

HOTELS CONCESSION AMENDMENT ACT 2005



BERMUDA

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HOTELS CONCESSION AMENDMENT ACT 2005

Date of Assent: 29 December 2005

Operative Date: Notice in Gazette

WHEREAS it is expedient to amend the Hotels Concession Act 2000:

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, which amends the Hotels Concession Act 2000 (in this Act referred to as "the principal Act") may be cited as the Hotels Concession Amendment Act 2005.

Amendment of section 2

2 Section 2 of the principal Act is amended —

(1) in subsection 1 —

(a) by repealing the definition of "hotel developer" and substituting the following —

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

(b) by repealing the definition of “substantial redevelopment” and substituting the following —

“ “substantial redevelopment ” means development of a hotel that is substantial in the opinion of the

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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.”; and

(2) by repealing subsection (2) and substituting the following new subsection —

“(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;
- (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.”.

Amendment of section 4

3 Section 4 of the principal Act is amended —

- (a) in subsection (3)(d) by inserting “full or” immediately before “partial”; and
- (b) by repealing subsection (3)(e).

Insertion of new section 4A

4 The principal Act is amended by inserting immediately after section 4 the following new section —

“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.”

Amendment of section 5

5 Section 5 of the principal Act is amended —

(1) by deleting the marginal note and substituting the following —

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“Minister’s power to amend or revoke a hotel concession order”;

(2) in subsection (2), by inserting immediately after “order”, in the first place where it occurs, the following —

“under subsection (1)”; and

(3) in subsection (3), by deleting “this section” and substituting the following —

“subsection (2)”.

Insertion of new sections 5A and 5B

6 The principal Act is amended by inserting immediately after section 5 the following —

“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).

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.

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(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.

(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.”.

Commencement

7 This Act comes into operation on such date as the Minister may appoint by notice published in the Gazette.