



BERMUDA

TOURISM INVESTMENT ACT 2017

2017 : 36

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TOURISM INVESTMENT ACT 2017

WHEREAS it is necessary to encourage developers of hotels, restaurants and tourism products, including attractions, natural sites, monuments, museums or historical structures, to invest in Bermuda by providing relief from customs duty and exemption from certain other taxes;

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:

Citation

1 This Act may be cited as the Tourism Investment Act 2017.

Interpretation

2 In this Act—

“appraised market value” means the value of an hotel as appraised by an hotel appraiser who is approved by the Minister in consultation with the Bermuda Business Development Agency;

“attraction” means a site that residents and overseas visitors visit that has an identifiable operation and management structure and can be characterised as natural, historical, cultural or man-made;

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

“Collector” means the Collector of Customs;

“developer” means a person who develops or intends to develop a tourism product;

“hotel” means—

(a) an 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);

“Minister” means the Minister responsible for tourism;

“new hotel” means—

(a) an hotel being developed on a vacant lot;

(b) the redevelopment of an operating hotel with estimated development costs of not less than 50% of the appraised market value of such hotel and expended over a period not exceeding three years; or

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- (c) the development of a derelict hotel with estimated development costs of not less than 50% of the appraised market value of such hotel and expended over a period not exceeding three years.

“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 operation;
- (b) in any other case, the date on which a tourism project, as provided in the developer’s application, is certified in writing by the Minister as complete;

“refurbished hotel” means an operating hotel subject to rehabilitation, refurbishment or extension with estimated development costs of not less than 25% of the appraised market value of such hotel and expended over a period not exceeding two years;

“restaurant” has the meaning assigned by the Restaurant Act 1961;

“tourism investment order” means an order under section 5;

“tourism product” means a new hotel, a refurbished hotel, a restaurant or an attraction;

“tourism project” means the development or redevelopment of a tourism product.

[Section 2 definition “appraised market value” amended by 2019 : 41 s. 2 effective 5 November 2019]

Application of this Act

2A (1) This Act shall apply in relation to a hotel development that is the subject of a hotel concession order made under the Hotels Concession Act 2000, as if the development were within the definition of “new hotel” in section 2.

(2) In this section, “hotel development” means the development provided in the following hotel concession orders—

- (a) Hotels Concession (Pink Beach Hotel) Order 2015;
- (b) Hotels Concession (former Surf Side Beach Club) Order 2016; and
- (c) Hotels Concession (Tucker’s Point Hotel and Resort) Order 2016.

[Section 2A inserted by 2019 : 41 s. 3 effective 5 November 2019]

Application to Minister

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

(1a) A developer of a hotel development in section 2A may apply in writing to the Minister for the making of a tourism investment order.

(2) The application shall contain—

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- (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 proposed development;
- (d) plans and drawings of the proposed development;
- (e) projected financial statements for—
 - (i) five years, if a new hotel;
 - (ii) three years, if a new restaurant;
 - (iii) one year, if an existing restaurant or an attraction;
- (f) such other information as the Minister may require.

(3) When receiving an application for a new or refurbished hotel, the Minister may consider the planned estimated costs of the proposed development plus the aggregate value of investment in the proposed development not exceeding seven years before such application is made.

[Section 3 subsection (1a) inserted by 2019 : 41 s. 4 effective 5 November 2019; Section 3 subsection (3) inserted by 2023 : 21 s. 2 effective 13 June 2023]

Tourism investment relief

4 Tourism investment relief for a tourism product shall be based on the qualifying criteria provided in Schedule 1.

Tourism investment order

5 (1) Where, having considered an application under section 3(1), the Minister is satisfied that the proposed tourism project 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 tourism investment order”) in respect of the proposed tourism project.

(1a) When considering an application under section 3(1a), the Minister shall take into account any period of relief in the hotel concession order used by the developer and shall deduct that period of relief when making a tourism investment order.

(2) In determining whether the proposed tourism project is in the national economic interest of Bermuda, the Minister, in consultation with the Bermuda Business Development Agency, shall consider all relevant circumstances, including in particular whether the proposed tourism project is likely—

- (a) to benefit the tourism industry and the economy generally; and
- (b) to encourage local investment.

(3) A tourism investment order shall expire on the date provided in the order.

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(4) Upon expiry of a tourism investment order granted for a new restaurant, an existing restaurant or an attraction, a developer shall not make another application for such restaurant or attraction.

(5) A tourism investment order may, in accordance with the scale of relief in Schedule 2, provide for relief as follows—

- (a) full relief from customs duty in respect of any building materials, furnishings, fixtures and equipment which are necessary for the building, furnishing and equipping of a tourism product from the commencement of the tourism investment order for a period —
 - (i) not exceeding fifteen years for a new hotel;
 - (ii) not exceeding fifteen years for a refurbished hotel;
 - (iii) not exceeding five years for a new restaurant;
 - (iv) not exceeding five years for an attraction;
 - (v) not exceeding three years for an existing restaurant;
- (b) full exemption from hotel occupancy tax for a period—
 - (i) not exceeding fifteen years from a new hotel's opening date;
 - (ii) not exceeding fifteen years from a refurbished hotel's opening date.
- (c) full exemption from an employer's share of payroll tax for a period—
 - (i) not exceeding fifteen years from a new hotel's opening date;
 - (ii) not exceeding fifteen years from a refurbished hotel's opening date;
 - (iii) not exceeding five years from a new restaurant's opening date;
- (d) full exemption for a new hotel from land tax commencing six years after the hotel's opening date, subject to the hotel verifying in writing to the Minister in years six through fifteen that 70% of the hotel's staff are Bermudian;
- (e) a deferral of the land-holding charge payable under section 96(2) of the Bermuda Immigration and Protection Act 1956 in respect of an hotel that is placed in the hotel inventory, if authorised by the regulations made under section 102C(1)(a) of that Act;
- (f) the developer to take a lease of an hotel for a period not exceeding 131 years, with an option to renew for a similar period.

(6) Full exemption from an employer's share of payroll tax under subsection (5)(c) shall only be granted on verification in writing from the Minister responsible for workforce development to the Minister annually that a management training programme for Bermudians is in operation.

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(7) A tourism investment order may be made subject to such terms and conditions as the Minister thinks fit, including in particular terms and conditions relating to the obtaining of planning permission under the Development and Planning Act 1974.

(8) The Minister need not give any reasons for not making a tourism investment order in response to an application under section 3, or for attaching terms and conditions to an order.

(9) The decision of the Minister to make a tourism investment 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.

(10) For the purposes of this section—

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

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

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

“payroll tax” has the meaning assigned by the Payroll Tax Act 1995; and the “employer’s share of payroll tax” means that portion of payroll tax which the employer is not entitled to deduct from an employee’s earnings under section 19 of that Act.

(11) A tourism investment order shall be made subject to the affirmative resolution procedure.

[Section 5 amended by 2019 : 41 s. 5 effective 5 November 2019; Section 5 subsection (5)(a) repealed and replaced by 2020 : 42 s. 2 effective 5 August 2020; Section 5 subsection (5) amended by 2023 : 21 s. 3 effective 13 June 2023]

Minister’s power to amend or revoke a tourism investment order

6 (1) The Minister may amend or revoke a tourism investment order—

- (a) if there has been any breach of the terms or 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 development (otherwise than in accordance with section 8); 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 developer notice in writing of the reasons why he may amend or revoke the order;

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- (b) afford the 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,

and if the Minister, with the agreement of the Minister of Finance, thereafter decides to amend or revoke the tourism investment order, he shall serve an order on the developer amending or revoking the tourism investment 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.

Relief from customs duty

7 (1) This section and section 8 apply in relation to a tourism investment 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 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) *[Repealed by 2023 : 21 s. 4]*

(6) *[Repealed by 2023 : 21 s. 4]*

(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 tourism investment 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 goods subject to relief from customs duty by virtue of a tourism investment order, a developer shall, whenever so required by the Collector, permit the Collector or any person authorised by him for the purpose to inspect the development or the goods to which the tourism investment order applies.

[Section 7 subsections (5) and (6) repealed by 2023 : 21 s. 4 effective 13 June 2023]

Payment of customs duty on diversion

8 (1) A 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 tourism investment order.

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

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(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 otherwise than in accordance with the tourism investment order without the authorisation 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

9 (1) A person is guilty of an offence if he fails, without reasonable excuse, 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—

- (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, 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, without reasonable excuse, to comply with a duty imposed upon him by or under section 7(5) or (8).

Penalties and forfeitures

10 (1) A person who is guilty of an offence under section 9(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 9(2) or (3) is liable on summary conviction—

- (a) to a fine of the level 4 amount; or

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(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, the provisions of sections 110, 111, 111A, 112, 114 and 115 of the Revenue Act 1898 (recovery of penalties and forfeitures) shall 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 or 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.

Offences by corporations

11 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 is also guilty of the offence and liable to be proceeded against and punished accordingly.

Minister may make regulations

12 (1) The Minister may make regulations generally for carrying out the purposes and provisions of this Act.

(2) The negative resolution procedure shall apply to regulations made under this section.

Minister may issue guidance

13 (1) The Minister may issue such guidance with respect to tourism investment orders as he considers appropriate and such guidance may be taken into account when assessing compliance with the provisions this Act.

(2) The Minister may from time to time revise any guidance issued under this section.

(3) For the avoidance of doubt, any guidance issued under this section is not a statutory instrument within the meaning of the Statutory Instruments Act 1977.

Consequential amendments

14 The consequential amendments that are set out in Schedule 3 shall have effect.

Revocation of Hotels Concession Orders

15 The Hotels Concessions Orders listed in Schedule 4 are hereby revoked.

Temporary application of Act in relation to restaurants and attractions

16 (1) The Minister shall not consider any application under section 3 made after the relevant date in relation to a new restaurant, an existing restaurant or an attraction.

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(2) For the avoidance of doubt, nothing in subsection (1) affects the continuing validity of a tourism investment order made before the relevant date in accordance with this Act in relation to a new restaurant, an existing restaurant or an attraction.

(3) In this section, “relevant date” means 10 years after the commencement date of this Act.

[Section 16 subsection (3) amended by 2020 : 42 s. 3 effective 5 August 2020]

Commencement

17 This Act shall come into operation on such day as the Minister may appoint by notice published in the Gazette.

SCHEDULE 1

(Section 4)

QUALIFYING CRITERIA

A. A NEW HOTEL

An hotel— Development on a vacant lot.

An operating hotel— Estimated development costs not less than 50% of the appraised market value with construction completed within three years.

A derelict hotel— Estimated development costs not less than 50% of the appraised market value with construction completed within three years.

B. A REFURBISHED HOTEL

Estimated development costs not less than 25% of the appraised market value with construction completed within 2 years.

C. A RESTAURANT

New Restaurant Tourism project costs not less than \$1,000,000 with construction completed within 12 months.

Existing Restaurant Tourism project costs not less than \$250,000 with construction completed within 12 months.

D. AN ATTRACTION

Tourism project costs not less than \$100,000 with construction completed within 3 years.

[Schedule 1 amended by 2020 : 42 s. 4 effective 5 August 2020]

SCHEDULE 2

(Section 5)

SCALE OF RELIEF

A. A NEW HOTEL

Number of years relief	not exceeding 15
Customs duty relief	100%
Hotel occupancy tax relief	100%
Land tax relief	100%- commencing six years after the hotel's opening date <i>subject to the hotel verifying in writing to the Minister in years six through fifteen that 70% of the hotel's staff are Bermudian</i>
Land-holding charge deferral	100%
Payroll tax relief	100%- <i>employers share - on written verification from the Minister responsible for workforce development to the Minister annually that a management training programme for Bermudians is in operation</i>

B. A REFURBISHED HOTEL

Number of years relief	not exceeding 15
Customs duty relief	100%
Hotel occupancy tax relief	100%
Land-holding charge deferral	100%
Payroll tax relief	100%- <i>employer's share - on written verification from the Minister responsible for workforce development to the Minister annually that a management training programme for Bermudians is in operation</i>

C. A NEW RESTAURANT

Number of years relief	not exceeding 5
Customs duty relief	100%
Payroll tax relief	100% employer's share - <i>on written verification from the Minister responsible for workforce development to the Minister annually that a management training programme for Bermudians is in operation</i>

D. AN EXISTING RESTAURANT

Number of years relief	not exceeding 3
Customs duty relief	100%

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E. AN ATTRACTION

Number of years relief	not exceeding 5
Customs duty relief	100%

[Schedule 2 amended by 2020 : 42 s. 5 effective 5 August 2020; Schedule 2 amended by 2023 : 21 s. 5 effective 13 June 2023]

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SCHEDULE 3

(Section 14)

CONSEQUENTIAL AMENDMENTS

Amends the Bermuda Immigration and Protection Act 1956

- 1 The Bermuda Immigration and Protection Act 1956 is amended—
- (a) in section 82 by inserting the following after subsection (1)(c)(v)—
 - “(vi) an order made under section 5 of the Tourism Investment Act 2017; or”;
 - (b) in section 102C(1)(ba)(v) by inserting “, tourism investment orders” after “Hotels Concession Orders”.

Amends the Companies Act 1981

- 2 The Companies Act 1981 is amended—
- (a) in section 120(5) by inserting “or a tourism investment order made under the Tourism Investment Act 2017” after “Hotels Concession Act 2000”;
 - (b) in section 129(1)(aa)(ii) by inserting “or in a tourism investment order made under the Tourism Investment Act 2017” after “Hotels Concession Act 2000”.

Amends the Hotels Concession Act 2000

- 3 The Hotels Concession Act 2000 is amended by inserting the following after section 3—

“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.”.

Amends the Limited Liability Company Act 2016

- 4 The Limited Liability Company Act 2016 is amended in section 20(5) by inserting “or in a tourism investment order made under the Tourism Investment Act 2017” after “Hotels Concession Act 2000”.

Amends the Revenue Act 1898

- 5 The Revenue Act 1898 is amended—

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- (a) in section 84A(5) by inserting the following in its proper alphabetic place—
 - “(ma) Tourism Investment Act 2017 (“TIA”);
- (b) in paragraph 4 of the Fourth Schedule by inserting “or section 8(2) of the Tourism Investment Act 2017” after “Hotels Concession Act 2000”.

Amends the Bermuda Immigration and Protection (Land-Holding Charges) Regulations 2007

6 The provisions of regulation 3 of the Bermuda Immigration and Protection (Land-Holding Charges) Regulations 2007 become paragraph (1) of that regulation, and after that paragraph insert—

“(2) A developer (as defined in section 2 of the Tourism Investment Act 2017) is entitled to a reduction or deferral of a land-holding charge to the extent that is provided for in an order made under section 5 of that Act.”.

SCHEDULE 4

(Section 15)

REVOCATION OF HOTELS CONCESSION ORDERS

1. Hotels Concession (Cambridge Beaches Hotel) Order 2001
2. Hotels Concession (Cambridge Beaches Hotel) Order 2008
3. Hotels Concession (Castle Harbour Redevelopment) Order 2000
4. Hotels Concession (Coco Reef Resort) Order 2008
5. Hotels Concession (Fairmont Hamilton Princess) Order 2001
6. Hotels Concession (Fairmont Southampton Princess) Order 2001
7. Hotels Concession (Fairmont Southampton) Order 2009
8. Hotels Concession (Grotto Bay Beach Resort) Order 2010
9. Hotels Concession (Palmetto Hotel) Order 2001
10. Hotels Concession (Pink Beach Club) Order 2013
11. Hotels Concession (Spa Resort at Lantana) Order 2004
12. Hotels Concession (Surf Side Beach Club) Order 2001
13. Hotels Concession (The Reefs) Order 2001
14. Hotels Concession (Wyndham Beach and Spa Resort) Order 2006
15. Hotels Concession (Elbow Beach Hotel) Order 2016

[Schedule 4 amended by 2019 : 41 s. 6 effective 5 November 2019]

[Assent Date: 23 October 2017]

[Amended by

2019 41

2020 42

2023 21]