



BERMUDA

MORGAN'S POINT COMPANY ACT 2022

2022 : 43

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SCHEDULE

WHEREAS expedient to establish a Government-owned company under the Companies Act 1981 to acquire, hold, develop, lease, sell, manage or oversee the management of the land at Morgan's Point;

Be it enacted by The King'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:

MORGAN'S POINT COMPANY ACT 2022

Citation

- 1 (1) This Act may be cited as the Morgan's Point Company Act 2022.
- (2) This Act shall be construed as one with the 1981 Act.

Interpretation

- 2 In this Act—
 - "Company" means the company referred to in section 3;
 - "financial year", in relation to the Company, means the financial year adopted by the Company;
 - "the Minister" means such Minister as the Premier may from time to time designate by instrument in writing as the Minister responsible for the Company;
 - "scheduled land" means the land provided in the Schedule;
 - "the 1981 Act" means the Companies Act 1981.

Incorporation of Company

- 3 If, before the expiration of ninety days beginning on the date of commencement of this Act, a memorandum of association for the purpose is delivered to the Registrar of Companies for registration under section 14 of the 1981 Act, then, subject to section 4 of this Act, the subscribers to that memorandum shall become a local company limited by shares upon registration in accordance with the said section 14, under the name "Morgan's Point Company Limited".

Application of 1981 Act

- 4 (1) Pursuant to section 4(1)(b) of the 1981 Act, the provisions of the 1981 Act apply in relation to the Company except in so far as either this Act expressly provides otherwise or this Act is inconsistent with those provisions.
 - (2) Where this Act is inconsistent with the 1981 Act, this Act overrides the 1981 Act to the extent of the inconsistency.
 - (3) For the avoidance of doubt, it is declared that nothing in section 286 or any other provision of the 1981 Act enables this Act to be amended otherwise than by a public Act.

General purpose of Company

- 5 The general purpose of the Company is to acquire and develop the scheduled land or any other land situated at Morgan's Point, and subsequently to operate any business thereon following completion of the development with a view to recouping the Government's investment in the scheduled land.

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Status of Company, etc.

6 (1) The Company shall not be regarded as the servant or agent of the Crown, or as enjoying any status, privilege or immunity of the Crown; and its property shall not be regarded as property of, or property held on behalf of, the Crown.

(2) The Company is not exempt from any tax, duty, rate, levy or other charge whatsoever, whether general or local, except as provided in subsections (3) to (5).

(3) The Company is not subject to foreign currency purchase tax under the Foreign Currency Purchase Tax Act 1975 or to land tax under the Land Valuation and Tax Act 1967.

(4) The exemption granted to the Company by subsection (3) from land tax shall not enure to the benefit of any lessee or tenant of the Company, and any such lessee or tenant shall be liable to land tax under the Land Valuation and Tax Act 1967 as if he were the owner of the premises the subject of his lease or letting, whatever the term of the lease or letting, notwithstanding subsection (3).

(5) The Company is exempt from stamp duty under the Stamp Duties Act 1976 ("the 1976 Act") in any case.

(6) Notwithstanding anything to the contrary in the 1976 Act, this subsection and the rules set forth in subsection (7) below have effect for the purpose of regulating liability to stamp duty under that Act ("duty") in any case where—

- (a) all the persons executing an instrument are expressed in that Act to be liable for the duty; and
- (b) the Company is one of the persons executing the instrument.

(7) The rules referred to in subsection (6) above are as follows—

- (a) the Crown (where it is a person executing) and the Company are not liable to duty;
- (b) each person (other than the Crown or the Company) executing the instrument is liable to duty on the basis that—
 - (i) the Crown or the Company is, or, as the case may be, both are, to be counted for the purpose of establishing the number of persons executing the instrument, notwithstanding paragraph (a) above; and
 - (ii) each person executing is liable only for his definite fractional share of duty.

Board of directors

7 (1) There shall be a board of directors of the Company which shall be responsible for devising and executing the policy of the Company.

(2) A director who is directly or indirectly interested in a contract, a proposed contract or an arrangement with the Company shall declare the nature of such interest at a meeting of the board of directors and the disclosure shall be recorded in the minutes of the meeting.

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(3) Where a declaration is made under subsection (2), unless the board of directors decide that the interest in question might prejudicially affect the director's consideration of the matter and so disqualify him from voting, a director may vote in respect of any contract, proposed contract or arrangement in which such director is interested and may be counted in the quorum for such meeting.

Members of Company

8 (1) The initial members of the Company shall be the Minister of Finance and the Minister of Public Works.

(2) A reference in this Act to a Minister being or becoming a member of, or a shareholder in, the Company is a reference to him being or becoming so in virtue of his office as Minister acting on behalf of the people of Bermuda and not personally, notwithstanding anything to the contrary in the 1981 Act.

Restricted transactions

9 Unless authorised by the Legislature, a member of the Company shall not—

- (a) sell or otherwise dispose of any shares in the Company except to a Minister; or
- (b) procure the dissolution of the Company, or its amalgamation with any other person or body.

Power to sell or dispose of land

10 (1) The Company may, with the prior approval of the Legislature—

- (a) sell the scheduled land or any other land situated at Morgan's Point;
- (b) grant a lease or create a disposition of an interest in relation to the scheduled land and any other land situated at Morgan's Point for a term exceeding twenty-one years or for terms renewable at the option of the grantee exceeding in the aggregate twenty-one years, except that no disposition or conveyance to which this subsection applies shall be expressed to be for a term exceeding one hundred and twenty years or for terms renewable at the option of the transferee or grantee for a period exceeding in the aggregate one hundred and twenty years.

(2) The approval of the Legislature referred to in subsection (1) shall be expressed by way of resolution passed by both Houses of the Legislature approving the sale of the scheduled land or any other land situated at Morgan's Point and communicated to the Governor by message.

Business plans and budgets

11 (1) Before the commencement of each financial year, the Company—

- (a) shall prepare a business plan, an operating budget and a capital budget; and

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(b) shall prepare and send to the Minister of Finance and Minister of Public Works a summary of every such plan and every such budget.

(2) Every such plan, budget or summary shall encompass all the businesses and activities, including investments, of the Company and its wholly-owned subsidiaries, if any, and shall set out the primary business decisions taken with respect to those businesses, activities and investments.

(3) Every such plan, budget or summary shall be in a form that clearly sets out information according to the primary businesses or activities of the Company and its wholly-owned subsidiaries, if any.

Minister may give directions

12 (1) The Minister may give a direction to the Company if he considers it to be in the public interest for him to do so, and the Company shall carry out any such direction.

(2) Before he gives a direction to the Company, the Minister shall consult Cabinet and the directors of the Company with respect to the content and effect of the direction.

(3) Without prejudice to the generality of subsection (1), a direction from the Minister may direct the Company to give to the Minister, whether periodically or not, such information relating to the operations of the Company as the Minister may specify in the direction.

(4) Without prejudice to the generality of subsection (1), a direction from the Minister may direct the Company to make available to any person, including the Government, property of the Company or a service which the Company can provide.

(5) Where a direction is given under subsection (4), the Government shall pay the Company for the property or service in question the price determined by the Government after consultation with the Company.

(6) Without delay after carrying out a direction, the Company shall inform the Minister in writing that the direction has been carried out.

Real estate operations

13 For the avoidance of doubt, it is declared that the Real Estate Brokers' Licensing Act 2017 does not apply to the Company or to any employee or agent of the Company acting within the scope of his employment or agency.

Indemnification of directors etc.

14 (1) The Government shall indemnify a present or former director or officer of the Company, and his legal representatives, against any costs, charges or expenses, including any amount paid to settle an action or satisfy a judgment, that are reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is a party by reason of being or having been such a director or officer, if he—

(a) acted honestly and in good faith with a view to the best interests of the Company; and

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(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, believed on reasonable grounds that his conduct was lawful.

(2) Notwithstanding subsection (1), the Government shall indemnify a present or former director or officer of the Company, and his legal representatives, against any costs, charges or expenses incurred by him in connexion with the defence of any civil, criminal or administrative action or proceeding to which he was made a party by reason of being or having been such a director or officer, if he—

(a) was substantially successful on the merits of the action or proceeding; and

(b) fulfils the conditions set out in paragraphs (a) and (b) of subsection (1).

(3) Any amount payable in respect of indemnification under this section may be paid out of the Consolidated Fund.

Annual financial statements and reports

15 (1) The Company shall prepare in respect of each financial year financial statements in proper form, which shall be audited by the Auditor General of Bermuda.

(2) The Company shall as soon as may be after the end of each financial year prepare a report on its operations during that year, and on its policy and programme for future years.

(3) Every report under subsection (2) in respect of a financial year shall include the text of every direction given by the Minister to the Company under section 12 during that financial year.

(4) The Company shall send to the Minister of Finance and Minister of Public Works, within six months after the end of each financial year, a copy of the set of financial statements prepared under subsection (1), and of the report prepared under subsection (2), in respect of that financial year.

(5) The Minister shall cause a copy of every set of financial statements, and of every report, sent to him under this section to be laid before each House of the Legislature.

Minister may make regulations

16 (1) The Minister may make regulations for such transitional, incidental, supplementary or consequential provision as appears to the Minister to be necessary or expedient.

(2) Regulations made under subsection (1) shall be subject to the negative resolution procedure.

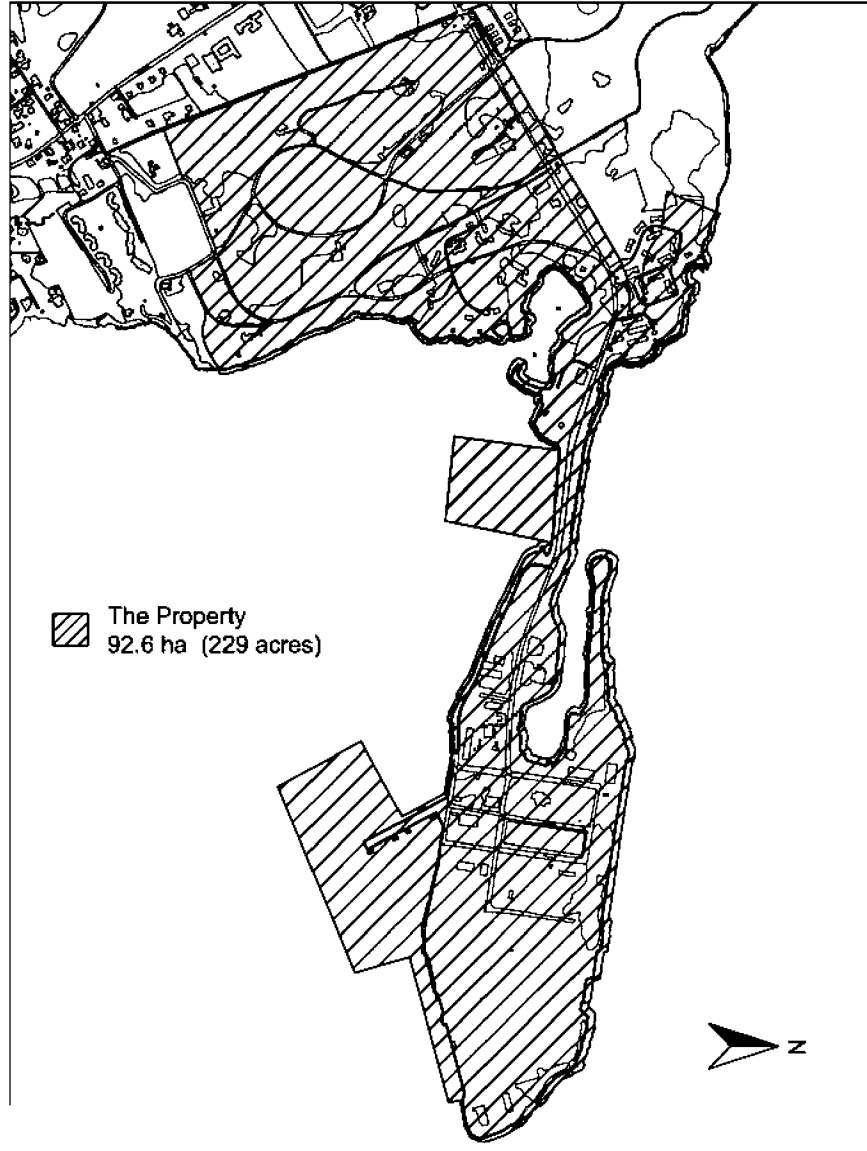
Commencement

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

SCHEDULE

(Section 2)

SCHEDULED LAND



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[Assent Date: 20 December 2022]

[Operative Date: 06 February 2023]