



BERMUDA

BASE LANDS DEVELOPMENT ACT 1996

1996 : 18

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[Preamble and words of enactment omitted]

Short title and construction

- 1 (1) This Act may be cited as the Base Lands Development Act 1996.
- (2) This Act shall be construed as one with the 1981 Act.

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Interpretation

2 In this Act the expression—

“the 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” has the meaning assigned to it by subsection (3) of section 7;

“the 1981 Act” means the Companies Act 1981 [*title 17 item 5*];

“the scheduled land” means the land described in the Schedule.

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 “the Bermuda Land Development 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 manage, or oversee the management of, the land entrusted to it with a view—

(a) generally, to the integration of that land into the economic and social fabric;

(b) in particular, to the creation of opportunities for increased employment now and in the future,

in furtherance of the well-being of the present and future generations of Bermudians.

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.

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(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 (7).

(3) The Company is not subject to foreign currency purchase tax under the Foreign Currency Purchase Tax Act 1975 [*title 14 item 45*] or to land tax under the Land Valuation and Tax Act 1967 [*title 14 item 31*].

(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 [*title 14 item 31*] 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") [*title 14 item 24*] 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 aliquot share of duty.

Members of Company

7 (1) The initial members of the Company shall be the Minister and the Minister of Finance.

(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.

(3) The expression "the Minister" in this Act means such Minister (not being the Minister of Finance) as the Premier may from time to time designate by instrument in writing as the Minister responsible for the Company.

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Restricted transactions

- 8 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.

Leasing of land, etc.

- 9 (1) Notwithstanding anything to the contrary and notwithstanding in particular—
- (a) section 8 of the Public Lands Act 1984 ; and
 - (b) section 120(4) of the 1981 Act,

the Government may lease or let to the Company, for a term not exceeding 262 years, all or any part of the scheduled land; and the Company may accept and enter into any such lease or letting.

(2) The Government may grant to the Company, for a term not exceeding 262 years, such easements as the Government may think necessary or convenient over land retained by the Government, being land adjacent to land leased or let by the Government to the Company under subsection (1) or otherwise, so that access may be had by persons or vehicles to that last-mentioned land.

(3) The Company may make a lease or letting of any part of the scheduled land to any person for a term not exceeding the remainder of its lease or for terms renewable at the option of the lessee or tenant not exceeding in the aggregate the remainder of its lease.

(4) Notwithstanding subsection (3) the Company shall obtain the prior consent of the Minister for a lease or letting of the scheduled land for a term exceeding 21 years or for terms renewable at the option of the lessee or tenant exceeding in the aggregate 21 years.

(5) Except with the prior approval of Cabinet, the Minister shall not consent to a lease or letting to which subsection (4) applies.

(6) The Company shall obtain the prior approval by resolution of both Houses of the Legislature for any lease or letting to which subsection (4) applies.

[Section 9 subsection (3) substituted, and (4) to (6) inserted, by 2006:21 s.2 effective 26 June 2006; Section 9 amended by 2010 : 57 s. 2 effective 14 December 2010; Section 9 subsections (1)(a) and (4) amended by BR 5/ 2011 effective 25 February 2011.]

Assurances relating to the scheduled land

- 10 (1) The assurances and undertakings set forth in the following provisions of this section are given for greater certainty.
- (2) The Government owns the scheduled land in fee simple absolute in possession.
 - (3) The Government shall hold the Company harmless against any assertion by any foreign government or any other person of any right to occupy or use any part of the scheduled land.

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(4) The Government shall hold the Company harmless against any assertion by any person of any right of pre-emption held by him under the Acquisition of Land Act 1970 [title 19 item 2] in respect of any part of the scheduled land.

(5) If it is discovered that any part of the scheduled land was polluted or contaminated before the commencement of this Act in such a way as to prevent or restrict its use or exploitation by the Company (or by any person deriving rights through the Company) for normal and customary purposes of residence or business, then the Government—

- (a) in the case of the Company, shall hold it harmless against any loss that the Company may suffer on account of that pollution or contamination;
- (b) in the case of a person deriving rights through the Company and injuriously affected by that pollution or contamination, shall also hold him harmless against any loss that he may suffer on account of that injurious affection, provided that the Government is satisfied, in each case in advance, that an agreement has been reached between him and the Company whereby the pollution or contamination (in so far as he is so affected) will be remedied to a standard satisfactory to the Government.

(6) The above assurances and undertakings may be amplified by the Government and the Company—

- (a) in any lease or letting made under section 9; or
- (b) in any agreement between the Government and the Company, being an agreement ancillary to such a lease or letting.

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
- (b) shall prepare and send to the Minister 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.

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(2) Before he gives a direction to the Company, the Minister shall consult the Minister of Finance 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) Forthwith 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 Agents Licensing Act 1976 [*title 30 item 20*] 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
- (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.

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Employment of public officers

15 (1) The Governor, acting in accordance with the advice of the Minister, may, subject to such conditions as the Governor, so acting, may impose, approve the appointment of any public officer by way of secondment to employment with the Company.

(2) A public officer seconded as mentioned in subsection (1) to employment with the Company shall, in relation to pension, gratuity or other allowance and rights and obligations of a public officer, be treated as continuing in a public office notwithstanding the secondment.

(3) The Government may require the Company to pay, and the Company shall have power to pay, to the Government such contribution as the Government may determine is required to be made by the Company to the Government's pension liability in respect of an officer seconded as mentioned in subsection (1).

Annual financial statements and reports

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

(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, 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.

Commencement

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

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THE SCHEDULE

(Section 2)

ALL THOSE LANDS, being lands—

- (a) occupied up to and including 31 August 1995 by the Government of the United States of America pursuant to the Treaty Agreement entered into in 1941 between that Government and the Government of the United Kingdom; and
- (b) shown on the attached drawings *[omitted]* prepared by the Ministry of Works and Engineering, Parks & Housing and respectively numbered—

5/15/7: the former Naval Air Station at St David's in the Parish of St. George's;
2/11/5: the former Naval Annex in the Parishes of Southampton and Sandys;
2/10/97: the former Operating Base at Tudor Hill in the Parish of Southampton,

BUT EXCEPTING the several areas respectively marked A to H on the drawing numbered 5/15/7;

AND ALSO the land for the most part formerly occupied as a Base by the Government of Canada at Daniel's Head in the Parish of Sandys and shown on the attached drawing *[omitted]* prepared by the Ministry of Works and Engineering, Parks & Housing and numbered 1/14/32.

[Drawings Omitted]

[Assent Date: 12 July 1996]

[Operative Date: 20 September 1996]

[Amended by:

2006 : 21

2010 : 57

BR 5 / 2011]