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GRAND BAHAMA (PORT AREA) INVESTMENT INCENTIVES ACT, 2016

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No. 30 of 2016

GRAND BAHAMA (PORT AREA) INVESTMENT INCENTIVES ACT, 2016

AN ACT TO GRANT TAX EXEMPTIONS TO THE PORT AUTHORITY
AND TO CERTAIN LICENSEES OF THE GRAND BAHAMA PORT
AUTHORITY LIMITED AS AN INCENTIVE FOR ECONOMIC
GROWTH IN THE PORT AREA

[Date of Assent - 26th August, 2016]

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act may be cited as the Grand Bahama (Port Area) Investment Incentives Act, 2016.
- (2) This Act shall be deemed to have come into force on the 4th day of May, 2016 and shall expire on the 4th day of May, 2036, unless otherwise extended by the Minister by Order published in the *Gazette*.

2. Interpretation.

In this Act —

“**affiliate**” means in relation to an entity, another entity that directly or indirectly controls, is controlled by, or is under common control with such other entity and hence is considered to be a member of the same group;

“**control**” means the ownership, directly or indirectly through one or more subsidiaries of more than one-half of the voting power of an entity; and the ability to appoint a majority of the board of directors or other governing body of such entity;

“**Board**” means the Investment Board established by section 12 of the International Persons Landholding Act (*Ch. 140*);

“**concessions**” means exemption from the payment of certain taxes in accordance with this Act;

“**licensee**” unless otherwise expressly stated, means a licensee of the Port Authority;

“**Minister**” means the Minister responsible for investments;

“**non-Bahamian**” means —

- (a) a person who is not a citizen of The Bahamas;
- (b) a company incorporated in The Bahamas under the Companies Act (*Ch. 308*) where any of its shares or other capital is beneficially owned by a person who is not a citizen or where it is in any manner, whether directly or indirectly, controlled by one or more of those persons;
- (c) a company formed and incorporated at any place outside The Bahamas; or
- (d) an international organisation;

“**Port Area**” has the meaning ascribed to it under the Hawksbill Creek, Grand Bahama (Deep Creek Water Harbour and Industrial Area) Act (*Ch. 261*);

“**Port Authority**” means the Grand Bahama Port Authority Limited, being a company incorporated under the statute laws of The Bahamas and carrying on business within The Bahamas.

3. Application of Act.

- (1) This Act shall apply to a licensee who —
 - (a) owns less than five acres of undeveloped land in the Port Area;
 - (b) being a non-Bahamian, owns five acres or more of undeveloped land in the Port Area, whether contiguous or otherwise; or
 - (c) owns developed land,and carries on or intends to carry on business within the Port Area, whether or not the licensee is the beneficial owner of the property.
- (2) A person shall be deemed to satisfy the condition set forth in subsection (1)(b) if the land is beneficially owned by an affiliate of such person.

4. Concessions for investing in Port Area.

- (1) Subject to subsections (3) and (4), a person to whom this Act applies, may upon application in writing to the Board, be granted concessions exempting the applicant from the payment of —
 - (a) real property taxes, rates, levies (whether capital or periodic) on all land and any other taxes now or hereafter imposed on real property on all land, buildings and other improvements comprising or

- forming part of a development or on which the development shall be situate;
- (b) personal property taxes or rates, capital levies or taxes on capital gains or capital appreciation upon or against, any personal property within the Port Area or upon or against shares, debentures or other securities of any company incorporated within or without The Bahamas;
 - (c) taxes of any kind, which would be otherwise applicable, upon or against —
 - (i) the earnings of a licensee in the Port Area and outside The Bahamas;
 - (ii) any rentals or licence fees paid by any lessee or by a licensee to the Port Authority;
 - (iii) any interests or dividends paid by any lessee company of the Port Authority or by a licensee to the holders of the evidences of indebtedness or shares or other securities of the Port Authority or of the company holding such lease from the Port Authority or of a licensee;
 - (iv) any salaries and remuneration by way of bonus participation in profits commission or otherwise paid by the Port Authority, any lessee from the Port Authority, a licensee to any person employed by the Port Authority or by such lessee or by a licensee within the Port Area, provided that the person receiving such salary or remuneration is ordinarily resident within the Port Area.
- (2) The Minister shall, upon the recommendation of the Board, grant approval for concessions under subsection (1) and such approval shall —
- (a) remain in full force and effect for the period stipulated, so long as the person fulfils its obligations under this Act;
 - (b) stipulate conditions for inspection of the development by such persons as the Board may appoint, to ensure compliance by that person of his obligations under the grant of approval.
- (3) Notwithstanding subsection (1), a person specified in the *Schedule*, its affiliates, subsidiaries and joint venture companies existing at the commencement of this Act, with whom the Government of The Bahamas has an existing agreement, need not apply for exemption.
- (4) A person referred to in section 3(1)(a) shall be exempt from real property tax for so long as this Act remains in force.

5. Application for concessions.

An application referred to in section 4 shall be made to the Board in writing accompanied with the prescribed application fee and supported by the following information —

- (a) particulars as to the name and nationality of the applicant, or if a company, the place of incorporation or establishment and the names of the beneficial owners of the equity or persons having an interest in the business;
- (b) the nature of the investment;
- (c) where the investment involves developing land —
 - (i) the land development commitments;
 - (ii) a specified time frame for development, including specific milestones and measures;
 - (iii) the work schedule programme and the need for key personnel;
 - (iv) the date on or before which —
 - (aa) the preparation, construction, expansion or further development as the case may be, of the development works will commence; and
 - (bb) the development is expected to be completed and operational;
- (d) the estimated amount of capital to be invested and the source of funding along with the estimated minimum amount and utilisation of the capital to be expended annually thereon;
- (e) evidence that the investment is sufficiently financed;
- (f) the manner in, and the period within, which the investment would be made;
- (g) the estimated contribution which it is expected to make to the economy of the Port Area;
- (h) an economic impact assessment, if so requested by the Board;
- (i) an environmental impact assessment, if so requested by the Board;
- (j) an environmental management plan, if so requested by the Board;
- (k) where applicable, the number of persons expected to be employed and the number of full time employees;
- (l) plans relating to the proposed lay out, design and construction of roads, buildings and other structures as applicable; and
- (m) such other information as the Board may reasonably require.

6. Failure to fulfil obligations.

- (1) Where a person fails to satisfy any material condition specified in an approval the Minister may —
 - (a) reduce or revoke in full the tax exemptions on such proportionate basis as may be prescribed;
 - (b) demand payment in respect of any money that would have been payable had no concessions under this Act been conferred;
 - (c) impose such other measures as the Board may see fit in consultation with the Grand Bahama Port Authority.
- (2) For the purposes of subsection (1), “**material condition**” means a condition which goes to the root of the approval for concessions, the breach of which gives rise to treat the approval as repudiated.

7. Effect of Force Majeure.

- (1) Where a person fails to fulfil an obligation undertaken by him under an approval because of force majeure, such failure shall not be treated as a failure to comply with the provisions of the approval, if it is proved to the satisfaction of the Minister to be the necessary consequence of such force majeure.
- (2) For the purposes of this section, force majeure means any event beyond the person’s reasonable control and includes war, insurrection, civil commotion, strikes, storm, tidal wave, flood, epidemic, explosion, fire, lightning, or earthquake or any enactment but does not include fluctuation in general business conditions.
- (3) Where failure to fulfil an obligation under an approval is proved to have been the necessary consequence of force majeure, the period during which the fulfilment of such obligation is rendered impossible shall be no more than one year and added to the period fixed by the approval.

8. Duration of concessions.

- (1) An approval for the grant of concessions under this Act shall stipulate the duration of the concessions therein.
- (2) Notwithstanding subsection (1) and subject to section 1(2), no approval shall be granted under this Act extending concessions beyond the 4th day of May, 2036.

9. Reporting requirements.

- (1) Every person to whom this Act applies and who is granted concessions under this Act shall provide progress reports to the Board, not less than

once in every twenty-four month period from the date of the grant of the approval or as may be specified in the approval.

- (2) A report referred to in subsection (1) shall —
 - (a) where the investment involves the construction of a new or expanded development, contain details regarding —
 - (i) the schedule of milestones and completion status;
 - (ii) any particulars relating to major risks or delays and any plan for the recovery from such delays;
 - (iii) an expense report showing the budgeted and actual expenses, of the development, if applicable;
 - (iv) the environmental management plan; and
 - (v) any matters of environmental concern;
 - (b) in respect of all other developments, contain details regarding —
 - (i) the business development detailing any capital improvement investment;
 - (ii) employment data including training of Bahamian workers; and
 - (iii) the public infrastructure development, if applicable.

10. Confidentiality.

- (1) No person having an official duty under this Act or being employed in the administration of this Act, shall disclose any information relating to the affairs of any person to whom this Act applies, which comes to his knowledge in the course of the performance of such duty under this Act.
- (2) Subsection (1) shall not apply to a disclosure —
 - (a) lawfully required or permitted by a court of competent jurisdiction in The Bahamas;
 - (b) for the purpose of assisting in the exercise of any functions conferred by this Act, by any other Act, or by regulations made under this Act or any other Act;
 - (c) in respect of the affairs of a person with the consent of that person, where such consent has been voluntarily given;
 - (d) if the information lawfully disclosed is or has been available to the public from any other source;
 - (e) given with a view to the institution of, or for the purpose of —
 - (i) criminal proceedings;
 - (ii) disciplinary proceedings relating to the discharge by a public officer of his duties; or

- (f) for the purposes of any legal proceedings in connection with —
 - (i) the winding-up or bankruptcy of a person; or
 - (ii) the appointment or duties of a receiver of a person.
- (3) Any person who —
 - (a) communicates any information in breach of subsection (1); or
 - (b) suffers or permits any unauthorised person to have access to any records or documents relating to any matter which comes to his knowledge in respect of this Act,commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for one year.

11. Board to prepare annual reports.

- (1) Once in every year, the Board shall prepare an annual report with regard to any concessions granted under this Act and all other matters pertaining thereto.
- (2) A copy of the report referred to under subsection (1) shall be submitted to the Minister, along with any recommendations that the Board sees fit.

12. Regulations.

The Minister may, in consultation with the Board, make regulations for carrying out the purposes and provisions of this Act, and in particular without prejudice to the generality of the foregoing, may make regulations —

- (a) prescribing the criteria for determining the grant of approval and the duration of any concessions granted;
- (b) prescribing the manner and form in which applications for an approval may be made;
- (c) prescribing or varying the fees payable in respect of any application under this Act;
- (d) prescribing the form of orders, notices and other documents to be used under this Act; and
- (e) prescribing the manner and form of reporting.

13. Non-derogation.

Except as provided herein, nothing in this Act shall derogate from the provisions of the Real Property Tax Act (*Ch. 375*).

14. Existing agreement.

Notwithstanding any other provisions of this Act, the persons listed in the *Schedule* and their existing affiliates, subsidiaries and joint venture companies,

existing at the commencement of this Act, shall be entitled to the benefit of concessions set forth in section 4(1) for a period of twenty years commencing from the 4th day of May, 2016 subject to fulfilment of their respective obligations under any existing agreement with the Government.

15. Transitional.

Subject to section 14, until the approval or otherwise of an application made under this Act, any licensee to whom this Act applies —

- (a) who has benefited from tax exemptions under the Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) Act (*Ch. 261*) and the extensions made thereafter; and
- (b) whose exemptions thereunder have expired on the 4th day of May, 2016,

shall be entitled to continue to enjoy the benefit of such exemptions with effect from the 4th day of May, 2016, provided that such application is made to the Board within six months from the date on which the Act comes into force, and where any licensee fails to make application within the specified time, such exemptions shall cease to apply upon the deadline of the application period.

SCHEDULE

(section 14)

The Grand Bahama Port Authority Limited

The Grand Bahama Development Company Limited

Freeport Harbour Company Limited

Freeport Commercial and Industrial Limited