation Policy to help increase the load warrant, in order to attract international aviation players. The MoCA may also consider implementing measures to incentivize airlines to provide international connections from airports that have adequate infrastructure to operate international flights. Based on a cost-benefit analysis, incentives may be considered, to initially attract private investment.	Policy/Circular	Ministry of Civil Aviation, DGCA, Department of Civil Aviation of MP	6-9 months	High
30.	Kushinagar Airport has been approved for more than a decade but its construction has begun just last year (in 2016)	Time-bound manner of construction and operation of the Airport.	Ministry should issue specific instructions by circular for developing the Airport with strict penalties on delay.	Ministry of Civil Aviation and Uttar Pradesh Department of Civil Aviation	6-9 months	High
31.	Absence of Open Sky Policy with ASEAN nations ¹⁸⁵	India should sign an unrestricted Open Sky Policy with ASEAN nations and Nepal, to increase the number of flights from the Buddhist nations,	Signing of Bilateral Agreements with the ASEAN Countries.	Ministry of Civil Aviation and DGCA	6 months	High

¹⁸⁵ An Open sky policy is an agreement between two countries to allow any number of airlines to fly from either country, without any restriction on the number of flights, destinations, seats or price. But, open skies may vary and with the decided restrictions between the flights operated between two countries.

India has an open-sky with the following:

		without any restriction on frequency of flights, season, number of seats and landing points etc.				
32.	Despite issuance of the 2014 memoranda to develop the Sanchi Railway Station as a Multifunctional Complex, there has been less progress. The land around Sanchi station belongs to Rail Land Development Authority – but has not been utilized.	Leasing railway land around Sanchi Railway station to developers by a transparent bidding process; Implementation of the plan to convert the station into Multifunctional Complex.	Orders	RLDA under the Ministry of Railways	12-16 months	Medium
33.	Lack of connectivity (land) to Kushinagar	Public transport services of the UPSRTC should be made available at Padrauna, Ramkola and Gorakhpur railway stations for ensuring seamless connectivity for tourists visiting Kushinagar.	Executive Orders	Principal Secretary, Transport Department Govt of UP.	6 months	High
34.	The MPSRTC was shut down in 2005 and privatized for financial reasons. As a result, private operators are preferring to operate in more profitable routes	The MPSRTC can be revived by sharing the ownership of the corporation with private stakeholders and the government. It could be a Public-Private Partnership model.	Introduction of new Bill on the MPSRTC (PPP model).	State Government	1 year	High

- United States, with No restriction on number of flights seats or destinations
- United Kingdom, with restriction on frequencies, only with respect to flights to and from Mumbai and Delhi
- Limited open-sky with Asean countries, for more than a dozen tourist destinations
- With other countries, India has entered into 109 bilateral agreements which cover capacity, landing points, traffic rights and seasons
- India tried to implement an Open Sky Policy with Nepal; however, the same was thwarted.

<i>Institutional Framework</i>						
35.	Absence of regular meetings, actions and transparency in the functioning of existing tourism institutional coordination mechanism (Inter-Ministerial Coordination Committee, National Tourism Advisory Council)	Publish online the agenda and minutes, revive functioning of existing institutions	Circular	Principle Secretary to Prime Minister	6 months	Medium
36.	Although single window mechanisms for investment have been introduced in both Madhya Pradesh and Uttar Pradesh, it is still cumbersome to set up tourism sector business (UP- Nivesh Mitra Platform; MP – TRIFAC)- largely due to limited enforcement/implementation authority of the institution operating the single window	UP: Greater authority to Udyog Bandhu (which is currently only registered as a society) MP: TRIFAC should be granted more power over the approvals process; clear timelines should be stated	Pass Udyog Bandhu Act and Rules (also making it a Company). Amendment of MPIF Act	State Legislature Ministry of Commerce and Sector of the State Government.	9-12 months	High
37.	UP Janhit Guarantee Act, 2011 makes it mandatory for government departments to provide timely services- it does not include departments directly connected to tourism (broadly covers manufacturing and general delivery of services to citizens). There is also no provision penalizing delay in granting approvals.	Include departments that affect tourism within the ambit of UP JG Act; and penalties.	Amendment in the UP JG Act	UP Commerce Department, State Legislature	6 months	Medium
38.	While the MPIF Rules provide for filing a common application (CAF) form for licenses, but does not provide for a remedy in case of delay in issuing approvals. It is also more catered to manufacturing sectors and not services sectors (and doesn't include timelines for land, labor, tax related processes – all very relevant for tourism services)	Approvals not granted within the stipulated time period will be deemed to have been approved. Revisit CAF, in context of services sectors	Amendment to the MPIF Rules	Ministry of Commerce and Sector of the State Government.	3 months	High

39.	Inadequate promotion activities by UP State Tourism Promotion Institutions (UPSTDC- no rebates to visitors, limited information on website; Tourism Promotion Council)	The state government should revive the TPC and take steps to ensure that it functions properly; UPSTDC should dedicate more resources towards promotion activities after gradually divesting from hotels (under the 20 Years Perspectives Plans for Uttar Pradesh)	Notification should be issued for extending the rebate to tourist visiting the Buddhist Circuit. The UPSTDC website should incorporate a specific section containing information on the Buddhist Circuit.	State Government	6 months	Medium
40.	There is no single, comprehensive law governing religious institutions, particularly aspects relating to their operations as commercial establishments (leading to a thriving monastic economy, which is stifling private sector growth)	A unified law specifically addressing monasteries should be passed, providing for mandatory registration, regulating donations received by religious institutions and setting a cap on the maximum number of guests allowed to stay per month.	Legislation	Parliament	1 year	High
41.	Limited enforcement of existing laws on monasteries- negatively impacting the level playing field between private sector and religious institutions (running commercial enterprises) (e.g. implementation of section 7 of Foreigners Act, 1946- requiring filing of Form C)	The enforcement of existing laws on monasteries should be improved. This could be achieved by increasing the District Collector's financial resources and staff (or by sufficiently empowering another institution)	Notification	State Government	6 months	High