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ARRANGEMENT OF SECTIONS

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SCHEDULE - Description of Part of New Providence in which New Hotels may be Built.

CHAPTER 289

HOTELS ENCOURAGEMENT

An Act to encourage the construction of hotels in The Bahamas by providing for the refund of customs duties and emergency taxes and certain other concessions, and for the exemption of such hotels from certain taxation, and to relieve existing hotels from certain taxation.

30 of 1954
6 of 1955
69 of 1957
32 of 1958
2 of 1961
43 of 1964
18 of 1965
59 of 1965
5 of 1966
E.L.A.O., 1974
5 of 1987
22 of 1989
13 of 1991
31 of 1992
10 of 1993
20 of 1999
37 of 1999

[Commencement 22nd July, 1954]

1. This Act may be cited as the Hotels Encouragement Act.

[Short title.](#)

2. (1) In this Act, unless the context otherwise requires-

[Interpretation.](#)

"all-inclusive hotel" means an hotel where food and beverage and entertainment are offered at a fixed price to registered guests;

"bedroom" means a room with a capacity of not less than twelve hundred cubic feet furnished as a bedroom and intended primarily to be slept in;

"construction plant" means in the case of a new hotel to be constructed in New Providence, machinery, equipment, tools and trucks of all kinds used in the building trades, but does not include machinery for the manufacture of wooden doors, door-frames, windows, window frames, mouldings, cement tile and cement block, and, in the case of a new hotel to be constructed in an Out Island, machinery, equipment, tools and trucks of all kinds used in the building trades;

"customs duties" means the duties of customs levied by the Tariff

Act and any Act passed in amendment thereof or in substitution therefor and any other duties or taxes now or hereafter imposed upon or payable in respect of goods imported into The Bahamas, except stamp duties;

"existing hotel" means-

(a)
in that part of New Providence described in the Schedule to this Act, any premises which at any time after the twenty-second day of July, 1954, up to the thirty-first day of December, 1955, are licensed as an hotel under the provisions of the Liquor Licences Act or any premises in which at any time during the said period is carried on the business of an hotel and which have not less than ten bedrooms for the accommodation of guests;

(b)
elsewhere in New Providence, any premises which at any time after the twenty-second day of July, 1954, up to the thirty-first day of December, 1955, are licensed as an hotel under the provisions of the Liquor Licences Act, or any premises in which at any time during the said period is carried on the business of an hotel and which have not less than fifty bedrooms for the accommodation of guests or any premises in which at any time after the twenty-second day of July, 1954, up to the thirty-first day of December, 1965, is carried on the business of an hotel and which have ten or more but less than fifty bedrooms for the accommodation of guests;

(c)
in an Out Island, any premises which at any time after the twenty-second day of July, 1954, up to the thirty-first day of December, 1955, are licensed as an hotel under the provisions of the Liquor Licences Act, or any premises in which at any time during the said period is carried on the business of an hotel and which have not less than twenty bedrooms for the accommodation of guests or any premises in which after the twenty-second day of July, 1954, up to the thirty-first day of December, 1965 is carried on the business of an hotel and which have ten or more but less than twenty bedrooms for the accommodation of guests;

"materials" means building materials of all kinds, and all equipment, furnishings, supplies, and things necessary-

(a)
for the construction, equipping and furnishing of a new hotel so that the same is complete and ready to open for business, or

(b)
for the rehabilitation, remodelling, furnishing, refurnishing, equipping, re-equipping, air-conditioning or extension of a new or existing hotel,

and if such new or existing hotel is to be constructed or is situate, as the case may be, in an Out Island where there is no central electricity supply as may be specified by the Minister by order, includes bunker oil and diesel oil, but does not otherwise include any consumable stores;

"Minister" means the Minister responsible for Hotel Encouragement;

"new hotel" means-

(a)

in that part of New Providence described in the Schedule to this Act, any premises completed after the twenty-second day of July, 1954,^[ii] for use as an hotel or residential club, having not less than ten bedrooms for the accommodation of guests and suitable public rooms for the accommodation and entertainment of guests, and

(i)

includes the planting and landscaping of the grounds thereof;

(ii)

includes, but only to the extent that the same comprises work carried out after the first day of January, 1965,^[ii] all other buildings, utility services, airfields, docks, jetties, bridges, dredging, reclaiming and filling operations, road building and other amenities, works and conveniences necessary or desirable in connection with the construction thereof and the improvement of the site upon which the same are constructed;

(b)

elsewhere in New Providence, any premises completed after the twenty-second day of July, 1954, for use as an hotel or residential club having not less than fifty bedrooms for the accommodation of guests, and suitable public rooms for the accommodation and entertainment of guests or any premises completed after the thirty-first day of December, 1965 for use as an hotel or residential club having ten or more but less than fifty bedrooms for the accommodation of guests and suitable public rooms for the accommodation and entertainment of guests, and

(i)

in either case includes the planting and landscaping of the grounds thereof;

(ii)

in either case, but only to the extent that the same comprises work carried out after the first day of January, 1965, includes all other buildings, utility services, airfields, docks, jetties, bridges, dredging, reclaiming and filling operations, road building and other amenities,

works and conveniences necessary or desirable in connection with the construction thereof and the improvement of the site upon which the same are constructed;

c) in an Out Island-

(i)
any premises completed after the twenty-second day of July, 1954, for use as an hotel or residential club having not less than twenty bedrooms for the accommodation of guests:

(ii)
any premises completed after the thirty-first day of December, 1965, for use as an hotel or residential club having ten or more but less than twenty bedrooms for the accommodation of guests; or

(iii)
any premises completed after the 26th day of May, 1993, for use as an hotel or residential club having not less than five bedrooms for the accommodation of guests,

and containing suitable public rooms for the accommodation and entertainment of guests either in such premises or in premises already constructed, and includes all other buildings, utility services, airfields, docks, jetties, bridges, dredging, reclaiming and filling operations, road building and other amenities, works and conveniences necessary or desirable in connection with the construction thereof and the improvement of the site upon which the same are constructed and notwithstanding that the same or any part thereof may have been previously constructed, erected or completed;

(d)
any premises to which substantial repairs and refurbishment have been carried out after the first day of June, 1995 for use as an hotel having not less than four bedrooms in an Out Island and not less than ten bedrooms in New Providence, Paradise Island or Freeport, Grand Bahama and where, in the opinion of the Minister, such repairs and refurbishment renders the premises a new hotel.

"New Providence", notwithstanding the provisions of the Interpretation Act or any other Act, means the island of New Providence only and shall not be deemed to include Paradise Island or any other island or cay;

"Out Island" notwithstanding the provisions of the Interpretation Act or any other Act, means an Out Island as defined by section 2 of the Interpretation Act and Paradise Island and all other adjacent

islands and Cays within ten miles of the island of New Providence;

"promoter" means any person or company or any group of persons or companies acting in conjunction prepared to undertake the construction of a new hotel;

"real property taxes" means the real property taxes levied by the Real Property Tax Act and any Act passed in amendment thereof or in substitution therefor;

"truck" means a motor vehicle constructed for and ordinarily used for the carriage of goods.

(2) In relation to the definition of "new hotel" in this section the expression-

(a)
"suitable public rooms" means rooms of a size and number as the Minister may deem adequate having regard to the size, type and location of the proposed hotel or residential club;

(b) "substantial repairs and refurbishment" means repairs and refurbishment to any hotel with an estimated cost of the materials being not less than 50% of the market value of such hotel and expended over a period of not more than three years.

3. Any promoter or owner who desires to erect, repair or refurbish premises for use as a new hotel may make application to the Minister for the approval thereof. Every such application shall be in writing and shall contain full particulars of the proposed new hotel and its amenities and an estimate of the cost thereof, and shall be accompanied by a plan showing the proposed location of the new hotel, by plans and drawings of the proposed building or buildings, and by such other information as the Minister may require.

Promoter may apply to Minister.

4. (1) The Minister may, if satisfied that the erection, repair or refurbishment of the premises for use as a new hotel will be in the best interests of The Bahamas, enter into an agreement with the promoter or owner providing for the following matters or any of them, namely-

Minister may enter into agreement with promoter or owner.

(iii)(a) for the exemption of the promoter or owner from the payment of all customs duties in respect of all materials necessary for the construction, equipping, furnishing and completing of the new hotel which may be imported into The Bahamas, purchased or taken out of bond therein by the promoter or owner during such period as the Minister may determine, upon the furnishing of a bond in a form to be

approved by the Comptroller of Customs with such sureties (if any) as may be required by the Minister of Finance in double the amount of any customs duties which would ordinarily attach on importation thereof for the payment of such customs duties on a date to be fixed by the Minister of Finance, such bond being conditioned to become null and void if, on or before the date specified in such bond, such materials are applied only for the purpose specified in such agreement:

Provided that the Minister may by Order in the case of a hotel situated in a Family Island specify the exemption from the payment of stamp duties payable in respect of the importation of any materials under this section.

(b)

for the importation into The Bahamas free of all customs duties for such period as the Minister may determine by the promoter or owner (or by any contractor employed by the promoter or owner or by any subcontractor employed by any such contractor) of the construction plant required for the construction, equipping, furnishing and completing of the new hotel upon the furnishing of a bond in a form to be approved of by the Comptroller of Customs with such sureties (if any) as may be required by the Minister of Finance in double the amount of any customs duties which would ordinarily attach on importation thereof for the payment of such customs duties on a date to be fixed by the Minister of Finance, such bond being conditioned to become null and void if such construction plant shall be re-exported from The Bahamas on or before the date specified in such bond;

(c)

for the exemption of the new hotel (and all buildings comprising the same and all additions thereto and the parcel of land upon which the same shall be situate) from the payment of real property taxes and any other taxes now or hereafter imposed on real property for a period of ten years from the date on which the new hotel opens for business;

(d)

for the exemption of the new hotel (and all buildings comprising the same and all additions thereto and the parcel of land upon which the same shall be situate) from the payment of real property taxes and any other taxes now or hereafter imposed on real property in excess of twenty dollars per annum for every bedroom therein for the further period of ten years commencing on the first day of the eleventh year after the date on which the new hotel opens for business;

(e)

for the exemption from direct taxation upon or against the earnings of

or from the new hotel and its amenities, and all additions thereto, and upon or against any rentals paid in respect of the letting or sub-letting thereof for a period of twenty years from the date on which the new hotel opens for business, and if the promoter or owner or operator of such new hotel is a company, then also for the exemption from direct taxation upon or against any dividends declared in respect of the shares of such company or any interest paid by such company in respect of its indebtedness for the said period of twenty years;

(f)

for the admission into The Bahamas of key personnel and special workmen both during the construction period and during the operation of the new hotel, subject to the proviso that at all times seventy-five per centum of the total number of persons employed in the construction or operation of the new hotel shall be natives of The Bahamas if such natives of The Bahamas are available to perform the several and respective services required;

(g)

that no Governmental restrictions, regulations or conditions shall be made affecting the operation of the new hotel which do not similarly affect all similar hotels and that no legislation will be enacted affecting the operation of the new hotel which does not similarly affect all other similar hotels; and

(h)

for such other matters and concessions as the Minister shall deem fit and proper having regard to the type and location of the new hotel;

(i)

the exemption of real property tax granted under paragraph (d) may be for further periods of up to ten years provided that the hotel property has been well maintained and refurbished and in which case-

(i)

the payment of real property tax in respect of an hotel in New Providence or Paradise Island shall be two hundred and fifty dollars per annum for every bedroom therein;

(ii)

the payment of real property tax, if applicable, in respect of an hotel in an Out Island shall be one hundred dollars per annum for every bedroom therein.

(2) Every such agreement shall contain covenants on the part of the promoter or owner for the construction, equipping, furnishing and opening of the new hotel and for such other matters as the Minister shall deem fit and proper having regard to the type and location of the new hotel.

(3) Every such agreement shall contain mutual covenants on the part of the Minister and the promoter or owner providing for the following matters, namely-

(a)
that the concessions granted by such agreement shall remain in full force and effect so long only as the new hotel shall continue to be used and operated as an hotel or hotel and cottage colony;

(b)
that nothing contained in the said agreement shall be deemed to make the promoter or owner liable to pay to the Government any payments in respect of any matter or thing done, executed or happening prior to the date on which such agreement shall cease in respect of which matter or thing payment is waived thereby, or to refund or to repay any customs duties which have been refunded to the promoter or owner under the concessions granted by such agreement except in the circumstances specified in section 12 of this Act;

(c)
for the arbitration of all questions and differences between the Minister and the promoter or owner;

(d)
for the interpretation of such agreement according to the laws of The Bahamas.

[iv](4) The Minister of Finance shall designate public officers to be inspectors for the purposes of this Act, and every such agreement shall provide for such safeguards as the said Minister may require as to inspection of the site of the new hotel, and of the building being erected thereon, and of any storeroom, warehouse or other place under the control of the promoter or owner in which materials intended for use in connection with the new hotel shall be stored, so as to ensure that-

(a)
in the case of any agreement made under the authority of this Act prior to the coming into force of the Hotels Encouragement (Amendment) Act, 1992, customs duties shall only be refunded in respect of materials used, or which could reasonably be presumed to have been used, in the construction, equipping, furnishing and completing of the new hotel; or

(b)
in the case of any other agreement, all materials in respect of which customs duties have been exempted pursuant to the provisions of any agreement made under the authority of this Act, are used, or can reasonably be presumed to have been used, in the construction,

equipping, furnishing and completing of the new hotel,

and for such other safeguards and matters, including the keeping of records, as the Minister of Finance shall deem fit and proper in the circumstances.

(5) The Minister may extend the period during which construction plant may remain in The Bahamas so that such construction plant may be employed in the construction of one or more new hotels in respect of which agreements have been entered into by the Minister pursuant to the provisions of this section.

(6) Nothing contained in this section shall affect any agreement which was made under the provisions of the Hotels Encouragement Act or a Heads of Agreement signed by the Government of The Bahamas and which was in force immediately before the coming into force of this section.

5. (1) The owner of an existing hotel desiring to obtain the concessions hereinafter granted in this section may make application to the Minister at any time after the coming into operation of this Act up to the thirty-first day of December, 1955, for the approval of such existing hotel for the purposes of this Act. Every such application shall be in writing and shall specify the location of the existing hotel, the number of bedrooms contained therein, and the amount of real property taxes assessed thereon for the year in which such application is made.

Concessions for existing hotels.

(2) Upon being satisfied that such application is in respect of premises comprising an existing hotel within the meaning of this Act, the Minister shall enter into an agreement with the owner thereof providing for the following matters, namely-

(a)
that for a period of ten years from the date of such agreement such existing hotel (and all buildings comprising the same and all additions thereto and the parcel of land upon which the same is situate) shall not be subject to the payment in any year of real property taxes or any other tax now or hereafter imposed on real property in excess of the amount at which such existing hotel has been assessed for the year in which such application was made or in excess of five pounds for every bedroom contained therein, whichever is the lesser;

(b)
that for the further period of ten years commencing with the first day of the eleventh year after the date of such agreement such existing hotel (and all buildings comprising the same and all additions thereto and the parcel of land upon which the same is situate) shall not be subject to the payment of real property taxes or any other tax now or

hereafter imposed on real property in an amount exceeding five pounds per annum for every bedroom contained therein;

(c)

that for a period of twenty years from the date of such agreement no taxes shall be levied directly upon or against the earnings of or from such existing hotel and its amenities, and all additions thereto, and upon or against any rentals paid in respect of the letting or sub-letting thereof, and if the owner or operator of such existing hotel is a company, no taxes shall be levied directly upon or against any dividends declared in respect of the shares of such company or any interest paid by such company in respect of its indebtedness for the said period of twenty years;

(d)

that the concessions granted by such agreement shall be granted in consideration of the operation of such existing hotel as an hotel and shall remain in full force and effect so long only as such existing hotel shall continue to be used and operated as an hotel.

(3) The owner of any existing hotel in respect of which an Act has been passed or an agreement has been entered into by the Minister which is still in force at the coming into operation of this Act whereby concessions in respect of real property taxes and direct taxation have been granted shall only be entitled to the benefits of this section to the extent that the concessions granted by such Act or agreement are less extensive than the concessions granted by this section.

6. (1) The owner or tenant of an existing hotel desiring to rehabilitate, remodel, refurbish, re-equip or extend the same may submit to the Minister in writing for approval full particulars of such proposed rehabilitation, remodelling, refurbishing, re-equipping or extension together with an estimate of the cost thereof, and shall supply to the Minister such information as the Minister may require.

[Exemptions for existing hotels.](#)

(2) The Minister may if he decides that the proposal, mentioned in subsection (1) in whole or in part, set out in the particulars amount to substantial rehabilitation, remodelling, refurbishing, re-equipping or extension of the said hotel and that such rehabilitation, remodelling, refurbishing, re-equipping or extension will be in the best interest of The Bahamas grant a certificate providing for a reduced rate of duty of 10% on such materials and equipment as the Minister may approve.

(3) The concessions for the substantial rehabilitation, remodelling, refurbishing, re-equipping and extension of the said Hotel shall only be granted upon satisfaction of the following-

(a)

production of a valid hotel licence and evidence of satisfactory payment of hotel room tax, business licence fees and real property tax if applicable; and

(b)

being a hotel which in the opinion of the Minister, meets one of the following standards-

(i)

the repairs are substantial;

(ii)

the repair and rehabilitation of the existing hotel will restore a monument as defined in the Antiquities, Monuments and Museum Act, 1998.

(4) For the purposes of this section "substantial" means the rehabilitation, repair, refurbishing, remodelling, re-equipping or extension of any hotel with an estimated cost of the materials being not less than 25% of the market value of such hotel and expended over a period of not more than two years.

7. Where goods are purchased in The Bahamas for the construction, equipping, furnishing and completing of a new hotel referred to under section 4 and the rehabilitation, remodelling, refurbishing, re-equipping or repairs of a hotel referred to under section 6 the customs duties paid on those goods shall be refunded by the Comptroller of Customs.

Materials
purchased locally.

8. (1) Every agreement made under the provisions of this Act shall be expressed to be made by and between the Minister acting for and on behalf of the Government of The Bahamas of the one part and the promoter of the new hotel or the owner or tenant of the existing hotel, as the case may be, of the other part, and shall be executed by the Minister under the Public Seal and shall be executed by the promoter or the owner or tenant, if the promoter or the owner or tenant is a person, under his hand and seal, or if the promoter or owner or tenant is a company, under its common seal.

How agreements
are to be made.

9. (1) No construction plant imported into The Bahamas under the provisions of this Act shall be used for any purposes other than the construction of the new hotel or the project in respect of which the same was imported except with the consent of the Minister.

Penalties for
improper use of
construction plant.

(2) Every person who contravenes the provisions of this section shall be guilty of an offence against this Act and shall be liable, on summary conviction, on a first offence to a fine of four hundred dollars and on a second or subsequent offence to a fine of two thousand

dollars.

10. (1) No construction plant imported into The Bahamas pursuant to the provisions of any agreement made under the authority of this Act may be sold, given away or otherwise disposed of within The Bahamas unless the full amount of customs duties ordinarily payable upon the importation thereof shall have been paid into the Treasury, in which case it shall be lawful for the Comptroller of Customs by a memorandum endorsed on the bond furnished upon the importation thereof to cancel the same so far as it relates to such construction plant.

Penalties for disposing of construction plant without payment of duties.

(2) Every person who contravenes the provisions of this section shall be guilty of an offence against this Act and shall be liable, on summary conviction, to a fine of two thousand dollars, or to imprisonment for one year, or to both such fine and imprisonment, and the construction plant sold, given away, or otherwise disposed of in contravention of the provisions of this section may be seized and proceeded against in the same manner as goods liable to forfeiture under the Customs Management Act, or any Act passed in amendment thereof or substitution therefor, and the penalty of any bond furnished upon the importation of such construction plant may be recovered as liquidated damages.

11. Every person knowingly making a false declaration for the purpose of obtaining a refund of customs duties or an exemption from the payment of customs duties, or stamp duties pursuant to the provisions of any agreement made under the authority of this Act shall be guilty of an offence against this Act, and shall be liable, on summary conviction, to a fine of two thousand dollars, or to imprisonment for one year, or to both such fine and imprisonment.

Penalty for false declaration.

12. (1) Any person applying any materials in respect of which customs duties shall have been refunded or exempted pursuant to the provisions of any agreement made under the authority of this Act, for any purpose other than for the purpose specified in such agreement shall be guilty of an offence against this Act and shall be liable, on summary conviction, to a fine of two thousand dollars, or to imprisonment for one year, or to both such fine and imprisonment.

Penalty for wrongful application of materials.

(2) If the person convicted of an offence under subsection (1) of this section shall be the promoter, or if the promoter is a company, a director thereof, such agreement may be cancelled by the Governor-General, in which case all customs duties refunded to the promoter and all customs duties from the payment of which the promoter has been exempted, pursuant to the provisions of any agreement made

under the authority of this Act may be recovered from the promoter as liquidated damages.

13. All proceedings for offences against this Act and for the recovery of any penalties under this Act shall be before a magistrate or justice of the peace having jurisdiction in the place where the offence was committed, and the magistrate or justice of the peace shall dispose thereof summarily.

Proceedings to be taken summarily.

14. All such proceedings may be prosecuted in the name of the Comptroller of Customs, or the Commissioner of Police, or by a revenue officer or peace officer.

How proceedings to be prosecuted.

15. All expenses incurred in carrying out the provisions of this Act shall be payable out of the Consolidated Fund by warrant in the usual manner.

Expenses.

16. Nothing contained in this Act or in any agreement made thereunder after the coming into operation of this section, shall apply so as to derogate from the operation of the provisions of the Business Licence Act.

Derogation.

17. (1) The Minister may make regulations setting out the items eligible to receive concessions under this Act.

Regulations.

(2) The owners or operators of any hotel granted concessions under this Act may be required to provide evidence that they attempted to obtain the materials locally or attempted to obtain locally produced materials at comparable quality, price and quantity.

SCHEDULE (Section 2)

That portion of New Providence which is bounded on the North by a straight line drawn from a point which is located on the centre line of St. Albans Road at a distance of two thousand two hundred (2,200) feet South of its junction with the Southern boundary of West Bay Street to a point which is located on the centre line of Village Road at a distance of two thousand one hundred (2,100) feet South of its junction with the Southern boundary of East Shirley Street (the said distance being measured along the centre line of the respective roads) on the East by a straight line running due South (true) from the above mentioned point on the centre line of Village Road to the Sea on the South by the Sea and on the West by a straight line running due South (true) from the above mentioned point on the centre line of St. Albans Road to the Sea.

[i] Date of coming into operation of the Hotels Encouragement Act, 1954 (Ch. 289).

[ii] Date of coming into operation of section 2 of the Hotels Encouragement (Amendment) Act, 1965 (No. 59 of 1965).

[iii] In relation to the substitution of paragraph (a), section 6 of Act 31 of 1992 reads as follows-

[iv] In relation to the substitution of subsection (4), section 6 of Act 31 of 1992 reads as follows-