



BERMUDA

HOTELS CONCESSION ACT 2000

2000 : 28

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WHEREAS it is expedient to encourage hotel development by providing relief from customs duty and exemption from certain other taxes, and by removing certain restrictions on companies holding interests in land;

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:—

Short title

1 This Act may be cited as the Hotels Concession Act 2000.

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### Interpretation

2 (1) In this Act—

“bedroom” means a bedroom intended to accommodate paying guests;

“Collector” means the Collector of Customs;

“develop a hotel” means build a new hotel or substantially redevelop a hotel;

“hotel” means—

(a) a hotel as defined in the Hotels (Licensing and Control) Act 1969; and

(b) any other premises which the Minister is satisfied are or will be used for at least six months in any year to accommodate paying guests who are not ordinarily resident in Bermuda,

and includes purpose-built accommodation for at least 20 members of staff of the hotel and associated offices and storage facilities, whether or not on the grounds of the hotel as defined in paragraph (a) or (b);

“hotel concession order” means an order under section 4;

“hotel developer” means a person who develops or intends to develop a hotel or a person who acquires a hotel from any such person;

“Minister” means the Minister responsible for tourism;

“new hotel” means a hotel which was not open for business immediately before the commencement of this Act;

“opening date” means—

(a) in relation to a new hotel, the date on which its initial licence to operate granted under the Hotels (Licensing and Control) Act 1969 comes into force;

(b) in any other case, the date on which the redevelopment which is the subject of the application under section 3 is complete in the opinion of the Minister;

“residential unit” means a residential unit forming part of a hotel by virtue of paragraph (b) of the definition of hotel;

“substantial redevelopment” means development of a hotel that is substantial in the opinion of the Minister, including development that adds significant new facilities or features to the hotel such as night clubs, convention rooms, spas or pools and major changes to landscaping;

(2) In determining, for the purposes of the definition of “substantial redevelopment”, whether a development is substantial, the Minister shall consider all relevant circumstances and in particular shall have regard to the following—

(a) the economic climate at the time;

(b) current building trends in the hotel market;

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- (c) the net effect of the development on the hotel's inventory of beds; and
- (d) such other factors pertinent to the tourism industry in Bermuda as the Minister may consider to be relevant.

*[Section 2 subsection (1) "hotel developer" and "substantial redevelopment" substituted, and subsection (2) substituted, by 2005:35 s.2 effective 31 May 2007; Section 2 subsection (1) "Minister" deleted and substituted by BR 5 / 2011 para. 5 effective 25 February 2011; "hotel" amended by 2016 : 39 s. 2 effective 27 July 2016]*

### Application to Minister

3 (1) A hotel developer may apply in writing to the Minister for the making of a hotel concession order.

- (2) The application shall contain—
  - (a) full particulars of the proposed development;
  - (b) estimated costs of the proposed development;
  - (c) a map showing the existing or proposed location of the hotel;
  - (d) plans and drawings of the proposed development;
  - (e) projected financial statements for five years; and
  - (f) such other information as the Minister may require.

### No further applications after relevant day

3A (1) The Minister shall not consider any application under section 3 for a hotel concession order made on or after the relevant day.

(2) For the avoidance of doubt, nothing in subsection (1) affects the validity of any hotel concession order made under this Act before the relevant day.

(3) In this section, "relevant day" means the date on which the Tourism Investment Act 2017 comes into operation.

*[Section 3A inserted by 2017 : 36 s. 14 & sch. 3 effective 10 November 2017]*

### Hotel concession order

4 (1) Where, having considered an application under section 3, the Minister is satisfied that the hotel development is in the national economic interest of Bermuda he may, with the written agreement of the Minister of Finance, make an order under this section ("a hotel concession order") in respect of the hotel.

(2) In determining whether the hotel development is in the national economic interest of Bermuda, the Minister shall consider all relevant circumstances, including in particular whether the hotel development is likely—

- (a) to benefit the tourism industry and the economy generally;
  - (b) to create employment and entrepreneurial opportunities for Bermudians;
- and

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- (c) to encourage local investment.
- (3) A hotel concession order may make provision for any or all of the following—
  - (a) full or partial relief from, or deferral of, customs duty until a year after the hotel's opening date in respect of any building materials, furnishings, fixtures and equipment which are necessary for the building, furnishing and equipping of the hotel;
  - (b) full or partial exemption from, or deferral of, land tax for a period not exceeding five years from the hotel's opening date;
  - (c) full or partial exemption from, or deferral of, hotel occupancy tax for a period not exceeding five years from the hotel's opening date;
  - (d) full or partial exemption from, or deferral of, payroll tax for a period not exceeding five years from the hotel's opening date;
  - (e) *[repealed]*
  - (f) a reduction or deferral of the land-holding charge payable under section 96(2) of the Bermuda Immigration and Protection Act 1956 in respect of tourist accommodation or a hotel residence that is placed in the hotel inventory, if authorized by the regulations made under section 102C(1)(a) of that Act;
  - (g) full or partial relief from, or deferral of, a charge required for the renting out or use for profit of a hotel or tourist accommodation held under a licence issued under the Bermuda Immigration and Protection Act 1956 for a period not exceeding five years from the hotel's opening date, if authorized by the regulations made under section 102C(1)(c) of that Act;
  - (h) that the hotel developer may take a lease of a hotel or residential unit for a period not exceeding 131 years, with an option to renew for a similar period.
- (4) A hotel concession order may be made subject to such terms and conditions as the Minister thinks fit, including in particular terms and conditions relating to—
  - (a) the employment and training of Bermudians;
  - (b) the obtaining of planning permission under the Development and Planning Act 1974.
- (5) The Minister need not give any reasons for not making a hotel concession order in response to an application under section 3, or for attaching terms and conditions to an order.
- (6) The decision of the Minister to make a hotel concession order, or to make an order subject to terms and conditions, or not to make an order, is final for all purposes and is not subject to any appeal.
- (7) For the purposes of this section—

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“Bermudian” means a person who possesses Bermudian status under the Bermuda Immigration and Protection Act 1956;

“customs duty” means the duty payable under the Customs Tariff Act 1970;

“land tax” means the tax payable under the Land Valuation and Tax Act 1967;

“hotel occupancy tax” has the meaning assigned by Part V of the Miscellaneous Taxes Act 1976;

“payroll tax” has the meaning assigned by the Payroll Taxes Act 1995.

(8) A hotel concession order shall be made subject to the affirmative resolution procedure.

*[Section 4 subsection (3)(d) amended and (e) repealed by 2005:35 s.3 effective 31 May 2007; subsection (3) paragraphs (d)-(f) substituted by 2007:16 s.22 & Sch effective 2 June 2007; subsection (3) paragraph (f) amended by 2010 : 40 s. 11 effective 27 August 2010]*

### Effect of hotel concession order if hotel transferred

4A A hotel concession order granted to a hotel developer shall continue to apply to the hotel in respect of which it was granted, notwithstanding that another person becomes the hotel developer by way of transfer of ownership of the hotel or otherwise, and shall enure for the benefit of any person who is for the time being the hotel developer.

*[Section 4A inserted by 2005:35 s.4 effective 31 May 2007]*

### Minister’s power to amend or revoke a hotel concession order

5 (1) The Minister may amend or revoke a hotel concession order—

- (a) if there has been any breach of the terms and conditions contained in the order;
- (b) if any false declarations are made to the Collector in respect of the goods to which customs duty relief applies;
- (c) if any goods which were imported subject to customs duty relief by virtue of the order are used for purposes which do not relate directly to the hotel (otherwise than in accordance with section 7); or
- (d) where any offence under this Act is committed.

(2) Before the Minister amends or revokes an order under subsection (1) he shall—

- (a) give the hotel developer notice in writing of the reasons why he is minded to amend or revoke the order;
- (b) afford the hotel developer an opportunity to make objection in writing within the period of 14 days after receipt of the notice; and
- (c) take any such objection into account;

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and if the Minister, with the agreement of the Minister of Finance, thereafter decides to amend or revoke the hotel concession order, he shall serve an order on the hotel developer amending or revoking the hotel concession order from such date as may be specified.

- (3) An order served under subsection (2)—
- (a) shall be final for all purposes and is not subject to any appeal; and
  - (b) shall be subject to the negative resolution procedure.

*[Section 5 marginal note substituted, subsections (2) and (3) amended, by 2005:35 s.5 effective 31 May 2007]*

### Application by hotel developer to amend hotel concession order

5A (1) A hotel developer may make a written application to the Minister for the amendment of a hotel concession order, which shall be supported by such information as the Minister may require.

(2) The Minister may, if he is satisfied that the amendment is in the national economic interest of Bermuda, by order amend the hotel concession order for the purpose of giving effect to the application.

(3) In determining whether the amendment is in the national economic interest of Bermuda, the Minister shall consider the matters mentioned in section 4(2).

*[Section 5A inserted by 2005:35 s.6 effective 31 May 2007]*

### Extensions of hotel concession orders

5B (1) The Minister may by order extend the concession period of a hotel concession order for a period not exceeding the period beginning with the day on which the hotel concerned, in the opinion of the Minister, closes due to any cause beyond the reasonable control of the hotel developer and ending with the day on which the hotel re-opens or is likely, in the opinion of the Minister, to re-open.

- (2) The Minister may only extend the concession period if—
- (a) in the opinion of the Minister, at any time after the hotel specified in the order has opened for business, the hotel developer has to close the hotel due to any cause which is beyond his reasonable control; and
  - (b) the hotel has been, or is likely to continue to be closed due to that cause for a period which, in the opinion of the Minister, is an extended one.

(3) In determining all matters which it is necessary for him to determine under subsection (1) or (2), the Minister shall have regard to any representations made by the hotel developer and shall consider all relevant circumstances, including—

- (a) the economic climate at the time;
- (b) current building trends in the hotel market; and
- (c) such other factors pertinent to the tourism industry in Bermuda as the Minister may consider to be relevant.

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(4) The Minister may extend a hotel concession order for a second extension period not exceeding the period beginning with the day on which the first extension period expires and ending with the day on which the hotel re-opens or is likely, in the opinion of the Minister, to re-open.

(5) The Minister may only grant a second extension if he is satisfied that it is necessary for the hotel to remain closed for an additional period due to the cause for which the first extension was granted or due to any other cause which, in the opinion of the Minister, is beyond the hotel developer's reasonable control.

(6) Subsections (2) and (3) apply to the Minister's decision to grant a second extension as if it were the first extension.

(7) For the purposes of this section, a cause beyond a hotel developer's reasonable control includes one which, in the opinion of the Minister, the hotel developer could not have avoided or prevented by reasonable foresight, planning and implementation.

(8) An order extending a hotel concession order made under this section—

- (a) shall be served upon the hotel developer concerned;
- (b) shall take effect from such date as may be specified in the order; and
- (c) shall be final for all purposes and is not subject to any appeal.

*[Section 5B inserted by 2005:35 s.6 effective 31 May 2007]*

### Relief from customs duty

6 (1) This section and section 7 apply in relation to a hotel concession order which makes provision for goods to be imported into Bermuda subject to any relief from customs duty.

(2) Subject to this Act, relief may be made available by such administrative methods and procedures as the Collector may establish.

(3) The hotel developer or any person in Bermuda who supplies goods to him ("the supplier") may be a claimant for relief in respect of those goods.

(4) A supplier shall make himself known to the Collector as soon as practicable so that the requirements of this section may be fulfilled in relation to him.

(5) For a period of six years after importing goods subject to relief from customs duty by virtue of a hotel concession order, the hotel developer and each supplier shall—

- (a) maintain at his place of business in Bermuda such full and proper records of the goods as the Collector may from time to time require; and
- (b) whenever so required by the Collector, within 24 hours produce, for inspection by the Collector or any person authorized by him for the purpose, those records or such portion of them as the Collector may specify.

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(6) Section 99(2) of the Revenue Act 1898 (seizure and detention of records which may afford evidence of commission of offence) shall apply to records produced under subsection (5)(b) as it applies to records produced under section 99(1) of that Act.

(7) The Collector may give to any person to whom subsection (5) applies such reasonable directions as the Collector deems necessary for the purpose of ensuring that relief is made available in accordance with the hotel concession order and not otherwise; and a person to whom such a direction is given shall comply with it.

(8) For a period of six years after importing any goods subject to relief from customs duty by virtue of a hotel concession order, a hotel developer shall, whenever so required by the Collector, permit the Collector or any person authorized by him for the purpose to inspect the hotel or the goods to which the hotel concession order applies.

### Payment of customs duty on diversion

7 (1) A hotel developer who has imported goods subject to relief from customs duty may make an application to the Collector if he wishes, within five years of their importation, to use or dispose of the goods otherwise than in accordance with the hotel concession order.

(2) The Collector may, upon payment of the outstanding duty, approve such use or disposal.

(3) Subsections (3) to (6) of section 89 of the Revenue Act 1898 (penalties for improper use of goods) shall apply, with the necessary modifications, in relation to the use or disposal of goods in breach of the hotel concession order without the authorization of the Collector under this section, as they apply in relation to the use or disposal of restricted goods in contravention of that section.

(4) For the purposes of this section—

(a) “duty” includes any surcharge;

(b) “outstanding duty” means any amount of duty payable in respect of goods less any amount already paid;

(c) where the goods in question are goods in respect of which duty is charged on the basis of their value, the value of the goods shall be taken to be that value which the Collector places on goods which in his opinion are goods of a description, age and condition of the goods in question at the time of the change of use or disposal;

(d) the rate of duty to be taken for the purposes of calculation of outstanding duty is the rate in force at the time of the change of use or disposal.

### Offences

8 (1) A person is guilty of an offence if he fails without reasonable excuse (the proof of which is upon him) to comply with a requirement or direction made of or given to him under this Act by the Collector.

(2) A person is guilty of an offence if—



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- (a) in or in relation to an application under section 3 he makes any statement, or otherwise supplies to the Minister or the Collector any information, which that person knows to be false or does not believe to be true; or
- (b) he fails, without reasonable excuse (the proof of which is upon him), to disclose to the Minister or the Collector any information which that person knows or believes, or ought reasonably to know or believe, that he is expected to supply pursuant to a requirement made of him under this Act.

(3) A person is guilty of an offence if he fails to comply with a duty imposed upon him by or under section 6(5) or (8).

### Penalties and forfeitures

9 (1) A person who is guilty of an offence under section 8(1) is liable on summary conviction to a fine of the level 3 amount.

(2) A person who is guilty of an offence under section 8(2) or (3) is liable on summary conviction—

- (a) to a fine of the level 4 amount; or
- (b) where duty is lost to the Revenue as a result of the offence, to a fine of the level 4 amount or five times the amount of the duty lost to the Revenue by reason of the commission of the offence, whichever is the greater amount.

(3) For the avoidance of doubt, it is hereby declared that the provisions of sections 110, 111, 111A, 112, 114 and 115 of the Revenue Act 1898 (recovery of penalties and forfeitures) apply with the necessary modifications in relation to penalties and forfeitures under this section as those provisions apply in relation to penalties and forfeitures under that Act.

(4) Subsection (3) of this section is without prejudice to the application in relation to penalties and forfeitures under this section of any other provision of the Revenue Act 1898 that is also applicable in relation to those penalties and forfeitures according to the tenor of that provision.

*[Section 9 subsections (1) and (2)(a) penalty on standard scale substituted for amount in \$ by 2004:6 s.18 & Sch 2, and subsection (2)(b) substituted by 2004:6 s.19 & Sch 3 effective 26 March 2004]*

### Offences by corporations

10 Where an individual who has committed an offence against this Act was at the time he committed the offence a director, manager, secretary or other similar functionary of a body corporate and committed the offence in that capacity, then the body corporate also is guilty of the offence and liable to be proceeded against and punished accordingly.

[Assent Date: 9 August 2000]

[Operative Date: 9 August 2000]

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*Amended by*

2004 6  
2005 35  
2007 16  
2010 40  
BR 5 / 2011  
2016 39  
2017 36]