

ANTIGUA AND BARBUDA



CRUISE PORT FINANCE, DEVELOPMENT AND MANAGEMENT BILL 2019

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AN ACT to make provisions for the financing, development, operation and management of cruise line facilities, for the improvement of the provision of cruise services at the Port, and tendering services at Falmouth Harbour and Barbuda Island and for purposes connected therewith.

ENACTED by the Parliament of Antigua and Barbuda as follows –

PRELIMINARY

1. Short title and Commencement

- (1) This Act may be cited as the Cruise Port Finance, Development and Management Act 2019.
- (2) This Act shall come into effect on a day to be appointed by the Minister by Notice publish in the official *Gazette*.

2. Interpretation

In this Act unless the context otherwise permits, the following words shall carry the following meaning —

“Agreement” means the Concession Agreement and includes the Schedules thereto;

“Annual Revenue” means the sum of the revenues received by the Company in the relevant Year from cruise related operations and commercial real estate operations at the port, Falmouth Harbour and Barbuda Island, pursuant to the rights granted hereunder;

“Barbuda Island” means the area indicated on the aerial map in Schedule 1 [Port];

“**Cruise Line**” means any cruise ship or vessel operator or their agents using the Port, Falmouth Harbour or Barbuda Island, that will be liable to pay any of the various charges and tariffs including but not limited to Cruise Passenger Charge in order to use the Port, Falmouth Harbour or Barbuda Island;

“**Cruise Passenger Charge**” means the passenger charges to be collected by the Comptroller of Customs from Cruise Lines for every cruise ship passenger movement.

“**Cruise Port Management and Development Fund**” means the Special Fund established under section 13;

“**Falmouth Harbour**” means the area indicated on the aerial map in *Schedule 1 [Port]*;

“**Fraser Family Properties**” means the properties as more particularly described in *Schedule 1 [Port]*, which may subsequently be brought within the Port in accordance with clause 6.6;

“**Heritage Mall Properties**” means the properties, as more particularly described in Schedule 1 [Port];

“**Minister**” means Minister with responsibility for Finance;

“**National Solid Waste Management Authority Tax**” means One US Dollar and fifty cents (USD 1.50) of the tax collected under subsection (2) of the National Solid Waste Management Authority Act, 1995;

“**Passenger Movement**” means every embarking and disembarking passenger on a home port operation or a turnaround operation and every passenger arriving on a port of call operation or in transit at Antigua, whether or not such passenger disembarks;

“**Port**” means the area and facilities at Saint John’s port identified in Schedule 1 of the Agreement and which is comprised of the following:

- (a) the Existing Piers;
- (b) the New Pier;
- (c) the New Commercial properties;
- (d) the Heritage Mall Properties;

(e) the Fraser Family Properties; and

(f) any government properties related to the tender operation into the Port;

together with any other areas that are to be included by mutual agreement of the Parties within the Port under the terms of the Agreement from time to time.

“Port Authority” refers to the Authority established under section 3 of the Port authority Act, Cap. 333

“Port Charges” means the charges or other fees permitted to be made by or on behalf of the Company pursuant to clause 10 for or in respect of certain Services or any marine, security or other port services provided at the Port, or as may be introduced from time to time by the Company in respect of Services provided at the Port, Falmouth Harbour or Barbuda Island;

“Port Infrastructure” includes those terminal structures and constructed works within the Port, dedicated to the commercial handling of passengers, such as all the fixtures in the (reclaimed) land, like cisterns, drains, pipes, wires, cables, ducts, sewers, channels, conduits, underground services and any other items installed for the purpose of supplying water, gas, electricity, telephone and electronic communications and for the purpose of draining away water or for allowing the escape of steam or other deleterious matters from the facilities as well as quay walls, piers, jetties, stacking yards, paving, berthing aids, bollards and including all appurtenances and components thereof;

“Port services” refers to the services outlined in section 7;

“Port Superstructure” includes those terminal facilities and buildings and other facilities at the Port considered as superstructure on the maritime domain pursuant to the laws, dedicated to the commercial handling of passengers;

“Rates” means

“Services” means the following services to be provided by or on behalf of the Company on an exclusive basis at or within the Port except as otherwise provided herein, and the tendering operations at Falmouth Harbour and Barbuda Island:

(a) terminal services, including but not limited to landing, luggage handling, screening, portorage;

(b) water provision;

(c) security services;

- (d) electricity provision;
- (e) cleaning services;
- (f) tendering operations for Cruise Lines at the Port, Falmouth Harbour and Barbuda Island;
- (g) retail services, including food and beverages services, duty free services, rental of retail spaces, hospitality;
- (h) advertising; and
- (i) organisation and management of all parking facilities within the Port.

“Variable Concession Fee” means the amount payable by the Company to the Government of Antigua and Barbuda as set out in the Agreement per passenger in respect of which the Cruise Passenger Charge is received by the Company and any payment for any shortfall in the Minimum Variable Concession Fee Guarantee in respect of a Year.

3. Inconsistency between this Act, the agreement or the Port Authority Act

- (1) In respect of any matter specifically dealt with in the Agreement, if there is any inconsistency between the Agreement and the Port Authority Act, the Agreement shall prevail to the extent of the inconsistency.
- (2) If there is any inconsistency between the Agreement and this Act, this Act shall prevail to the extent of the inconsistency.

PART I

MANAGEMENT AND OPERATION OF THE PORT

4. Vesting of Authority for the management and development of the Port

- (1) At the commencement of this Act, by and with the consent of the Port Authority and the Government, the responsibility for the management, operation and development of the Port shall vest in GPH (Antigua) Limited (‘the Company’).
- (2) Subject to subsection (3), the authority vested in the Company in subsection (1) shall endure for a period of thirty (30) years from the services commencement date as notified by the Minister by Order published in the official *Gazette*.
- (3) Nothing contained in subsection (2) shall prevent the Government of Antigua and Barbuda from entering into agreement with any other entity or organization for the

provision of port services with the consent of the Company if the agreement to be entered into is for the purpose of improving the quality of the cruise services being offered or to satisfy a special request made by a Cruise Line calling at the Port.

5. Rights and powers of GPH (Antigua) Limited

- (1) The Company has the right and the power to –
- (a) design and build the New Pier and the New Commercial Properties;
 - (b) possess and use Port equipment and Port superstructure;
 - (c) operate Port equipment;
 - (d) possess and use Port infrastructure;
 - (e) take over existing leases of retail and other spaces at Heritage Quay Mall
 - (f) grant sub-leases of the retail spaces in the Port subject to the terms of the Agreement;
 - (g) subject to section 6(2), offer the services to Cruise Lines, passengers and to users in Antigua and Barbuda;
 - (h) enter into contracts with third parties for the purpose of fulfilling its obligations under this Act;
 - (i) implement rules, as appropriate for the health and safety of Cruise passengers and users of the Port;
 - (j) implement rules, as appropriate to maintain or advance the safety of Cruise Lines and the environmental integrity of the Port;
 - (k) manage all interactions with the cruise lines;
 - (l) undertake any activity that optimize the operations, commercial activities and ancillary facilities at the Port;
- (2) The Company has the exclusive right for a period of ten years starting on the services commencement date and continuing until the tenth anniversary of the Agreement, to –
- (a) build, design and construct cruise facilities in Antigua and Barbuda;
 - (b) perform all services at the Port, except Port services;
 - (c) manage interactions with the Cruise Lines; and

(d) perform tendering operations at Falmouth Harbour and Barbuda Island;

6. Duties and Functions of GPH (Antigua) Limited

(1) The Company shall –

(a) operate and manage the Port and maintain the Port superstructure in accordance with the terms of the Agreement between the Government and the Company;

(b) keep under review the condition of the Heritage Quay Mall and repair as may be required;

(c) design, build and construct the New Pier Works and the New Commercial Properties Works;

(d) Subject to the provisions of this Act, to provide the services to Cruise Lines and passengers at the Port;

(e) subject to the provisions of this Act, to perform tendering operations at Falmouth Harbour and Barbuda Island;

(f) keep Port facilities including the superstructure insured; and

(g) with the consent of the Cabinet, carry out such other construction works at the Port for the purpose of achieving its duties under this Act;

7. Provision of Port Services

Notwithstanding any other provisions of this Act, the Port Authority shall –

(a) continue to provide and be responsible for the Port services outlined in this section and to levy and collect such charges and other dues as it considers appropriate for the Port services:

(i) Pilotage;

(ii) Harbour dues;

(iii) Towage;

(iv) Light dues

(v) mooring and unmooring; and

(vi) pilot launch.

(b) maintain the authority to give directions in relation to berthing, mooring, or anchoring and the method of anchoring of any vessel in the Port.

8. Maintenance of Access to Port

(1) Nothing contained in this Act, nor the Agreement shall be construed as affecting the right of access to and from or operation in the Port by an agency or person authorised by any law to undertake any function or to exercise any power in relation to –

- (a) the collection of Government revenues;
- (b) performance of duty by or at the direction of the Chief Immigration Officer;
- (c) performance of duty by or at the direction of the Comptroller of Customs;
- (d) any matter concerning quarantine and the prevention of the introduction or spread of any disease; and
- (e) any other area of the government responsibility under law.

PART II

FINANCING OF PORT DEVELOPMENT

9. Financing of New Pier Works

(1). The Company is responsible for the financing and also the design and construction of the New Pier Works in accordance with the Agreement.

(2) The sum of eight million one hundred thirty-three thousand three hundred and twenty-three US Dollars representing monies spent by the Government of Antigua and Barbuda on the New Pier Works shall be repaid by the Company to the Government of Antigua and Barbuda in equal yearly instalments over a period of seven years commencing ten months after the Services Commencement Date.

10. Financing of New Commercial Properties construction

(1) The Company is responsible for the financing, design and construction of the New Commercial Properties in accordance with the Agreement.

(2) The Company shall procure the design, construction and completion of the New Commercial Properties works within a period of three years from the Services Commencement Date.

11. Financing of repairs and maintenance to the Heritage Mall Properties

The Company is responsible for the renovation and maintenance of the Heritage mall properties in accordance with the Agreement.

12. No Agency between the Company and the Government, or the Company and Port Authority

(1) The Company is not an agent of the Government nor is the Government an agent of the Company.

(2) The Company is not an agent of the Port Authority nor is the Port Authority an agent for the Company.

(3) Nothing contained in this Act or the Agreement shall bind the Government nor the Port Authority for the purpose of being a Guarantor of any money borrowed by the Company for the purpose of financing the development of the Port or which is borrowed to satisfy any of the obligations of the Company under this Act.

PART III

THE CRUISE PORT MANAGEMENT AND DEVELOPMENT FUND

13. Establishment of the Cruise Port, Management and Development Fund

(1) There is hereby established a Special Fund pursuant to section 42(1)(a) of the Finance Administration Act 2006 to be known as the Cruise Port Management and Development Fund ('the Fund').

(2) Subject to subsection (3), the Fund shall be administered in accordance with the provisions of this Act.

14. Purpose of the Fund

(1) The purpose of the Fund is to serve as an instrument for the collection of all tax, revenues, income, rent and other charges and fees charged to passengers of a cruise ship calling at Antigua and Barbuda or derived from the provision of cruise passenger services and other services connected with the operation of the cruise Port.

(2) The Accountant General shall keep the monies of the Fund in a separate account from any other fund.

15. Governing body of the Fund

(1) Management of the Cruise Port Management and Development Fund shall vest in a Committee ('the Cruise Port Management and Development Fund Committee'), comprising five persons to include the Financial Secretary and at least one other person from the Ministry of Finance and three other persons appointed by the Cabinet with the agreement of the Company.

(2) The Financial Secretary is the Chairman of the Committee.

16. Monies of the Fund

(1) There shall be paid into the Fund the following monies –

- (a) all monies levied and collected by the Comptroller of Customs under the Cruise Passenger Tax Act, except monies authorized by that Act to be paid by the Comptroller of Customs to the National Solid Waste Management Authority, established under the national Solid Waste Management Act 1995;
- (b) all line handling fees and charges paid by the cruise passenger ships to the Ports Manager under the Ports Authority Act;
- (c) such other charges in relation to services offered to cruise passenger ships as the Minister may direct.

(2) All payments made under this section shall be accompanied by such returns as the Minister may direct;

(3) All monies paid into the Fund shall be recorded under a specified head which must properly describe the source of the money.

(4) Notwithstanding subsection (1)(c), the following marine service dues do not form any part of the Fund –

- (a) Pilotage charge;
- (b) Harbour dues (50%);
- (c) Towage;
- (d) light dues
- (e) mooring and unmooring; and
- (f) pilot launch

17. Payment of money out of the Fund

The Accountant General shall, on a quarterly basis, pay out of the Fund the following moneys as specified in this section –

(a) the Variable Concession Fee as set out in the Schedule to the agreement, but subject to a minimum variable concession fee payable in an amount equivalent to 600,000 Passenger Movements per year shall be paid into the Consolidated Fund;

(b) the Cruise Passenger Charge less the amount payable to the National Solid Waste Management Authority under the National Solid Waste Management Authority Act 1995 shall be paid to the Company;

(c) all revenues derived from the rental of retail spaces for businesses operating in and around the Port and the Heritage Mall Properties shall be paid to the Company.

18. Audit and Reports

(1) The Company shall prepare and present to the Minister within two months of the end of each calendar year, a report –

- (a) describing the activities of the Company; and
- (b) giving detail update on the progress of the Works.

(2) The Cruise Port Management And Development Fund Committee shall provide the Accountant General within two months of the end of a financial year with the financial statements of the Special Fund showing the payments out to the Company and to any other person or entity.

(3) The reports submitted under this section are to be presented to the House of Representatives.

PART IV MISCELLANEOUS

19. Tax exemptions

(1) Nothing contained in this Act shall be adjudged as being in conflict with the Investment Authority Act, 2006 or the Tenders Board Act, any amendment thereto.

(2) The Cabinet approves the Concession Agreement dated 31st January, 2019.

20. Consequential Amendments

(1) The Cruise Passenger Tax Act, Cap. 122 is amended as follows –

(a) in section 3 by repealing subsection (2) of that section and replacing it as follows –

“(2) The cruise passenger tax shall be imposed at the following rate and for the following period –

(a) for the rateable service period beginning 1st January 2019 to [day immediately before the services commencement date] shall be [*current rate*] in respect of every passenger so carried;

(b) for the rateable service period beginning from the services commencement date and ending on the 31st day of December 2019 shall be five dollars and ninety five cents in United States currency or its equivalent in other currency in respect of every passenger so carried;

(c) for the rateable service period beginning on the 1st day of January 2020 and for subsequent service period ending on the 31st day of December, 2022 shall be eleven dollars in United States currency or its equivalent in other currency in respect of every passenger so carried;

(d) for the rateable service period beginning on the 1st day of January 2023 and ending on the 31st day of December 2023 shall be twelve dollars and ten cents in United States currency or its equivalent in other currency in respect of every passenger so carried.”

(b) by inserting immediately after subsection (2) a new subsection as follows –

“(2A) Notwithstanding subsection (2), the Minister may, with the approval of the Company, remit any portion of the Cruise Passenger Tax payable by a cruise line as part of an agreement with the cruise line for the development of cruise services.”

21. Repeal

Cruise Ship Complex Development Act, 2001, No. 13 of 2001 is hereby repealed

