

ANTIGUA AND BARBUDA



PARADISE FOUND (PROJECT) BILL

NO. OF 2015

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ANTIGUA AND BARBUDA
PARADISE FOUND PROJECT BILL.
NO. OF 2015

AN ACT to provide for the approval of specified terms of an Agreement dated 3rd November 2014 between the Government of Antigua and Barbuda and Paradise Found LLC for a tourism development Project in Barbuda.

ENACTED by the Parliament of Antigua and Barbuda as follows-

1. Short title and Commencement

This Act may be cited as the Paradise Found Project Act, 2015, and comes into operation on the day appointed by the Minister by notice published in the Gazette.

2. Interpretation

In this Act –

“ABST” has the same meaning as the meaning assigned to it in the Antigua and Barbuda Sales Tax Act 2006, No. 5 of 2006;

“Leased Land” means those parcels of land situate in Barbuda leased to Paradise Found LLC or its subsidiaries or affiliates for the Project more particularly described in Schedule 1 and includes all lands in Barbuda that may be leased to Paradise Found in the future for purposes of the Project

“Minister” means the Minister responsible for finance;

“Paradise Found” means Paradise Found LLC and any subsidiary or affiliate of that corporation;

“the Project” means the tourism and real estate development in on Barbuda by Paradise Found LLC on lands of the former K Club together with certain lands leased from the Crown pursuant to an agreement between the Government of Antigua and Barbuda and Paradise Found LLC dated 3rd November, 2014.

“the Resort” means the hotel resort to be built by Paradise Found as part of the Project.

3. Grant of leases

(1) Notwithstanding the provisions of the Barbuda Land Act, 2007, No 23 of 2007 or any other law to the contrary, the Government leases to Paradise Found the Leased Land on the terms set out in Schedule 2.

(2) The Rent shall be prepayment and discharge of all Lessee’s financial obligations under the Lease, including rental for the first 99 years of the term.

(3) The provisions of the Barbuda Land Act, 2007 does not apply to the lease of the Leased Land pursuant to this Act.

4. Non-application of section 6 of Act No 23 of 2007

Section 6 of the Barbuda Land Act, 2007 (which provides that the Barbuda Council may grant leases with the approval and on the advice of the Cabinet and the consent of a majority of the people of Barbuda) does not apply to the lease of the Leased Land pursuant to this Act; nor does the restriction of the term of the lease apply.

5. Non-application of section 17 of Act No 23 of 2007

Section 17 of the Barbuda Land Act, 2007 shall not apply to the lease of the Leased Land by virtue of this Act; consequentially the procedure set out in that section is not applicable to the grant of the lease of the Leased Land under this Act.

6. Non-application of section 19 of Act No 23 of 2007

Section 19 of the Barbuda Land Act, 2007 (time limits on development) shall not apply to the grant of lease of the Leased Land under this Act.

7. Registration of Leases

Notwithstanding the Barbuda land Act, 2007, the lease of the Leased Land and subleases therefrom shall be registered as deeds under the Registration and Records Act [Cap 375] and no further filing or registration is necessary.

8. Obligations of the Paradise Found

In developing the Leased Land, Paradise Found shall -

- (a) commission an Environmental Impact Assessment (EIA) study to be undertaken for the Project and to make the EIA available to the Government;
- (b) construct and maintain a new public facility of sheltered buildings, bathrooms, changing areas and car parking on a beach front site in the proximity of and just north west of ‘Uncle Roddy’s’) (“the Beach Facilities”) This beach with public access and Beach Facilities will be named the Princess Dianna Beach;
- (c) provide car parking and a walkway for public access to the beach between the Property and Coco Point. The car park and public access is not to be used for commercial purposes and particularly is not to be used for cruise ship visitors; and
- (d) maintain and illuminate all public access roads in the vicinity of the Resort

9. Government Permissions

(1) Paradise Found is permitted –

- (a) to operate a desalination or similar plant and equipment to produce potable water and irrigation water for its own use and for sale to the public at reasonable price;
- (b) to drill for and use water located on or under the Property;
- (c) to operate electricity generating or similar plant and equipment to produce electricity ;
- (d) to install renewable energy plants for the sole purpose of the Project;
- (e) to install and operate a sewage treatment plant , waste management plant, re-usable grey water or similar plant and equipment for the disposal or reprocessing of effluent for the sole purpose of the Project;
- (f) to install and operate a television service for the sole purpose of the Project;
- (g) to operate an internet service including connecting to fiber optic or microwave services for the sole purpose of the Project;
- (h) to import and store oil, petro and gas for the sole purpose of the Project;
- (i) to operate a garbage disposal, waste management and recycling facility for the sole purpose of the Project;
- (j) to re-route the existing boundary road to the external perimeter of the Property at its own cost;

(2) Subject to Development Control Authority approval, Paradise Found is permitted –

- (a) to build a main jetty or dock from the beach in front of the Resort for the sole use of the Resort and its guests and owners;
- (b) to build small private individual docks in front of the villa sites;
- (c) to install, at its cost, twelve water moorings points off the beach in front of the Resort for large and super yachts for the sole and exclusive use by the Resort;
- (d) to construct buildings along the current setbacks already established by the K Club or closer to the sea, if permitted by the applicable building code ;
- (e) to build and maintain a helipad at the Resort, which in the event of an emergency on Barbuda will be available to assist.

(3). Paradise Found is granted a waiver of the following -

- (a) Non-citizens landholding licence to hold the Leased Land;
- (b) Vendor's and purchaser's stamp duty payable on land transfer to subsequent first sale only of properties/subleases to first time buyers;
- (c) Non-citizen land holding licence fee (stamp duty) payable under the non-citizen Land Holding Regulation Act Cap. 293 on purchase of properties (leases/subleases by first time buyers of leases/properties within the Resort;
- (d) licence to operate a casino on the Resort, subject to the betting and Gaming Act Cap. 47.

10. CIP approval of the Project

The Project is confirmed as eligible for benefits under the Antigua and Barbuda Citizenship by Investment Act, 2013.

11. Exemption from personal income tax on employment income.

(1) All persons employed on the Project, including foreign contractors and consultants, are exempt from personal income tax on their employment income for fifteen years from the commencement of this Act.

(2) Foreign Contractors and consultants working on the Project are exempt from withholding or other taxes from income so derived.

12. Exemption from import duty, revenue recovery charge and ABST.

(1) Paradise Found shall be entitled to import building materials, furniture, fixtures, fittings, furnishings, appliances, machinery, equipment, fittings, motor vehicles, boats, aircraft, furniture, office equipment, and any other mechanical, landscaping or construction material for the project, free from duty, revenue recovery charge, ABST or surcharges of any kind, but not including handling charges.

(2) Paradise Found shall not –

- (a) sell or dispose of any material which has been imported free of customs duties, taxes surcharges or other impost; or
- (b) use such items for the purpose other than in connection with an operation authorized by the Agreement, without the prior approval of the Government and the payment of the appropriate customs duties and other charges imposed by law.

(3) Where Paradise Found disposes of or uses any material brought into Antigua and Barbuda in contravention of subsection (2), Paradise Found shall pay to the Government any customs duties consumption taxes, customs service and surcharges which would have been payable on such material if it had been imported in the condition in which it was at the time of such improper disposition or use.

13. Foreign employees exempt from import duties

The employees of the Paradise Found who are required to move to Antigua and Barbuda to take up positions within the Project are exempted from the payment of import duties, taxes or levies for their personal belongings and household items.

14. Other import duties exemption

(1) Paradise Found shall be exempt from payment of import duties, revenue recovery charge and ABST on the following items related to the Project –

- (a) all food and beverage where such commodities are imported directly for the Resort;
- (b) fuel to run the generators until such time as Antigua Public Utilities Authority can provide electricity at comparable prices to that being generated by Paradise;
- (c) all aviation fuel purchased in Antigua and Barbuda;
- (d) two hundred golf carts or similar vehicles, twenty motor vehicles, two aircrafts, two helicopters and two boats related to the project.

(2) Paradise Found shall be exempt from all port fees at the Barbuda dock for all imports into Barbuda.

15. Exemption from Taxes

Paradise Found shall for 25 years from the commencement of this Act be exempt from corporate income tax on its income or profits and shall be able to carry forward losses for 7 years for each tax year.

16. Withholding tax exemption

Paradise Found is exempt from withholding tax on remittance of interest paid or accrued by Paradise Found on any debt for the Project, for 25 years from the commencement of this Act.

17. Dividends exempt from tax

(1) Any income of Paradise Found derived from operation of Paradise Found and distributed as dividends to its shareholders shall be exempt from income tax payable by such shareholders of the Paradise Found out of the capital of the Paradise Found, its earnings or its retained earnings.

(2) Where otherwise applicable on repatriation of profits, dividends and capital, and on payment of royalties, technical and management fees, interest, rentals or amenities, Paradise Found shall be entitled to free repatriation thereof and is exempted from any withholding tax and any other taxes in connection therewith.

18. Stamp Duty waived

Stamp duty is waived on

- (a) all conveyances of interests in land between Paradise Found and any of its subsidiaries, joint venture partners and shareholders on all conveyances between them where such conveyances are in connection with the Resort.;
- (b) the acquisition of any interest in any further lands by Paradise Found related to the Project;
- (c) the subsequent first conveyance only of subleases to first time buyers
- (d) Non-citizens Landholding licence on any lease acquired in Barbuda by Paradise Found or its affiliates;

19. Property Tax

Property tax shall be waived on all property in the Project for 25 years from the commencement of this Act.

20. Undeveloped Land Tax

The provisions of the Non-Citizens Undeveloped Land Tax shall not be applicable to Paradise Found Project.

21. Exemption from planning fees.

Paradise Found is exempt from the payment of planning fees that may be prescribed under the provisions of any law or regulation in force.

22. Work permit fees capped.

Work permit fees for employees of the Project shall be capped at a maximum of US\$1,500 per employee per annum for a period of fifteen years after the commencement of this Act.

23. Exemption from section. 32 of the Licensing (Intoxicating Liquor) Act, Cap. 249

Paradise Found is exempted from the provisions of section 32 of the Licensing (Intoxicating Liquor) Act Cap 249.

24. Reconciliation with other laws.

(1) Except as otherwise provided in this Act, no other law and no practice or procedure relating to taxes, stamp duty or other imposts shall apply to the Project so far as it is inconsistent with this Act.

(2) Notwithstanding subsection(1), the provisions of the Tourism and Business (Special Incentives) Act 2013 shall apply to the project where those provisions offer better incentives than those provided for in this Act.

EXPLANATORY MEMORANDUM

This Bill seeks to provide for Parliamentary approval of certain terms of an Agreement dated 3rd November 2014 between the Government of Antigua and Barbuda and Paradise Found LLC in relation to a very large tourism development project in Barbuda. The project is being undertaken by two well-known investors, American movie icon, Robert De Niro and Australian billionaire, James Packer.

2. The Government considered this Bill necessary as efforts to implement the project have been stymied by maneuverings of persons in Barbuda. These persons have held up the project by taking the Barbuda Council to Court on a technicality involving the voting procedure under the Barbuda Land Act, 2007. Although the detractors lost the case at first instance they have appealed and therefore have caused a further delay to the commencement of a project that the Government considers key to the development of Antigua and Barbuda.

3. The application of the Barbuda Land Act, 2007 (BLA) has proved not to be investor-friendly. Some of the provisions of the BLA are considered to be of doubtful constitutional validity: for instance the attempt to bind a future parliament in section 31 (2). This Bill therefore provides that specified provisions of the BLA are not applicable to the lease of land in Barbuda to Paradise Found. It also provides that the Paradise Found Project Act, 2015 will supersede any other law (including the BLA) where there might be a conflict of laws.

4. The Bill also covers the gamut of the usual tax incentives granted by Government to investors in order to stimulate the development of the tourism sector, particularly in Barbuda. For instance, it covers a tax holiday of 25 years in the case on corporate income tax; and taxes (stamp duty) on conveyance of interests in land are waived for the Investor Company and first time investors into the Project. Personal income tax is waived for all persons employed on the Project for 15 years (where applicable).

5. The Bill also seeks to reconcile its provisions with other pieces of legislation that cover taxes and waiver of taxes, particularly the Tourism and Business (Special Incentives) Act, 2013 (Act No 22 of 2013). Provision is made for the special incentives provided for in the Tourism and Business (Special Incentives) Act, 2013 to apply to the Project where those incentives are better than those provided for in this Bill.

Dated the day of 2015

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Hon. Gaston Browne
Prime Minister and Minister of Finance