



BERMUDA

BERMUDA TOURISM AUTHORITY ACT 2013

2013 : 32

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### SCHEDULE

WHEREAS it is expedient to establish a Tourism Authority with the objective of efficiently developing the tourism industry and promoting Bermuda as a tourism destination so as to increase the contribution of the tourism industry for purposes of the economic development of Bermuda;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

### PART 1 PRELIMINARY

#### Citation

- 1 This Act may be cited as the Bermuda Tourism Authority Act 2013.

#### Interpretation

- 2 In this Act—
  - “Authority” means the Bermuda Tourism Authority established under section 3;
  - “Board” means the Board of the Authority, the composition of which is provided for under section 4;
  - “Chairman” means the Chairman of the Board appointed under section 5;

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“Chief Executive Officer” means the Chief Executive of the Board appointed under section 6;

“committee” means a committee appointed by the Board under section 9;

“financial year” means a period of 12 months ending on 31st December in each year;

“interest register” means the interest register provided for in section 13;

“member” means a member of the Board appointed under section 4;

“Minister” means the Minister responsible for tourism;

“National Tourism Plan” means the Master Plan approved by the Legislature on 29 June 2012 and includes any amendments or revisions of the Master Plan as are approved by the Legislature;

“tourism authority fee” means the tourism authority fee provided for under section 15.

### PART 2

#### ESTABLISHMENT AND COMPOSITION OF AUTHORITY

##### Establishment of Authority

3 (1) There is established a body corporate to be known as the Bermuda Tourism Authority.

(2) The Authority has perpetual succession and a common seal with power, subject to the provisions of the Act—

- (a) to acquire and dispose of property, both moveable and immovable;
- (b) to sue and be sued in its corporate name; and
- (c) to perform such other acts as bodies corporate may by law perform.

##### Composition of Board of Authority

4 (1) The Authority shall be governed by a Board, which shall consist of—

- (a) the Chairman, appointed in accordance with the provisions of section 5; and
- (b) seven other members who shall be appointed in accordance with this section for a period of four years (except that the Board appointed immediately after the commencement of this Act shall be appointed in accordance with section 28).

(2) A member of the Board under subsection (1)(b) shall—

- (a) be elected by the Board, after consultation with the Minister, in the case of the appointment of any member to the Board other than a member appointed to the Board immediately after the commencement of this Act;
- (b) be appointed by the Board from candidates nominated by either the Minister or Chairman, in the case of a vacancy in the Board caused by the death, incapacity, resignation or termination of appointment of a member; or
- (c) be appointed by the Minister, in the case where there has been incapacity, death, resignation or termination of a member leading to the Board failing to form a quorum for the purposes of meetings.

(3) A member of the Board is eligible, upon the expiry of the member's term of appointment, to be considered for reelection by the Board, for one more term only, in accordance with subsection (2)(a), and the election held for such member may be contested by any other candidate that may be nominated at that time by the Minister or the Chairman.

(4) A member of the Board shall have suitable qualifications and experience to enable meaningful contribution for the effective and efficient realisation of the objectives of this Act.

(5) The Board shall elect a Deputy Chairman from amongst their number.

(6) If both the Chairman and Deputy Chairman are absent or unable to act, the Board shall elect an acting Chairman from amongst their number.

(7) The Chairman and members of the Board shall be paid such fees and allowances as the Minister may determine.

(8) The Schedule shall have effect as to terms of appointment, meetings and procedures of the Board.

#### Chairman

5 (1) The Minister shall appoint a Chairman of the Board who shall be a person with suitable qualifications and experience in the travel and tourism sectors.

(2) The Chairman shall hold office for such period not exceeding three years and on such terms as the Minister shall determine, and on the expiry of the Chairman's term of office the Minister may reappoint him for a further term in accordance with this section.

(3) The Chairman shall be responsible for the efficient conduct of the affairs of the Authority.

#### Chief Executive Officer

6 (1) The Board shall, after consultation with the Minister, appoint a Chief Executive Officer.

(2) The Chief Executive Officer shall—

- (a) be a person with suitable qualifications and experience in management, finance and the travel and tourism sectors;

- (b) be known by such designation as the Board may determine;
- (c) work to further the principal objectives of the Authority; and
- (d) report to the Board and be present during such parts of each board meeting that the Chairman deems to be appropriate.

(3) The Chief Executive Officer shall be responsible for the management of the staff of the Authority, and shall make determinations on hiring, promoting, disciplining and dismissing staff after consultation with the Board.

#### Appointment of agents

7 The Board may from time to time appoint such agents, promoters or contractors, locally or internationally based, as may be necessary for the purposes of this Act.

#### Declaration of interest by job-seeker

8 (1) Any person who seeks employment as an officer or employee of the Authority who has, directly or indirectly, by himself or with his business or other partner, entered into any contract with, for or on behalf of the Authority, shall make a declaration of such contract in such manner as the Board may determine in its rules.

(2) Any officer or employee of the Authority who has entered into or acquires any such contract and did not make a declaration in terms of subsection (1), or who subsequently enters into or acquires any such contract as provided for in subsection (1) but fails to disclose the contract entered into, shall be liable, in the discretion of the Board, to summary dismissal without notice.

#### Appointment of committees and delegation of powers

9 (1) The Board may, in its discretion, appoint from among its own members or from among other persons such number of committees as it thinks fit for purposes that, in the opinion of the Board, would be more expediently carried out or managed by such committees.

(2) The Board may, subject to subsection (3), delegate to—

- (a) the Chairman;
- (b) any of its members;
- (c) the Chief Executive Officer;
- (d) any committee appointed under subsection (1); or
- (e) any officer or employee,

any of the functions or powers of the Authority under this Act, except the power of delegation conferred by this section.

(3) A committee appointed under this section shall, in the performance of functions delegated by the Board under subsection (2), at all times be subject to such directions, conditions and restrictions as may be imposed by the Board and shall adhere to all policies of the Board.

(4) Any power, function or duty delegated as provided in subsection (2) shall be exercised or performed by the person to whom delegated in the name and on behalf of the Board.

(5) The Board may continue to exercise a power conferred upon it, or perform a function or duty under this Act or any other written law, notwithstanding the delegation of such power, function or duty under this section.

(6) The chairman of each committee appointed under this section shall ensure that the committee prepares and submits to the Chairman a report of the functions delegated to the committee, and the progress thereof, before the end of every quarter in the year.

#### Immunity from suit

10 (1) No action, suit, prosecution or other proceeding shall be brought or instituted personally against an officer, employee or agent of the Authority, or any member of the Board, or the Minister, in respect of any act done bona fide in pursuance or execution or intended execution of their functions under this Act or any other Act and regulations made thereunder.

(2) Where any member of the Board is exempt from liability by reason only of subsection (1), the Authority shall be liable to the extent that it would be if that member were an employee or agent of the Authority.

### PART 3

#### PRINCIPAL OBJECTIVES AND POWERS OF AUTHORITY

##### Principal objectives of Authority

- 11 (1) The principal objectives of the Authority shall be—
- (a) to develop and promote Bermuda as a tourist destination;
  - (b) to advise and assist the Government on matters relating to travel and tourism;
  - (c) to contribute to the economic growth of Bermuda by increasing the travel and tourism sector's contribution to the Bermudian economy;
  - (d) to implement the National Tourism Plan and review and update the plan on a periodic basis;
  - (e) to provide appropriate tourism education and training;
  - (f) to ensure the social and economic enhancement of Bermuda through the development of tourism and the implementation of the National Tourism Plan;
  - (g) to ensure that the development of tourism is appropriate and sustainable given the size, environment, resources and population of Bermuda; and

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- (h) to charge fees for services rendered to travel and tourism enterprises as the Minister may determine in consultation with the Minister of Finance.

(2) In addition to the principal objectives of the Authority under subsection (1), the Authority may undertake such other functions as the Minister may, by written instrument, authorise the Board to carry out.

### Powers of Authority

12 (1) Subject to the other provisions of this Act, the Authority shall have power to do anything for the purpose of discharging its objectives under this Act or any other written law or which is incidental or conducive to the discharge of those objectives.

(2) Without prejudice to the generality of subsection (1), but subject to this Act, the powers of the Authority shall include the power—

- (a) to acquire, take on lease, hire, hold and enjoy movable and immovable property and to convey, assign, surrender, charge, mortgage, demise, transfer or otherwise dispose of, or deal with any movable or immovable property belonging to the Authority upon such terms as the Board considers fit;
- (b) to grant loans or advances to any person carrying on a tourism enterprise, except that the Authority shall not grant loans or advances the aggregate amount of which exceeds \$1,000,000 without the approval of the Minister of Finance;
- (c) to enter into any contract or agreement for carrying out the purposes of this Act;
- (d) to receive such fee, payment or commission as may be agreed upon, in consideration of the services rendered by the Authority;
- (e) to subscribe for or acquire any stock, share, bond, debenture or other financial instrument in any company carrying on a tourism enterprise;
- (f) to invest any money of the Authority in any business within or outside Bermuda which will promote or be conducive to the tourism trade in Bermuda;
- (g) to enter into any joint venture with any person or to form or participate in the formation of any company, whether in Bermuda or elsewhere, for the purpose of carrying out all or any of the functions of the Authority;
- (h) to manage, control or supervise tourism enterprises within or outside Bermuda by appointing advisers, or by collaborating with persons carrying on tourism enterprises or entering into partnerships or any other arrangements with them;
- (i) to borrow money whether by way of bank overdraft or otherwise for such purposes of the Authority as the Board may from time to time consider desirable with the approval of the Minister of Finance;

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- (j) to require such fee or payment with respect to any matter, in accordance with the objectives of this Act, relating to tourism or tourism enterprises to be remitted to the Authority; and
- (k) generally to do all such matters and things as may be incidental to or consequential upon the exercise of the Authority's powers or the discharge of its duties under this Act.

### Interest register

13 (1) The Minister shall cause to be compiled and maintained, in accordance with this Act and the regulations made thereunder, an interest register.

(2) Where the Minister or any member of the Board has an interest in any business conducted by the Authority, the Minister or member shall file a written notice in the interest register as soon as reasonably practicable after the Minister or member becomes aware that such business is being transacted.

(3) The interest register may be inspected by members of the public.

## PART 4

### FINANCIAL PROVISIONS

#### Funds of Authority

14 The funds of the Authority shall consist of—

- (a) all such sums as may be appropriated by the Legislature for the purposes of the Authority;
- (b) all moneys, dividends, royalties, interest or income received from any source or transaction made pursuant to the powers conferred on the Authority under this Act;
- (c) all moneys borrowed by the Authority for the purposes of this Act;
- (d) all moneys received by the Authority by way of fees, payments or commissions—
  - (i) relating to the tourism authority fee payable under section 15;
  - (ii) for any matter relating to tourism and tourism enterprises; and
  - (iii) for services rendered by the Authority to any person; and
- (e) all grants, subsidies and contributions paid to the Authority or received from any source and funds raised by all lawful means.

#### Tourism authority fee

15 (1) In addition to the occupancy tax payable under section 29 of the Miscellaneous Taxes Act 1976 and any other fees authorized by law, there shall continue to be imposed and shall be paid by each proprietor of a hotel in respect of each guest accommodated in



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the hotel, at the rate of 2.5% of the rack rate charge made by such hotel in respect of such guest, the tourism guest fee, which, for purposes of this Act, is renamed as the 'tourism authority fee'.

(2) The term "rack rate charge" has the meaning ascribed to it in section 29(2) of the Miscellaneous Taxes Act 1976.

(3) The Minister may in the regulations made under this Act, from time to time, vary the percentage rate of the rack rate charge payable in respect of the tourism authority fee.

(4) The statement to be delivered under section 30 of the Miscellaneous Taxes Act 1976 by every proprietor of a hotel on the departure of the person who had been accommodated at the hotel shall include a separate entry for the amount of the tourism authority fee payable.

(5) The tourism authority fee shall be due and payable at such time as the hotel occupancy tax is payable and shall be collected by the Authority in such manner as it considers appropriate.

(6) Any proprietor who fails to comply with the requirements of this section shall be guilty of an offence and liable on conviction by a court of summary jurisdiction to a fine not exceeding \$50,000.

(7) Regulations made by the Minister under subsection (3) shall be subject to the affirmative resolution procedure.

### Charges and revenue

16 (1) The Authority shall collect the revenue from such fees and charges as are authorised by the Minister pursuant to section 11(1)(h) of this Act.

(2) The Authority shall retain revenue from such fees and charges as the Minister shall determine after consultation with the Minister of Finance.

### Profits from commercial activities

17 The profits from the commercial activities of the Authority shall be retained by the Authority to fund tourism projects in accordance with the objectives of this Act.

### Liability of Authority

18 The liability of the Authority is limited to such funds and assets as are held by the Authority at the time of any particular claim.

### Financial year

19 The financial year of the Authority shall end on 31st December in each year.

### Accounts of Authority

20 (1) The Authority shall cause proper statements of its financial affairs to be maintained and shall prepare in respect of each financial year a statement of its accounts in such form as required by applicable accounting standards.

(2) The accounts of the Authority shall be audited by the Auditor-General or by an auditor appointed annually by the Auditor-General.

(3) A person shall not be qualified for appointment as an auditor under subsection (2) unless he is a public accountant who is registered or deemed to be registered under the Institute of Chartered Accountants of Bermuda Act 1973.

(4) The statement of accounts must present fairly and accurately—

- (a) the financial transactions of the Authority during the financial year to which they relate; and
- (b) the financial position of the Authority at the end of the financial year.

(5) The auditor shall state in his report whether—

- (a) proper accounting and other records have been kept; and
- (b) the receipt, expenditure and investment of moneys and the acquisition and disposal of assets by the Authority during the year have been in accordance with the provisions of this Act.

(6) The auditor may at any other time report to the Minister through the Authority upon any matter arising out of the performance of his audit.

(7) Where the Auditor-General has not been appointed to be the auditor, a copy of the audited financial statements and any report made by the auditor shall be forwarded to the Auditor-General before they are submitted to the Authority.

(8) As soon as the accounts of the Authority and the financial statements have been audited in accordance with the provisions of this Act, but not later than six months after the end of the financial year, a copy of the audited financial statements signed by the Chairman, together with a copy of any report made by the auditor, shall be submitted to the Minister.

#### Annual report

21 The Authority shall, as soon as practicable after the close of each financial year but not later than 31st May of each year, submit to the Minister an annual report on the activities of the Authority during the preceding financial year.

#### Tabling of annual report and accounts

22 (1) The Authority shall, as soon as practicable after the end of each financial year, cause to be made and transmitted to the Minister—

- (a) a copy of the annual report of the operations of the Authority during that year; and
- (b) a copy of the audited annual statement of accounts of the Authority certified by the Auditor-General.

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(2) The Minister shall as soon as practicable after receipt of the annual report and annual statement of accounts cause a copy of each to be laid before both Houses of the Legislature.

### PART 5

#### MISCELLANEOUS PROVISIONS

##### Confidentiality

23 (1) Except in so far as may be necessary for the due performance of his functions under the Act or other statutory provision, a member of the Board or any person who is, or is acting as, an officer, a servant, an agent or an adviser of the Authority shall preserve and aid in preserving confidentiality with regard to all proprietary information that is provided to the Authority.

(2) Any such member, officer or servant who communicates any proprietary information that is provided to the Authority to any person other than the Minister, the Board or an officer of the Authority authorized in that behalf by the Chairman, or suffers or permits any unauthorized person to have access to any books, papers or other records relating to such proprietary information, commits an offence.

(3) A person who commits an offence under this section is liable—

- (a) on summary conviction to a fine of \$10,000 or to imprisonment for one year or to both such fine and imprisonment;
- (b) on conviction on indictment to a fine of \$20,000 or to imprisonment for two years or to both such fine and imprisonment.

##### Rules

24 (1) The Board may make rules for any matter relating to its functions under this Act.

(2) Without prejudice to the generality of subsection (1), such rules may provide for—

- (a) the manner and method of collection of the tourism authority fee and late payment fees;
- (b) the collection from any travel and tourist enterprise by the Board of any information in relation to its business and activities;
- (c) the granting of loans and other assistance to travel and tourist enterprises;
- (d) the conduct of commercial activities by the Board.

(3) Rules made by the Authority under this Act shall be subject to the negative resolution procedure.

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### Regulations

25 (1) The Minister may make regulations for the purposes of this Act prescribing anything that is necessary or convenient to be prescribed for the carrying out of the provisions of this Act or to give effect to it.

(2) Without derogating from the generality of subsection (1), regulations may provide for—

- (a) the tourism authority fee or other payment with respect to any matter relating to travel, tourism or tourist enterprises to be remitted to the Authority at such rate and times as may be prescribed;
- (b) the procedures, processes and forms required for the carrying out of any of the functions or powers of the Authority;
- (c) the contravention of regulations to be an offence and to impose penalties—
  - (i) not exceeding a fine of \$20,000 or imprisonment for two years, or both; and
  - (ii) in the case of a continuing offence, to a further fine not exceeding \$1000 for every day or part thereof during which the offence continues after conviction.

(3) Regulations made by the Minister under this Act, except for regulations made under section 15(7), shall be subject to the negative resolution procedure.

## PART 6

### REPEAL AND TRANSITIONAL PROVISIONS

#### Repeal of Tourism Board Act 2012

26 Subject to section 27, the Tourism Board Act 2012 is hereby repealed.

#### Transitional arrangements

27 (1) In this section—

“Board” means the Board established under the Tourism Board Act 2012.

(2) Notwithstanding the repeal of the Tourism Board Act 2012, the tourism guest fee shall continue to be imposed and paid by each proprietor of a hotel and, upon the commencement of this Act, shall be known as the “tourism authority fee” as provided in section 15 of this Act.

(3) All rights, assets and property vested in or in any manner held on behalf of or for the purposes of the Board immediately before the commencement of this Act shall be vested in the Authority.

(4) All liabilities and obligations subsisting against the Board immediately before the commencement of this Act shall thereafter continue to subsist against the Authority.

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(5) Every contract in respect of any matter, other than an employment contract, being a contract between the Board and any other party immediately before the commencement of this Act shall thereafter continue to subsist between the Authority and such other party.

(6) All rights, powers and duties, whether arising under any written law or otherwise, which immediately before the coming into operation of this Act were vested in the Board shall, by virtue of this subsection, be transferred to, vested in, imposed on, or be enforceable by or against the Authority.

(7) On and after the commencement of this Act, all actions, suits or legal proceedings by or against the Board shall be carried out on or prosecuted by or against the Authority and no such suit, action or legal proceedings shall abate or be affected by the coming into operation of this Act.

(8) The annual estimates approved for purposes of the Board in respect of the financial year in which this Act comes into operation shall be deemed to be annual estimates of the Authority for the remainder of the financial year, but those estimates may be varied by the Authority in such manner as the Minister and the Minister of Finance may approve.

### Appointment of initial Board

28 The Board appointed immediately after the commencement of this Act shall be appointed as follows—

- (a) the Minister shall appoint the Chairman in accordance with section 5; and
- (b) the Minister shall appoint the seven members of the Board in consultation with the Chairman for the following terms—
  - (i) two members of the Board shall be appointed for two years;
  - (ii) three members of the Board shall be appointed for three years; and
  - (iii) two members of the Board shall be appointed for four years.

### Commencement

29 The provisions of this Act shall come into operation on such date as the Minister may appoint by notice published in the Gazette, and the Minister may appoint different days for the coming into operation of different provisions.

SCHEDULE

(section 4(8))

PART 1

RESIGNATION AND REMOVAL FROM OFFICE

*Resignation*

1 (1) Any member of the Board, other than the Chairman, may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the Chairman, and from the date of the receipt by the Minister of such instrument, such member shall cease to be a member of the Board.

(2) The Chairman may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt of such instrument by the Minister.

*Removal from office and disqualification for appointment*

2 The Minister, acting after consultation with the Board, may remove a person from office as Chairman or member of the Board if he is satisfied that such person—

- (a) has without reasonable excuse been absent from—
  - (i) three consecutive meetings of the Board; or
  - (ii) two-thirds of the meetings of the Board convened in any year;
- (b) has been convicted (whether before or after his appointment) of a criminal offence;
- (c) is an undischarged bankrupt or his estate has been sequestrated and he has not been discharged;
- (d) has made a composition or arrangement with, or granted a trust deed for, his creditors; or
- (e) is otherwise unable or unfit to carry out his functions as Chairman or member.

3 Subject to section 4(3), the fact that a person has held office as a member of the Board does not disqualify him for reappointment to that office.

4 The Minister shall cause to be published in the Gazette the names of every person appointed as a member of the Board.

PART 2

PROCEDURE FOR MEETINGS OF THE BOARD

*Powers*

5 The Board may act notwithstanding the existence of one or more vacancies in its members or a defect in the appointment of a member.

*Meetings*

6 (1) The Board shall meet as often as necessary or expedient for the due performance of its functions with at least ten meetings being held in each calendar year.

(2) The Chairman may summon a meeting at any time on giving such notice as, in his judgment, the circumstances may require.

7 At a meeting of the Board, the proceedings shall be regulated as follows—

- (a) five members of the Board constitute a quorum;
- (b) the Chairman shall preside at meetings of the Board;
- (c) if the Chairman is absent from a meeting of the Board, the Deputy Chairman shall preside at the meeting;
- (d) if both the Chairman and Deputy Chairman are absent or unable to act, the Board shall elect an acting Chairman from amongst their number;
- (e) if a member of the Board has any direct or indirect interest in any dealing or business with the Authority—
  - (i) he shall disclose his interest to the Board at the time of the dealing or business being negotiated or transacted;
  - (ii) he shall have no vote in relation to the dealing or business unless the Board has resolved that the interest does not give rise to a conflict of interest; and
  - (iii) the disclosed interest shall be recorded in the interest register provided for under section 13;
- (f) subject to subparagraph (e)(ii), a member of the Board shall have no vote in relation to any question arising which touches or concerns him;
- (g) the decisions of the Board shall be by a majority of votes;
- (h) in the event of an equality of votes, the Chairman shall have a casting vote; and
- (i) the Board shall determine its own procedure.

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8        The Chairman shall cause copies of the minutes taken at each meeting of the Board during each quarter of the year to be delivered to the Minister no later than 30 days after the end of the quarter.

[Assent Date: 09 October 2013]

[Operative Date: 16 December 2013]