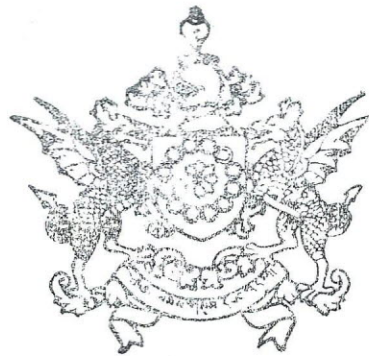


SIKKIM

GOVERNMENT



GAZETTE

EXTRAORDINARY
PUBLISHED BY AUTHORITY

Gangtok Thursday, 11th February, 1999

No. 29

GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK.

No. 10/LD/99

Dated the 10th February, 1999.

NOTIFICATION

The following Act of the Sikkim Legislative Assembly having received the assent of the Governor on 21st day of January, 1999 is hereby published for general information:-

THE SIKKIM REGISTRATION OF TOURIST TRADE ACT, 1998
(ACT NO. 10 OF 1998)

AN
ACT

to provide for registration of persons dealing with tourists and for matters connected therewith.

Be it enacted by the Legislature of Sikkim in the Forty-ninth Year of the Republic of India as follows:-

CHAPTER—I

*Short title, extent
and commencement.*

- (1) This Act may be called the Sikkim Registration of Tourist Trade Act, 1998.
- (2) It extends to the whole of Sikkim.
- (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

Definitions.

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- In this Act unless the context otherwise requires ;
- (a) "black-list" means a list maintained and exhibited by Tourism Department for dealers, hotel-keepers and travel agents who have been black-listed under the provisions of this Act ;
 - (b) "dealer" means a person carrying on in a tourist area the business of selling any notified article, whether wholesale or retail and includes his agent or employee transacting business on his behalf ;
 - (c) "hotel" means any premises, establishment or part or part of premises, including holiday home, resort, restaurants, lodges, dhabas, bar, tent where lodging with or without board or other service is provided for a monetary consideration ;
 - (d) "hotel keeper, means any person who owns or operates a hotel as proprietor and includes a person managing or operating the affair of a hotel for and on behalf of the proprietor ;
 - (e) "malpractice" includes dishonesty, cheating, touting, impersonation, obstruction in allowing free choice for shopping or stay or travel arrangements, charging a price higher than that displayed on the label or remuneration higher than that fixed under this Act, or by any other competent authority, failure to execute an order within the stipulated time or according to the terms agreed.

Explanation— I For the purpose of this clause, labelled prices shall be reasonable prices with stock number recorded on each label of each item as reflected in the stock books of dealer/manufacturer maintained at their place of business which shall be open for inspection by

- (i) "prescribed authority" means the authority notified as such, by the Government provided that different authorities may be notified for different provisions of this Act;
- (j) "tourist" means a person or group of persons including pilgrims visiting the State from any part of India or outside India ;
- (k) "tourist area" means any area notified by the Government in the Official Gazette to be a tourist area for the purpose of this Act;
- (l) "travel agent" means a person engaged in the business of conducting tours and travel, trekking, camping, tour operating or other arrangements for tourist for a monetary consideration and includes a tourist guide, excursion agent, or tour operator or cargo agent.

Explanation — For the purposes of clauses (e) and (l) the expression "travel arrangements" includes—

- (i) arrangements for transportation, sight seeing ;
- (ii) arrangements for lodging with or without board; and
- (iii) rendering other services such as assistance for game, sports or receipt or despatch of personal belonging of a tourist .

CHAPTER—II

REGISTRATION OF DEALERS

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|---|----|---|
| <i>Registration.</i> | 3. | <ul style="list-style-type: none"> (1) Any person intending to carry on business of dealer under this Act, shall, before he commences such business, apply for registration to the prescribed authority in the prescribed manner. (2) Notwithstanding anything contained in sub-section (1) any person already carrying on business of selling any notified article in a tourist area on the date such article is notified under clauses (f) of section 2 shall apply for registration under this Act within five months from the aforesaid date. |
| <i>Certificate of registration.</i> | 4. | The prescribed authority, shall, unless registration is refused under section 5, direct that the name and particulars of the dealer be entered in the register maintained for the purpose and shall issue a certificate of registration to the dealer in the prescribed form within the period of three months from the date of the receipt of the application. |
| <i>Refusal to register.</i> | 5. | <ul style="list-style-type: none"> (1) The prescribed authority may refuse registration of a dealer under this Act if he is convicted of any offence punishable under any law providing for prevention of hoarding, smuggling or profiteering or adulteration of food or drug or offence under chapter XIII and XIV of the Indian Penal Code, 1860 and three years have not elapsed since the expiry of any sentence imposed upon him. (2) No application for registration shall be refused unless, the person applying for registration has been afforded a reasonable opportunity of being heard. |
| <i>Removal of the name from the register.</i> | 6. | <ul style="list-style-type: none"> (1) The prescribed authority may by an order in writing remove the name of a dealer from the register and cancel his certificate of registration on any of the following grounds, namely,— <ul style="list-style-type: none"> (a) if he ceases to be a dealer ; (b) if he is convicted of any offence punishable under Chapter XIII and XIV of the Indian Penal Code, 1860 or under any law providing for the prevention of hoarding, smuggling or profiteering or adulteration of food or drugs or corruption; (c) if he is black-listed by the prescribed authority. (2) Any dealer whose name is removed from the register under sub-section (1) shall forthwith cease to be a dealer. |
| <i>Black-listing of dealers.</i> | 7. | <ul style="list-style-type: none"> (1) The prescribed authority may, on proof of complaint of malpractice or for any other offence committed under this Act, for reasons to be recorded, black-list a dealer, after taking into consideration the nature of malpractice or the gravity of offence for such period as the prescribed authority deem fit. (2) The particulars of a dealer black-listed shall be exhibited at conspicuous places in all tourist areas or spots and notified to all travel, trade and other concerned organisations after the order black-listing him has become final. (3) Notwithstanding action taken under sub-section (1), the dealer shall be liable to be prosecuted under the provisions of law if deemed necessary. |
| <i>Notice of removal and black listing of dealer.</i> | 8. | Before removing the name of a dealer under section 6 or black-listing him under section 7, the prescribed authority shall give notice to the dealer of the ground or grounds on which it is proposed to take action and hold an enquiry in the presence |

CHAPTER — III

REGISTRATION OF HOTELS

- Registration.* 10. (1) Any person intending to operate a hotel in a tourist area shall, before operating apply for registration to the prescribed authority in the prescribed manner.
- (2) Notwithstanding anything contained in sub-section (1), any person already operating/running a hotel in a tourist area on the date of the notification under clause (k) of section 2 is issued, shall apply for registration within three months from the aforesaid date.
- (3) Every application made under sub-section (1) shall be disposed off within a period of one month from the date of receipt of the application failing which the application shall be deemed to have been accepted for registration.

- Certificate of registration.* 11. (1) The prescribed authority shall, unless registration is refused under section 12 direct that the name and the particulars of the hotel and the hotel keeper be entered in the register maintained for the purpose and shall issue a certificate of registration to the hotel keeper in the prescribed form.

- Refusal to register a hotel.* 12. (1) The prescribed authority may refuse registration of a hotel under this Act on any of the following grounds, namely-
- (a) if the hotel keeper does not hold a licence or certificate required to be held by him under any law for the time being in force;
- (b) if the hotel keeper is found to be in unlawful possession or under his control of any explosive substance of a nature likely to endanger life or to cause serious injury to property;

Explanation:- Explosive substance shall be deemed to include any material for making any explosive substance; also any apparatus, machine, implement or material used, or intended to be used or adapted for causing, aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement.

- (c) if the hotel-keeper is convicted of any offence under the Arms Act, 1959, and five years have not been elapsed since the expiry of the sentence imposed upon him;
- (d) if the hotel keeper is convicted of any offence punishable under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988; and five years have not elapsed since the expiry of the sentence imposed upon him;
- (e) If the hotel keeper is convicted of any offence punishable under Immoral Traffic (Prevention) Act, 1956 and five years have not elapsed since the expiry of the sentence imposed upon him;
- (f) if the hote-keeper is convicted of any offence under Chapter XIII and XIV of the Indian Penal Code, 1860 and under any law providing for the prevention of hoarding, smuggling, gambling or profiteering or adulteration of food or drug and three years have not elapsed since the expiry of the sentence imposed upon him;
- (g) if the hotel keeper has been declared an insolvent by a court of competent jurisdiction and has not been discharged;
- (h) if the name of hotel keeper has been removed from the register under any of the clauses (a) to (i) of sub-section (1) of section 13 and six months have elapsed since the date of removal;
- (i) if in the opinion of the prescribed authority, there is any sufficient ground, to be recorded in writing for refusing registration.

2. No application for registration shall be refused unless the person applying for registration has been afforded a reasonable opportunity of being heard.

- Removal of the name from the register.* 13. (1) The prescribed authority may by an order in writing, remove the name of a hotel from the register and cancel its certificate of registration on any of the following grounds, namely:—
- (a) if the hotel-keeper ceases to operate the hotel for a period of one year in the tourist area for which it is registered;
- (b) if any complaint of malpractice is received and proved against a hotel-keeper;
- (c) if the hotel is black-listed under section 14;
- (d) if the hotel-keeper is found to be in unlawful possession or under his control of any explosive substance of a nature likely to endanger life or to cause serious injury

- (e) if the hotel-keeper is convicted of any offence under the Arms Act, 1959 and five years have not elapsed since the expiry of the sentence imposed upon him;
- (f) if the hotel-keeper is convicted of any offence punishable under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988; and five years have not elapsed since the expiry of the sentence imposed upon him;
- (g) if the hotel-keeper is convicted of any offence punishable under the Immoral Traffic (Prevention) Act, 1956 and five years have not elapsed since the expiry of the sentence imposed upon him;
- (h) if the hotel-keeper is convicted of any offence under Chapter XIII and XIV of the Indian Penal Code, 1860 and under any law providing for the prevention of hoarding, smuggling, gambling or profiteering or adulteration of food or drug and three years have not elapsed since the termination of the sentence imposed upon him;
- (i) if the hotel-keeper has been declared an insolvent by a court of competent jurisdiction and has not been discharged.
- (2) Any hotel the name of which is removed from the register under sub-section (1) shall forthwith cease to operate.

Black-listing of hotels.

14. (1) The prescribed authority may on proof of complaint of malpractice or for any other offences committed under this Act, for reasons to be recorded, black-list a hotel after taking into consideration the nature of malpractice or the gravity of offence, for such period as the prescribed authority may deem fit.
- (2) The particulars of a black-listed hotel shall be exhibited at conspicuous places in all tourist areas and notified to all travel, trade and other concerned organisations, foreign missions in India, Indian missions abroad.
- (3) Notwithstanding action taken under sub-section (1), the hotel-keeper shall be liable to be prosecuted under the provisions of law if deemed necessary.
- (4) If the prescribed authority is satisfied that there are sufficient grounds for removal of a hotel from the black-list he may, after recording the reasons, order its removal from such list and issue a fresh certificate of registration on payment of prescribed fees and notify the same for the information of all concerned.

Notice of removal and black-listing of hotel.

15. Before removing the name of a hotel from the register under section 13 or black-listing it under section 14, the prescribed authority shall give a notice to the hotel-keeper of the ground or grounds on which it is proposed to take action and hold an inquiry in the presence of the hotel-keeper giving him a reasonable opportunity of showing cause against it.

Fixation of rates.

16. The prescribed Authority may, in consultation with the hotel keeper by notification in the Official Gazette, fix in respect of each hotel the reasonable maximum rate and the service charges, if any, commensurate with the standard of hotel and quality of food, accommodation and service, which may be charged by the hotel-keeper for board or lodge or for both from the person staying therein or from other customers.

Hotel keeper to display information.

17. Every hotel-keeper shall cause to be displayed at some conspicuous place of the hotel, such information as may be prescribed.

Hotel keeper to present detailed bill.

18. Every hotel-keeper shall render detailed bills to the person residing in the hotel and other customers and shall give receipts in acknowledgment of all payments.

CHAPTER—IV TRAVEL AGENTS

Registration.

19. (1) No person shall carry on the business of a travel agent in a tourist area unless he is registered in accordance with the provisions of this Act.
- (2) Any person intending to act as a travel agent in a tourist area shall, before he commences to act as such, apply for registration to the prescribed authority in the prescribed manner.
- (3) Notwithstanding anything contained in sub-section (2), any person acting as a travel agent in a tourist area on the date a notification under clause (k) of section 2 is issued, shall apply for registration within three months from the aforesaid date.
- (4) Every application made under sub-section (2) shall be disposed off within a period of three months from the date of receipt of the application, failing which

Refusal to Register.

21. (1) The prescribed authority may refuse the registration of a travel agent under the Act on any of the following grounds, namely:-
- (a) If he does not possess any of the prescribed qualifications;
 - (b) if he has been convicted of any offence under chapters, XIII, XIV, XVI and XVII of the Indian Penal Code, 1860 or under any of the provisions of this Act of any offence punishable under any law for the time being in force providing for the prevention of hoarding, smuggling or profiteering or adulteration of food or drugs or corruption and two years have not elapsed since the termination of the sentence imposed upon him;
 - (c) if he has been convicted of any offence punishable under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, and five years have not been elapsed since the termination of sentence imposed upon him;
 - (d) if he has been convicted of any offence punishable under Arms Act, 1959 and five years have not elapsed since the expiry of sentence imposed upon him;
 - (e) if he has been convicted of any offence punishable under Immoral Traffic (Prevention) Act, 1956 and five years have not elapsed since the expiry of sentence imposed upon him;
 - (f) if he has been declared an insolvent by a Court of competent jurisdiction and has not been discharged;
 - (g) if his name has been removed from the register under this Act and one year has not elapsed since the date of removal.
- (2) No application for registration shall be refused unless the person applying for registration has been allowed an opportunity of being heard.

Removal of the name of a travel agent from the Register.

22. (1) The prescribed authority may, by an order in writing, remove the name of a travel agent from the register and cancel his certificate of registration on any of the following grounds, namely:
- (a) if he ceases to act as a travel agent in a tourist area;
 - (b) if he is convicted of any offence under Chapters XIII and XVII of the Indian Penal Code, 1860 or under any of the provisions of this Act or of any offence punishable under any law providing for the prevention of hoarding, smuggling or profiteering or adulteration of food or drugs or corruption;
 - (c) if he is declared an insolvent by a Court of competent jurisdiction and has not been discharged;
 - (d) if any complaint of malpractice is received and proved against him;
 - (e) if he is black-listed by the prescribed authority;
 - (f) if he has been convicted of any offence punishable under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 five years have not elapsed since the expiry of sentence imposed upon him;
 - (g) if he has been convicted of any offence punishable under Arms Act, 1959 and five years have not elapsed since the expiry of sentence imposed upon him;
 - (h) if he has been convicted of any offence punishable under Immoral Traffic Prevention Act, 1956 and five years have not elapsed since the expiry of sentence imposed upon him.
- (2) Any travel agent whose name is removed from the register under sub-section (1) shall forthwith cease to be a travel agent.

Black-listing of travel agents.

23. (1) The prescribed authority may, on proof of any complaint of malpractice or for any other offence committed under this Act, for reasons to be recorded, black-list a travel agent after taking into consideration the nature of malpractice of the gravity of offence, for such period as the prescribed authority deem fit.
- (2) The particulars of a travel agent black-listed shall be exhibited at conspicuous places and notified to all travel, trade and other concerned organisations, foreign missions in India and Indian missions abroad.
- (3) Notwithstanding action taken under sub-section (1) the travel agent shall be liable to be prosecuted under the provisions of law if deemed necessary.
- (4) If the prescribed authority is satisfied that there are sufficient grounds for removal of a travel agent from the black-list, he may, after recording the reasons, order his or its removal from the black-list.

- Fixation of rates.* 25. The prescribed authority, may, by a notification in the Official Gazette, fix reasonable maximum rates which may be charged by a travel agent for the services rendered by him to a person engaging him as such.
- Travel Agent not to demand tips.* 26. No travel agent shall demand any tips, gratuity, presents or commission other than that permissible under this Act from any person engaging him or from any dealer selling any notified article to any person or from any hotel-keeper in whose hotel such person resides or intends to reside.

CHAPTER—V

APPEAL

- Appeal.* 27. (1) Subject to the provisions of sub-section (2) an appeal shall lie from every order of the prescribed authority under this Act to the appellate authority to be appointed by the Government.
- (2) Every such appeal shall be preferred within thirty days from the date of communication of the order:
- Provided that the appellate authority may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing it within the prescribed time limit.
- (3) The appellant shall have a right to appear through a counsel and the prescribed authority may be represented by such officer or person or a counsel as the Government may appoint.
- (4) On receipt of any such appeal, the appellate authority shall after giving the appellant a reasonable opportunity of being heard and after making such enquiry as it deems proper, dispose off the appeal for reasons to be recorded.
- (5) The proceedings before the appellate authority shall be completed within four months of its institution.
- Procedure to be followed by Prescribed Authority.* 28. The prescribed authority shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:-
- (1) Summoning and enforcing attendance of the complainant or the person against whom complaint is made under this Act and witnesses required in connection therewith;
 - (2) Compelling the production of any document;
 - (3) examining witnesses on oath; and
 - (4) may summon and examine suo moto any person whose evidence appears to be material.

Explanation:- For the purpose of enforcing the attendance of witnesses and other persons mentioned above, the local limits of the jurisdiction of the prescribed authority extends to the whole of the State.

CHAPTER—VI

OFFENCES AND PENALTIES

- Penalty for default in registration.* 29. (1) Any person carrying on the business of a dealer, hotel-keeper or travel agent without a proper registration under this Act or in violation of any of the provisions of this Act shall be punishable with a fine which may extend to Rs.5,000/- and if the breach is continuing one with a fine of Rs.200/- for each day.
- (2) The fine imposed under sub-section(1) shall be recovered as if it is a fine recoverable under the provisions of the Code of Criminal Procedure, 1973.
- Explanation.-* A person who has made an application within the prescribed period and is pending disposal shall not be a defaulter for the purposes of this section.
- Penalty for false statement.* 30. If any person required to make a statement under this Act wilfully makes or suppresses a material fact with an intention to mislead the authority, he shall be liable to punishment with simple imprisonment for a term which may extend to six months or with fine not exceeding Rs.1, 000/- or with both.
- Certificate not to be assigned.* 31. Any person who lends, transfers or assigns the certificate of registration issued under this Act, shall be liable to punishment with imprisonment which may extend to six months or with fine not exceeding Rs.5, 000/- or with both.
- Certificate and* 32. (1) Any person registered under this Act, shall, at all times on demand, produce

(2) Any person who refuses on demand to show his certificate or document, or allow it to be read by any of the persons authorised to demand, he shall be liable to punishment with fine not exceeding Rs. 500/-

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| <i>Penalty for malpractice.</i> | 33. | Any dealer, hotel-keeper travel agent or any other person to whom this Act may be made applicable, commits a malpractice or contravenes any other provisions of this Act in the tourist area for which no specific penalty has been provided, shall be liable to punishment with imprisonment for a term which may extend to three months or with fine not exceeding Rs. 1,000/- or with both. |
| <i>Obstructing lawful authorities.</i> | 34. | If any person wilfully obstructs or offers any resistance to, or otherwise interferes in the discharge of the functions of the authority or any officer authorised by him exercising any power, or performing any duties conferred or imposed upon it or him by or in pursuance of this Act or the rules made thereunder, he shall be liable to punishment with imprisonment which may extend to three months or with fine not exceeding Rs. 1,000/- or with both. |
| <i>Institution of proceedings.</i> | 35. | No prosecution shall be instituted against any person for any offence under this Act except on a complaint made by the prescribed authority. |
| <i>Cognizance of offence.</i> | 36. | No Court inferior to that of Judicial Magistrate First Class shall try any offence punishable under this Act. |
| <i>Procedure.</i> | 37. | (1) For the purpose of realisation of fine or imposition of other punishment as set out in this Chapter the procedure as provided in Criminal Procedure Code, 1973 shall be followed.
(2) All complaints shall be filed within one year from the date of offence. |
| <i>Composition of offences.</i> | 38. | The prescribed authority may accept from any person accused of an offence under this Act a sum of money by way of composition for such offence and may out of money so received, compensate the person against whom the offence has been committed to the extent the prescribed authority deems reasonable. |

CHAPTER—VII

MISCELLANEOUS

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| <i>Notification of changes.</i> | 39. | (1) Whenever a business for which a certificate of registration is held by a person devolves by inheritance or otherwise upon any person or undergoes a change in respect of any particular person entered in the register under this Act, such person shall, within sixty days of the date of such devolution or change, notify in writing the fact to the prescribed authority.
(2) The prescribed authority shall make necessary changes in the register maintained for the purpose and in the certificate of registration.
(3) Notwithstanding anything contained in sub-section (2) the prescribed authority may remove from the register the name of the person in whose favour the certificate was issued and cancel the certificate of registration if the successor is not qualified to be registered under this Act. |
| <i>Return of certificate of registration.</i> | 40. | When a certificate of registration is cancelled under this Act, the person holding such certificate shall, within seven days from the date of publication of the order of cancellation in the Official Gazette, return it to the prescribed authority. |
| <i>Duplicate Certificate.</i> | 41. | If a certificate of registration issued under this Act is lost, damaged or destroyed, the prescribed authority shall on an application made on that behalf by the person holding such certificate and on payment of the prescribed fee, issue a duplicate certificate. |
| <i>Certificate of registration to be kept exhibited.</i> | 42. | The certificate of registration shall be exhibited by the person holding it in a conspicuous place at the principal place of his business and if he has no place of business, he shall keep it on his person. |
| <i>Publication of list of persons removed from the register.</i> | 43. | The prescribed authority shall from time to time publish in such manner it deems fit, the names and addresses of the persons and of the hotels whose names have been removed from the register and who have been refused registration under this Act. |
| <i>Power to inspect.</i> | 44. | The prescribed authority or any person authorised by him in this behalf or any other lawful authority may within the tourist area, inspect at all reasonable times, the premises in which a dealer or a travel agent carries on his business or any premises where a hotel is operated and require such dealer, travel agent or a hotel-keeper to produce any document kept in pursuance of this Act or the rules made thereunder |

Powers of the Government to apply the Act to other persons. 46.

The Government may by notification in the Official Gazette direct that all or any of the provisions of this Act or the rules made thereunder shall with such exceptions, adaptations or modifications as may be considered necessary apply to persons doing the business in a tourist area of letting or plying for hire tents, ponies, yaks, sleeping bags, rafting materials and others or to such other persons as may be specified in the notification.

Powers and duties of police in respect of offences and assistance to the prescribed authority. 47.

Every Police Officer shall give immediate information to the prescribed authority of an offence coming to his knowledge which has been committed against this Act or any rule made thereunder and shall assist the prescribed authority in the exercise of his lawful authority.

Indemnity. 48.

No suit, prosecution or other legal proceedings whatsoever shall, lie against the Government or any person in respect of anything which is in good faith done or intended to be done under this Act.

Reservation of power of local authority. 49.

Nothing in this Act shall take away or diminish any of the powers vested in any local authority by or under any law for the time being in force.

Power to make rules. 50.

(1) The Government may, by notification in the Official Gazette, make rules for carrying out the purpose of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for:—

(a) The maintenance of registers, books and forms by a hotel-keeper, dealer or travel agent for conduct of business;

(b) the form of application for registration and certificate of registration;

(c) the fee for registration;

(d) the manner of giving notices under this Act;

(e) classification of hotels and travel agents;

(f) qualifications for registration as travel agents;

(g) manner of publication of the names and addresses of the persons and of the hotels removed from the register or to whom registration has been refused;

(h) manner in which a dealer, a hotel and a travel agent shall be black-listed and the publication of names and addresses of such dealer hotel and travel agent;

(i) the place where the prescribed authority shall hold enquiry under this Act; and

(j) all manners expressly required to be prescribed under this Act.

(3) The rules made under this Act shall be subject to previous publication in the Official Gazette.

Power to remove difficulties. 51.

If any difficulty arises in giving effect to any of the provisions of this Act, the Government may, by order, remove such difficulty: Provided that no such order shall be made after the expiration of a period of two years from the date of commencement of this Act.

By Order of the Governor,

T.D. RINZING,

Secretary, to the Govt. of Sikkim,

Law Department.

Fl. No. 16 (298) LD/99