

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

TOURISM BOARD ACT 2012

TABLE OF CONTENTS

PART 1 PRELIMINARY

- 1 Citation
- 2 Interpretation

PART 2 ESTABLISHMENT, INCORPORATION AND COMPOSITION OF BOARD

- 3 Establishment of Board
- 4 Chairman of Board
- 5 Composition of Board
- 6 Tenure of office of member

PART 3 FUNCTIONS AND POWERS OF BOARD

- 7 Functions of Board
- 8 Powers of Board
- 9 Directions by Minister
- 10 Chief Executive
- 11 Staff of Board
- 12 Ineligibility for employment as officers or employees
- 13 Appointment of committees and delegation of powers
- 14 Immunity from suit

PART 4 FINANCIAL PROVISIONS

- 15 Funds of Board
- 16 Tourism guest fee
- 17 Financial year
- 18 Accounts of Board
- 19 Annual report
- 20 Publication of annual report and accounts
- 21 Regulations
- 22 Commencement

TOURISM BOARD ACT 2012

SCHEDULE

WHEREAS it is expedient to establish a Tourism Board for the purpose of developing and promoting Bermuda as a tourist destination;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

PART 1

PRELIMINARY

Citation

1 This Act may be cited as the Tourism Board Act 2012.

Interpretation

2 In this Act—

“Board” means the Tourism Board established under section 3;

“Chairman” means the Chairman of the Board appointed under section 4;

“Chief Executive” means the Chief Executive of the Board appointed under section 10;

“committee” means a committee appointed by the Board under section 13;

“financial year” means a period of 12 months beginning on 1 April;

“member” means a member of the Board appointed under section 5;

“Minister” means the Minister responsible for tourism.

PART 2

ESTABLISHMENT, INCORPORATION AND COMPOSITION OF BOARD

Establishment of Board

3 (1) There is established for the purposes of this Act a body corporate to be known as the Tourism Board.

(2) The Board has perpetual succession and a common seal with power, subject to the provisions of the Act—

(a) to acquire and dispose of property, both moveable and immovable;

(b) to sue and be sued in its corporate name; and

(c) to perform such other acts as bodies corporate may be law perform.

TOURISM BOARD ACT 2012

Chairman of Board

4 The Minister shall appoint a Chairman of the Board who shall, subject to the provisions of this Act, hold office for such period and on such terms as the Minister may determine.

Composition of Board

5 (1) The Board shall consist of—

- (a) the Chairman;
- (b) eight members appointed by the Minister;
- (c) five members appointed by the Bermuda Hotel Association;
- (d) the Executive Officer of the Chamber of Commerce; and
- (e) the President of the Bermuda Industrial Union.

(2) The following persons shall be ex-officio members of the Board—

- (a) the Director of Tourism;
- (b) the Director of Global Operations;
- (c) the Airport General Manager; and
- (d) the Chief Executive Officer of the Bermuda Hotel Association.

(3) If the Chairman is absent or unable to act, the Minister may appoint any person, whether a member of the Board or not, to act temporarily as Chairman.

(4) An ex-officio member of the Board under subsection (2) may attend meetings of the Board and may assist the Board in its deliberation on any matter, but shall not be counted for the purpose of constituting a quorum and shall have no vote.

(5) The Chairman and members of the Board shall be paid such fees and allowances as the Minister may determine.

(6) The Schedule shall have effect as to terms of appointment, meetings and procedures of the Board.

Tenure of office of member

6 A member of the Board, other than the Chairman, shall, subject to the provisions of this Act, hold office for a period not exceeding three years, but such member shall be eligible for reappointment.

PART 3

FUNCTIONS AND POWERS OF BOARD

Functions of Board

7 (1) The functions of the Board shall be—

- (a) to develop and promote Bermuda as a tourist destination;
- (b) to advise the Government on matters relating to travel and tourism;
- (c) to enhance the travel and tourism sector's contribution to the Bermuda economy;
- (d) to act as an agent for the Government or, with the approval of the Minister, for any person, body or organisation for the transaction of any business connected with any tourism enterprise;
- (e) to engage in, assist in or promote the improvement of facilities for visitors to Bermuda and the development of Bermuda as a tourist destination;
- (f) to secure overseas publicity for the tourist attractions in Bermuda and tourism projects outside Bermuda in which Bermuda has an interest;
- (g) to co-ordinate the activities of persons providing services for visitors to Bermuda; and
- (h) generally to do all such acts, matters and things as are necessary to be carried out for the purposes of this Act.

(2) In addition to the functions mentioned in subsection (1) the Minister may require the Board to undertake other functions related to the functions set out under subsection (1).

(3) The Minister may require the Board generally to carry out any of the functions provided for in subsection (1) or may in a particular case require the Board to carry out any such function.

(4) Subject to this Act and the approval of the Minister, the Board may carry on such activities as appear to the Board to be advantageous, necessary or convenient for it to carry on for or in connection with the discharge of its functions and duties under this Act.

Powers of Board

8 (1) Subject to the other provisions of this Act, the Board shall have power to do anything for the purpose of discharging its functions under this Act or any other written law, or which is incidental or conducive to the discharge of those functions.

(2) Without prejudice to the generality of subsection (1) but subject to this Act, the powers of the Board shall include the power—

- (a) with the approval of the Minister, to acquire, take on lease, hire, hold and enjoy movable and immovable property and to convey, assign, surrender, charge, mortgage, demise, transfer or otherwise dispose of, or deal with, any movable or immovable property belonging to the Board upon such terms as the Board considers fit;
- (b) to grant loans or advances to any person carrying on a tourism enterprise;
- (c) to enter into any contract or agreement for carrying out the purposes of this Act;

- (d) to receive such fee, payment or commission as may be agreed upon, in consideration of the services rendered by the Board;
- (e) to require such fee or payment with respect to any matter relating to tourism or tourism enterprises to be remitted to the Board as the Minister may prescribe;
- (f) with the approval of the Minister, to subscribe for or acquire any stock, share, bond, debenture or other financial instrument in any company carrying on a tourism enterprise;
- (g) with the approval of the Minister, to invest any money of the Board in any business within or outside Bermuda which will promote or be conducive to the tourism trade in Bermuda;
- (h) with the approval of the Minister—
 - (i) to enter into any joint venture with any person; or
 - (ii) to form or participate in the formation of any company, whether in Bermuda or elsewhere, for the purpose of carrying out all or any of the functions of the Board;
- (i) with the approval of the Minister, to manage, control or supervise tourism enterprises within or outside Bermuda by appointing advisers, or by collaborating with persons carrying on tourism enterprises or entering into partnerships or any other arrangements with them;
- (j) with the approval of the Minister and the Minister of Finance, to borrow money whether by way of bank overdraft or otherwise for such purposes of the Board as the Board may from time to time consider desirable; and
- (k) generally to do all such matters and things as may be incidental to or consequential upon the exercise of the Board's powers or the discharge of its duties under this Act.

Directions by Minister

9 (1) The Minister may, after consultation with the Board, give to the Board such directions, not inconsistent with the provisions of this Act, as he may think fit, as to the exercise and performance by the Board of its functions, duties and powers under this Act, and the Board shall give effect to all such directions.

(2) The Board shall furnish the Minister with such information with respect to its property and activities as the Minister may from time to time require.

Chief Executive

10 (1) The Board may, with the approval of the Minister, appoint a Chief Executive for the purposes of this Act.

(2) The Chief Executive shall—

- (a) be known by such designation as the Board may determine;
- (b) be responsible to the Board for the proper administration and management of the functions and affairs of the Board in accordance with the policy laid down by the Board; and
- (c) not be removed from office without the consent of the Minister.

Staff of Board

11 (1) The Board may from time to time appoint such agents and appoint such officers and employees as may be necessary for the purposes of this Act.

(2) All officers and employees of the Board shall be under the administrative control of the Board.

Ineligibility for employment as officers or employees

12 (1) No person shall be eligible for employment as an officer or employee of the Board who has, directly or indirectly, by himself or with his partner, entered into any contract with, for or on behalf of the Board.

(2) Any officer or employee of the Board who has entered into or acquires any such contract shall be liable, in the discretion of the Board, to summary dismissal without notice.

Appointment of committees and delegation of powers

13 (1) The Board may, in its discretion, appoint from among its own members or from among other persons such number of committees as it thinks fit for purposes which, in the opinion of the Board, would be more expediently carried out or managed by such committees.

(2) The Board may, subject to such conditions or restrictions as it thinks fit, delegate to—

- (a) the Chairman;
- (b) any of its members;
- (c) the Chief Executive;
- (d) any committee appointed under subsection (1);
- (e) any officer or employee,

any of the functions or powers of the Board under this Act, except the power of delegation conferred by this section.

(3) Any power, function or duty delegated as provided in subsection (2) shall be exercised or performed by the person to whom delegated in the name and on behalf of the Board.

(4) The Board may continue to exercise a power upon it, or perform a function or duty under this Act or any other written law, notwithstanding the delegation of such power, function or duty under this section.

Immunity from suit

14 (1) No action, suit, prosecution or other proceeding shall be brought or instituted personally against an officer, employee or agent of the Board, or any member of the Board, or the Minister, in respect of any act done bona fide in pursuance or execution or intended execution of their functions under this Act or any other Act and regulations made thereunder.

(2) Where any member of the Board is exempt from liability by reason only of subsection (1), the Board shall be liable to the extent that it would be if that member were an employee or agent of the Board.

PART 4

FINANCIAL PROVISIONS

Funds of Board

15 The funds of the Board shall consist of—

- (a) all such sums as may be appropriated by the Legislature for the purposes of the Board;
- (b) all moneys, dividends, royalties, interest or income received from any source or transaction made pursuant to the powers conferred on the Board under this Act;
- (c) all moneys borrowed by the Board for the purposes of this Act;
- (d) all moneys received by the Board by way of fees, payments or commissions—
 - (i) relating to tourism guest fee payable under section 16;
 - (ii) for any matter relating to tourism and tourism enterprises; and
 - (iii) for services rendered by the Board to any person; and
- (e) all grants, subsidies and contributions paid to the Board or received from any source and funds raised by all lawful means.

Tourism guest fee

16 (1) In addition to the occupancy tax payable under section 29 of the Miscellaneous Taxes Act 1976 and any other fees authorized by law, there is imposed and shall be paid by each proprietor of a hotel in respect of each guest accommodated in the hotel the tourism guest fee at the rate of 2.5% of the rack rate charge made by such hotel in respect of such guest.

(2) The term “rack rate charge” has the meaning ascribed to it in section 29(2) of the Miscellaneous Taxes Act 1976.

TOURISM BOARD ACT 2012

(3) The Minister may in the regulations made under this Act, from time to time, determine the percentage rate of the rack rate charge applicable to the tourism guest fee with respect to—

- (a) different categories of hotels and other accommodations for guests; and
- (b) different times and seasons of the year.

(4) The statement to be delivered under section 30 of the Miscellaneous Taxes Act 1976 by every proprietor of a hotel on the departure of the person who had been accommodated at the hotel shall include a separate entry for the amount of the tourism guest fee payable.

(5) The tourism guest fee shall be due and payable at such time as the hotel occupancy tax is payable and shall be collected by such office of the Board as the Minister may in writing determine.

(6) Any proprietor who fails to comply with the requirements of this section shall be guilty of an offence and liable on conviction by a court of summary jurisdiction to a fine not exceeding \$10,000.

(7) Regulations made by the Minister under subsection (3) shall be subject to the affirmative resolution procedure.

Financial year

17 The financial year of the Board shall end on 31 March in each year.

Accounts of Board

18 (1) The Board shall cause proper statements of its financial affairs to be maintained and shall prepare in respect of each financial year a statement of its accounts in such form as required by applicable accounting standards.

(2) The accounts of the Board shall be audited by the Auditor-General or by an auditor appointed annually by the Auditor-General.

(3) A person shall not be qualified for appointment as an auditor under subsection (2) unless he is a public accountant who is registered or deemed to be registered under the Institute of Chartered Accountants of Bermuda Act 1973.

(4) The statement of accounts must present fairly and accurately—

- (a) the financial transactions of the Board during the financial year to which they relate; and
- (b) the financial position of the Board at the end of the financial year.

(5) The auditor shall state in his report whether—

- (a) proper accounting and other records have been kept; and
- (b) the receipt, expenditure and investment of moneys and the acquisition and disposal of assets by the Board during the year have been in accordance with the provisions of this Act.

TOURISM BOARD ACT 2012

(6) The auditor may at any other time report to the Minister through the Board upon any matter arising out of the performance of his audit.

(7) Where the Auditor-General has not been appointed to be the auditor, a copy of the audited financial statements and any report made by the auditor shall be forwarded to the Auditor-General at the same time they are submitted to the Board.

(8) As soon as the accounts of the Board and the financial statements have been audited in accordance with the provisions of this Act, a copy of the audited financial statements signed by the Chairman, together with a copy of any report made by the auditor, shall be submitted to the Minister.

Annual report

19 The Board shall, as soon as practicable after the close of each financial year but not later than 30 September of each year, submit to the Minister an annual report on the activities of the Board during the preceding financial year.

Publication of annual report and accounts

20 (1) The Board shall, as soon as practicable after the end of each financial year, cause to be made and transmitted to the Minister—

- (a) a copy of the annual report of the operations of the Board during that year; and
- (b) a copy of the audited annual statement of accounts of the Board certified by the Auditor-General.

(2) The Minister shall as soon as practicable after receipt of the annual report and annual statement of accounts cause a copy of each to be laid before both Houses of the Legislature.

Regulations

21 (1) The Minister may make regulations for the purposes of this Act prescribing anything that is necessary or convenient to be prescribed for the carrying out of the provisions of this Act or to give effect to it.

(2) Without derogating from the generality of subsection (1), regulations may provide for—

- (a) the tourism guest fee or other payment with respect to any matter relating to tourism or tourism enterprises to be remitted to the Board at such rate and times as may be prescribed;
- (b) the procedures and processes required for the carrying out of any of the functions or powers of the Board;
- (c) the contravention of regulations to be an offence and to impose penalties—
 - (i) not exceeding a fine of \$1,000 or imprisonment for six months, or both; and

TOURISM BOARD ACT 2012

- (ii) in the case of a continuing offence, to a further fine not exceeding \$250 for every day or part thereof during which the offence continues after conviction.

(3) Regulations made by the Minister under this Act shall be subject to the negative resolution procedure.

Commencement

22 The provisions of this Act shall come into operation on such date as the Minister may appoint by notice published in the Gazette, and the Minister may appoint different days for the coming into operation of different provisions.

SCHEDULE

(section 5)

PART 1

RESIGNATION AND REMOVAL FROM OFFICE

Resignation

1 (1) Any member of the Board, other than the Chairman, may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the Chairman, and from the date of the receipt by the Minister of such instrument, such member shall cease to be a member of the Board.

(2) The Chairman may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt of such instrument by the Minister.

Removal from office and disqualification for appointment

2 The Minister, acting after consultation with the Board, may remove a person from office as Chairman or member of the Board—

- (a) if he is satisfied that such person—
 - (i) has without reasonable excuse been absent from three consecutive meetings of the Board;
 - (ii) has been convicted (whether before or after his appointment) of a criminal offence;
 - (iii) is an undischarged bankrupt or his estate has been sequestrated and he has not been discharged;
 - (iv) has made a composition or arrangement with, or granted a trust deed for, his creditors; or
 - (v) is otherwise unable or unfit to carry out his functions as Chairman or member; or
- (b) by giving such person notice of termination of appointment.

3 The fact that a person has held office as a member of the Board does not disqualify him for reappointment to that office.

4 The Minister shall cause to be published in the Gazette the name of every person appointed as a member of the Board.

PART 2

PROCEDURE FOR MEETINGS OF THE BOARD

Powers

5 The Board may act notwithstanding the existence of one or more vacancies in its members or a defect in the appointment of a member.

Meetings

6 (1) The Board shall meet as often as necessary or expedient for the due performance of its functions.

(2) The Chairman may summon a meeting at any time on giving such notice as, in his judgment, the circumstances may require.

7 At a meeting of the Board, the proceedings shall be regulated as follows—

- (a) seven members of the Board constitute a quorum;
- (b) the Chairman shall preside at meetings of the Board;
- (c) if the Chairman is absent from a meeting of the Board, the Minister may appoint another person to act as Chairman and to preside at the meeting;
- (d) if a member of the Board has any direct or indirect interest in any dealing or business with the Board—
 - (i) he shall disclose his interest to the Board at the time of the dealing or business being negotiated or transacted; and
 - (ii) he shall have no vote in relation to the dealing or business, unless the Board has resolved that the interest does not give rise to a conflict of interest;
- (e) subject to subparagraph (d)(ii), a member of the Board shall have no vote in relation to any question arising which touches or concerns him;
- (f) the decisions of the Board shall be by a majority of votes;
- (g) in the event of an equality of votes, the Chairman shall have a casting vote; and
- (h) the Board shall determine its own procedure.

TOURISM BOARD BILL 2012

EXPLANATORY MEMORANDUM

This Bill establishes the Tourism Board for the purpose and objective of developing and promoting Bermuda as a tourist destination. The Board achieves this objective under the Bill by giving expert advice to the Government on matters relating to travel and tourism; by formulating strategies and programmes, and effectively managing outcomes, necessary to enhance the travel and tourism sectors contribution to the Bermuda economy, and generally by doing all such matters and things as may be incidental to or consequential upon the exercise of its powers or the discharge of its duties under this Bill.

Clause 1 provides a citation for the Bill.

Clause 2 provides for the definition of terms used in the Bill.

Clause 3 establishes the Tourism Board as a body corporate.

Clause 4 provides for the appointment of the Chairman of the Tourism Board by the Minister. The Chairman is appointed to hold office for such period and on such terms as the Minister may determine.

Clause 5 provides for the composition of the Tourism Board. The Board will comprise of 16 members including the Chairman. Nine members are to be appointed by the Minister, five members are to be appointed by the Bermuda Hotel Association, one member is to be appointed by the Chamber of Commerce and one member is to be appointed by the Bermuda Industrial Union. There are also four ex-officio members who shall attend meetings of the Board and participate in the deliberations of the Board but shall have no vote and will not be counted for purposes of constituting a quorum.

Clause 6 provides for the tenure of office of members of the Board. Except in the case of the Chairman whose tenure is determined by the Minister under clause 4, the tenure of office of members of the Board is to be three years, but the members are eligible for reappointment.

Clause 7 provides for the functions of the Board. The primary function of the Board is to develop and promote Bermuda as a tourist destination.

Clause 8 provides for the powers of the Board. The Board shall have power to do anything for the purpose of discharging its functions under this Act or any other written law, or which is incidental or conducive to the discharge of those functions.

Clause 9 empowers the Minister to give directions to the Board that are not inconsistent with the provisions of the Act and which relate to the exercise and performance by the Board of its functions, duties and powers under the Act. The Board is required to give effect to all such directions.

Clause 10 provides for the appointment of the Chief Executive by the Board with the approval of the Minister. The Chief Executive is to be responsible to the Board for the proper

administration and management of the functions and affairs of the Board in accordance with the policy laid down by the Board.

Clause 11 provides for the staff of the Board. The Board is empowered to employ such agents, officers and employees as may be necessary for the purposes of the Bill.

Clause 12 provides for the grounds for ineligibility for employment by the Board. A person is not eligible for employment as an officer or employee of the Board who has, directly or indirectly, by himself or with his partner, entered into any contract with, for or on behalf of, the Board. An officer or employee who contravenes the eligibility requirement is liable to summary dismissal without notice.

Clause 13 provides for the appointment of committees consisting of members of the Board or other persons. The clause also provides for the delegation of powers of the Board to the Chairman, any member of the Board, the Chief Executive, the committees of the Board or any officer or employee of the Board. The power of the Board to delegate its powers is not to include the delegation of the power to delegate.

Clause 14 provides for immunity from suit for any officer, employee or agent of the Board, members of the Board and the Minister, with respect to any act done bona fide in pursuance or execution or intended execution of their functions under this Bill or Regulations made thereunder.

Clause 15 provides for the funds of the Board. The funds of the Board are to consist of sums appropriated by the Legislature for the purposes of the Board and all moneys including dividends, royalties, interest, income received, fees, payments and commissions for services rendered, grants and moneys borrowed.

Clause 16 provides for the payment of a tourism guest fee by each proprietor of a hotel in respect of each guest accommodated in the hotel. The tourism guest fee is to be at the rate of 2.5% of the rack rate charge made by such hotel in respect of such guest.

Clause 17 provides that the financial year of the Board shall end on the 31 March in each year.

Clause 18 provides for the accounts of the Board and requires that the Board maintain proper statements of its financial affairs and that it should prepare in respect of each financial year a statement of its accounts in such form as required by applicable accounting standards.

Clause 19 provides for the annual report. The Board is required to submit to the Minister, as soon as practicable after the end of each financial year, an annual report on the exercise of its functions during that year.

Clause 20 provides for the annual report and statement of accounts of the Board to be made and transmitted to the Minister. The Minister is required to lay a copy of the annual report and statement of accounts before both Houses of the Legislature.

Clause 21 provides for the making of regulations by the Minister for the purposes of the Bill and in the making of such regulations the Minister may prescribe anything that is necessary or convenient for the carrying out of the provisions of the Bill.

TOURISM BOARD BILL 2012

Clause 22 provides for the Minister to cause the Act to come into operation on a date or dates as the Minister may determine.