

A BILL

entitled

FAIRMONT SOUTHAMPTON HOTEL ACT 2023

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	SCHEDULE
	Scheduled Land

WHEREAS it is expedient, in a special Act of the Legislature, to facilitate the redevelopment of the Fairmont Southampton Hotel by providing, subject to conditions, certain tax and customs duty rebates and relief in respect of the redevelopment;

Be it enacted by The King'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:

Citation

1 This Act may be cited as the Fairmont Southampton Act 2023.

Interpretation

2 In this Act—

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“applicable legislation” means the legislation under which each of the hotel taxes are payable including the Taxes Acts;

“Collector” means the Collector of Customs;

“customs duty” means the duty payable under the Customs Tariff Act 1970;

“hotel” means the Fairmont Southampton Hotel, or any other names by which it may be known from time to time hereafter, and its associated restaurants and facilities, including any development or redevelopment of the scheduled land as developed or redeveloped by the hotel developer;

“hotel developer” means Westend Properties Limited, a company incorporated in Bermuda on 30 April 1962 and its successors in title to the hotel or part thereof;

“hotel occupancy tax” has the meaning assigned by Part V of the Miscellaneous Taxes Act 1976;

“hotel opening date” means the date on which the initial licence to operate the redeveloped hotel granted under the Hotels (Licensing and Control) Act 1969 comes into operation;

“hotel redevelopment” means the Fairmont Southampton Hotel redevelopment, including renovation of guest rooms, restaurants, bars, meeting rooms, spa, pool, beach club, kitchen, laundry, and staff housing, as described in the summary of works and site plan submitted to the Minister on 19 April, 2022;

“hotel taxes” means the customs duty and taxes provided in section 3(1)(a) to (d);

“land tax” means the tax payable under the Land Valuation and Tax Act 1967;

“Minister” means the Minister responsible for tourism;

“payroll tax” has the meaning assigned by the Payroll Tax Act 1995;

“rebate” means a full or partial payment of an amount equal to any taxes or duty paid by, or on behalf of, the hotel developer under any Act in accordance with the entitlement to the rebate granted to the hotel developer under this Act;

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

“Tax Collector” means the person responsible under the Taxes Acts for the collection of hotel taxes, other than customs duty;

“Taxes Acts” means the Taxes Management Act 1976 and any statutory provision relating to the taxes to which the Taxes Management Act 1976 applies.

Customs duty and tax rebate

3 (1) Subject to section 4, the hotel developer shall be entitled to the following rebates—

- (a) for a period of fifteen years, less any period for which customs duty relief is granted under section 5, after the hotel opening date, a full rebate

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from customs duty paid in respect of any building materials, furnishings, fixtures and equipment which are necessary for the building, furnishing and equipping of the hotel redevelopment;

- (b) for a period of fifteen years after the hotel opening date, a full rebate in relation to hotel occupancy tax paid in respect of the hotel;
- (c) for a period commencing six years after the hotel opening date and ending on the fifteenth anniversary of the hotel opening date, a full rebate in relation to land tax paid in respect of the hotel;
- (d) for a period of fifteen years after the hotel opening date, a full rebate in relation to the employer's share of the payroll tax paid in respect of persons employed by the hotel.

(2) For the purposes of subsection (1)(d), the employer's share of the payroll tax means that portion of payroll tax which the employer is not entitled to deduct from an employee's wages under section 19 of the Payroll Tax Act 1995.

(3) For the avoidance of doubt, nothing in subsection (1) affects to any extent the hotel developer's liability to pay all hotel taxes when due and payable in accordance with all applicable legislation.

Terms and conditions

4 (1) To qualify for the rebate in relation to land tax under section 3(1)(c), the hotel developer shall, for the relevant period, confirm in writing to the Minister that in years six through fifteen at least 70% of the hotel's staff are Bermudian

(2) To qualify for the rebate in relation to the employer's share of payroll tax under section 3(1)(d), the Minister responsible for workforce development shall, for the relevant period, confirm in writing to the Minister, annually, that a management training programme for Bermudians is in operation at the hotel.

(3) To qualify for the rebate in relation to each of the hotel taxes under section 3(1), the hotel developer, shall for the relevant period—

- (a) pay each of the hotel taxes due for such period in accordance with the applicable legislation; and
- (b) in relation to hotel occupancy tax and the employer's share of payroll tax, furnish a return in relation to the tax paid in accordance with the Taxes Acts;
- (c) in relation to customs duty, make such declarations as prescribed by the Collector under section 16 of the Revenue Act 1898;
- (d) in relation to land tax, no filings are necessary with the Tax Collector provided that payment is made in accordance with the land tax demand for the relevant period;
- (e) comply with any additional terms, conditions restrictions or requirements pursuant to subsection (4).

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(4) The rebates granted under section 3(1) may be made subject to such additional terms and conditions as the Minister of Finance thinks fit.

(5) In this section—

“Bermudian” means a person who possesses Bermudian status under the Bermuda Immigration and Protection Act 1956;

“relevant period” means the period for which the rebate is claimed.

Relief from customs duty

5 (1) The hotel developer shall be entitled for the period from the commencement of this Act and ending on the hotel opening date, to full relief from customs duty in respect of any building materials, furnishings, fixtures and equipment which are necessary for the building, furnishing and equipping of the hotel redevelopment.

(2) Subject to this Act, relief may be made available by such administrative methods and procedures as the Collector may establish.

(3) The hotel developer or any person in Bermuda who supplies goods to him (“the supplier”) may be a claimant for relief in respect of those goods.

(4) A supplier shall make himself known to the Collector as soon as practicable so that the requirements of this section may be fulfilled in relation to him.

(5) For a period of six years after importing goods subject to relief from customs duty, the hotel developer and each supplier shall—

(a) maintain at his place of business in Bermuda such full and proper records of the goods as the Collector may from time to time require; and

(b) whenever so required by the Collector, within 24 hours produce for inspection by the Collector or any person authorised by him for the purpose those records or such portion of them as the Collector may specify.

(6) Section 99(2) of the Revenue Act 1898 (seizure and detention of records which may afford evidence of commission of offence) shall apply to records produced under subsection (5)(b) as it applies to records produced under section 99(1) of that Act.

(7) The Collector may give to any person to whom subsection (5) applies such reasonable directions as the Collector deems necessary for the purpose of ensuring that relief is made available in accordance with this section and not otherwise; and a person to whom such a direction is given shall comply with it.

(8) For a period of six years after importing goods subject to relief from customs duty the hotel developer shall, whenever so required by the Collector, permit the Collector or any person authorised by him for the purpose to inspect the hotel redevelopment or the goods to which this section applies.

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Payment of customs duty on diversion

6 (1) The hotel developer who has imported goods subject to relief from customs duty may make an application to the Collector if he wishes, within five years of their importation, to use or dispose of the goods otherwise than in accordance with the relief granted under section 5.

(2) The Collector may, upon payment of the outstanding duty, approve such use or disposal.

(3) Subsections (3) to (6) of section 89 of the Revenue Act 1898 (penalties for improper use of goods) shall apply, with the necessary modifications, in relation to the use or disposal of goods otherwise than in accordance with this section without the authorisation of the Collector under this section, as they apply in relation to the use or disposal of restricted goods in contravention of that section.

(4) For the purposes of this section—

- (a) “duty” includes any surcharge;
- (b) “outstanding duty” means any amount of duty payable in respect of goods less any amount already paid;
- (c) where the goods in question are goods in respect of which duty is charged on the basis of their value, the value of the goods shall be taken to be that value which the Collector places on goods which in his opinion are goods of a description, age and condition of the goods in question at the time of the change of use or disposal;
- (d) the rate of duty to be taken for the purposes of calculation of outstanding duty is the rate in force at the time of the change of use or disposal.

Offences

7 (1) A person is guilty of an offence if he fails, without reasonable excuse, to comply with a requirement or direction made of or given to him under this Act by the Collector.

(2) A person is guilty of an offence if—

- (a) in or in relation to an application under section 3, he makes any statement, or otherwise supplies to the Minister, the Collector or the Tax Collector any information, which that person knows to be false or does not believe to be true; or
- (b) he fails, without reasonable excuse, to disclose to the Minister, the Collector or the Tax Collector any information which that person knows or believes, or ought reasonably to know or believe, that he is expected to supply pursuant to a requirement made of him under this Act.

(3) A person is guilty of an offence if he fails, without reasonable excuse, to comply with a duty imposed upon him by or under section 5(5) or (8).

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Penalties and forfeitures

8 (1) A person who is guilty of an offence under section 7(1) is liable on summary conviction to a fine of the level 3 amount.

(2) A person who is guilty of an offence under section 7(2) or (3) is liable on summary conviction—

- (a) to a fine of the level 4 amount; or
- (b) where duty is lost to the revenue as a result of the offence, to a fine of the level 4 amount or five times the amount of the duty lost to the revenue by reason of the commission of the offence, whichever is the greater amount.

(3) For the avoidance of doubt, the provisions of sections 110, 111, 111A, 112, 114 and 115 of the Revenue Act 1898 (recovery of penalties and forfeitures) shall apply with the necessary modifications in relation to penalties and forfeitures under this section as those provisions apply in relation to penalties and forfeitures under that Act.

(4) Subsection (3) of this section is without prejudice to the application in relation to penalties and forfeitures under this section or any other provision of the Revenue Act 1898 that is also applicable in relation to those penalties and forfeitures according to the tenor of that provision.

Offences by corporations

9 Where an individual who has committed an offence against this Act was at the time he committed the offence a director, manager, secretary or other similar functionary of a body corporate and committed the offence in that capacity, then the body corporate is also guilty of the offence and liable to be proceeded against and punished accordingly.

Minister power to amend or repeal

10 (1) The Minister, with the agreement of the Minister or Finance, and having consideration for any objections made by the hotel developer may, by regulations, amend or repeal any provision of sections 3, 4 or 5 in any of the following circumstances—

- (a) if there has been any breach of the terms and conditions in section 4;
- (b) if any false declarations are made to the Tax Collector in respect of any hotel taxes subject to a rebate;
- (c) if any false declarations are made to the Collector in respect of the goods to which customs duty relief applies;
- (d) if any goods which were imported subject to customs duty relief are used for purposes which do not relate directly to the hotel redevelopment otherwise than in accordance with section 6;
- (e) where any offence under this Act is committed.

(2) Regulations made under subsection (1) are subject to the negative resolution procedure.

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Minister may issue guidance

11 (1) The Minister may issue such guidance as he considers appropriate and such guidance may be taken into account when assessing compliance with the provisions this Act.

(2) The Minister may from time to time revise any guidance issued under this section.

(3) For the avoidance of doubt, any guidance issued under this section is not a statutory instrument within the meaning of the Statutory Instruments Act 1977.

Minister may make regulations

12 (1) The Minister may make regulations—

- (a) generally for carrying out the purposes and provisions of this Act;
- (b) for such transitional, incidental, supplementary or consequential provision as appears to the Minister to be necessary or expedient

(2) The negative resolution procedure shall apply to regulations made under this section.

Application of the Development and Planning Act 1974

13 Nothing in this Act shall be taken to modify the requirements of the Development and Planning Act 1974 as regards obtaining any planning permission necessary for the hotel redevelopment.

Consequential amendments

14 The Revenue Act 1898 is amended—

- (a) in section 84A(5) by inserting the following after paragraph (e)—

“(ea) Fairmont Southampton Hotel Act 2023 (“FSHA”);

- (b) in paragraph 4 of the Fourth Schedule by inserting “or the Fairmont Southampton Hotel Act 2023” after “Tourism Investment Act 2017”.

Commencement

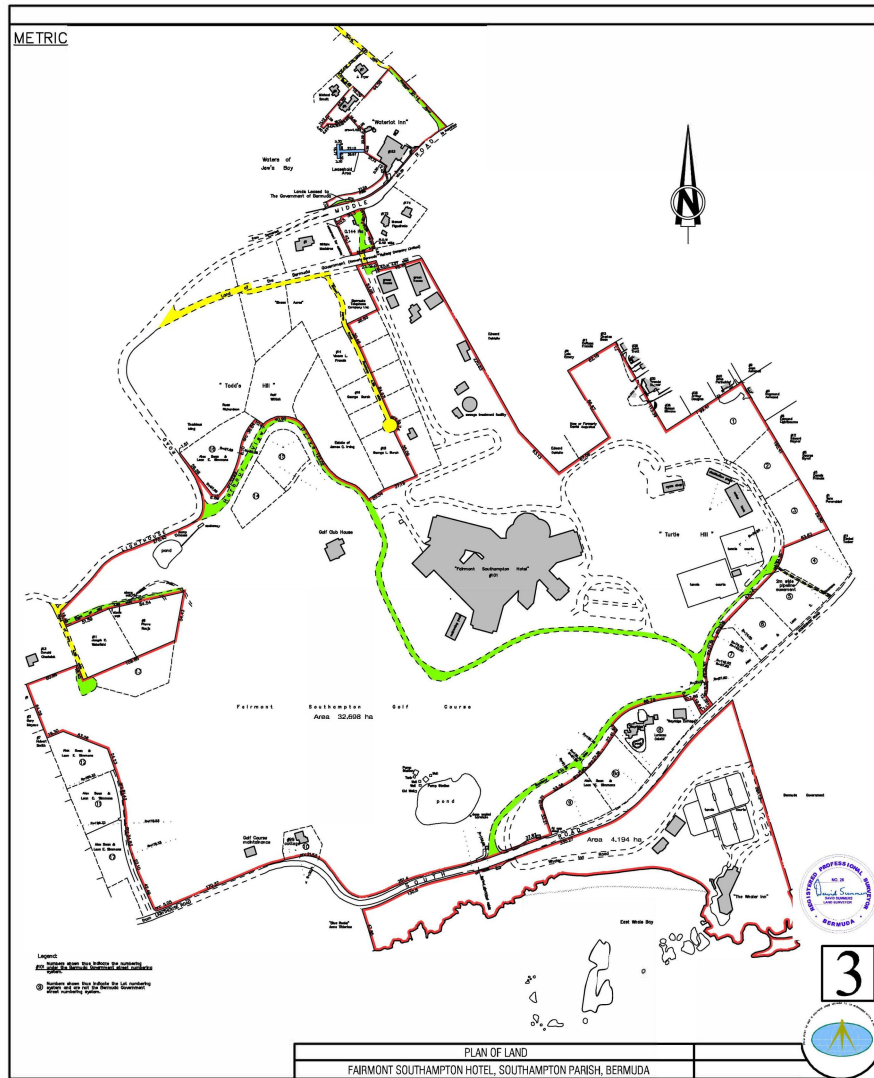
15 This Act may come into operation on such day as the Minister appoints by Notice in the Gazette.

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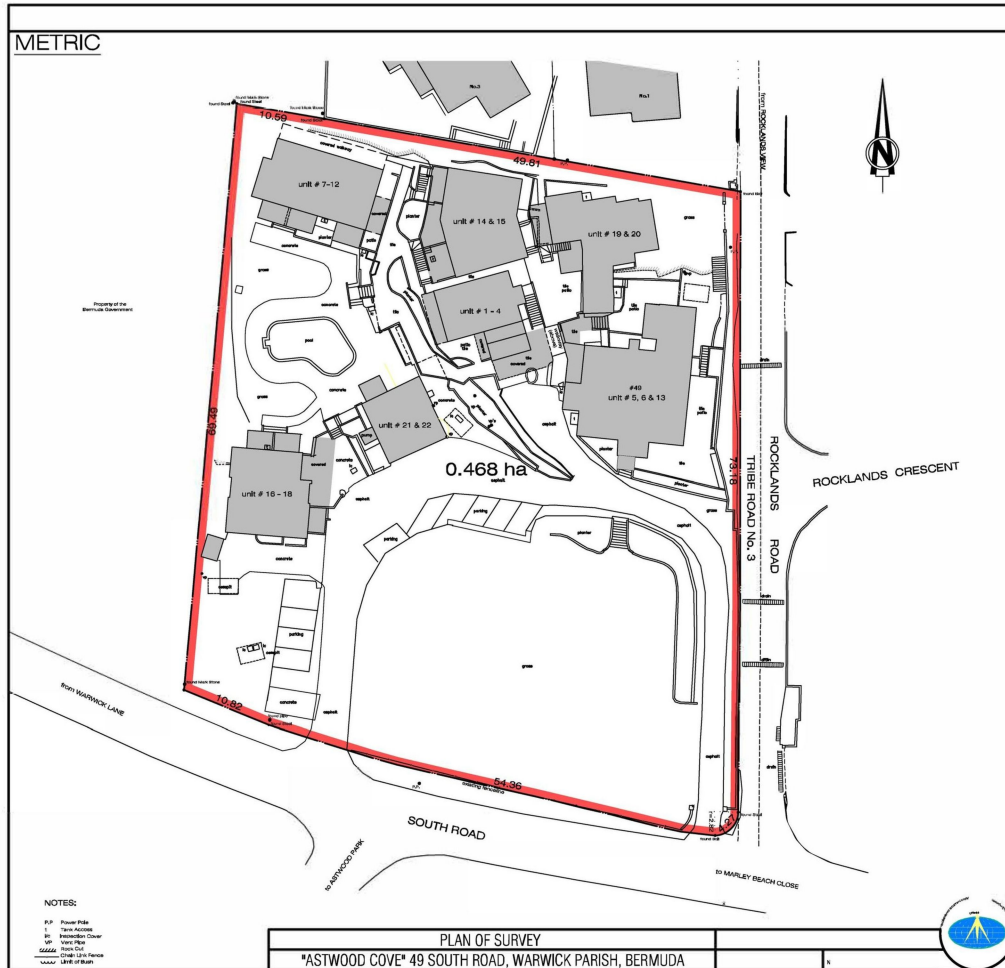
SCHEDULE

(Section 2)

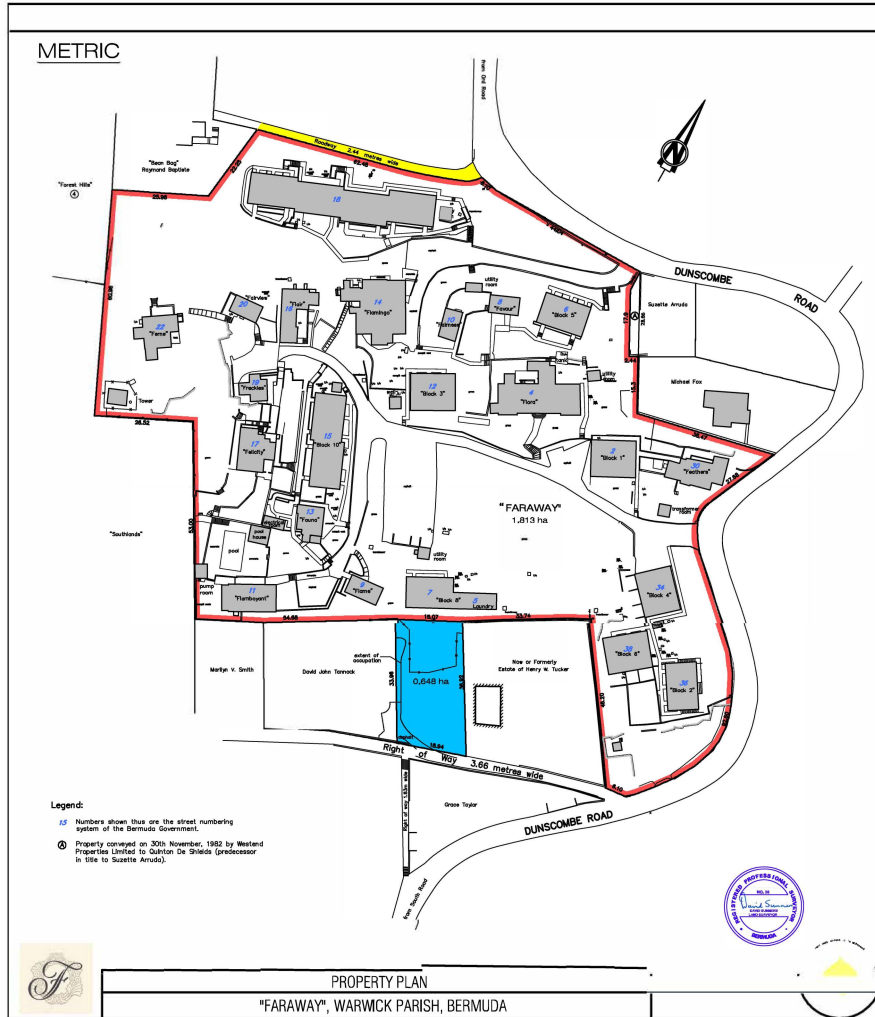
SCHEDULED LAND



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EXPLANATORY MEMORANDUM

This Bill seeks, in a special Act of the Legislature, to facilitate the redevelopment of the Fairmont Southampton Hotel by providing, subject to conditions, certain tax and customs duty rebates and relief in respect of the redevelopment.

Clause 1 provides the title of the Bill.

Clause 2 provides the definitions for the purposes of the Bill.

Clause 3 sets out the customs duty and tax rebates granted in respect of the hotel redevelopment, as follows:

(a) a full rebate from customs duty paid in respect of any building materials, furnishings, fixtures and equipment which are necessary for the building, furnishing and equipping the of hotel redevelopment, for a period of fifteen years less any period for which customs duty relief is granted prior to the hotel opening date, after the hotel's opening date;

(b) a full rebate in relation to hotel occupancy tax paid in respect of the hotel for a period of fifteen years after the hotel opening date;

(c) a full rebate in relation to land tax paid in respect of the hotel for a period commencing six years after the hotel opening date and ending on the fifteenth anniversary of the hotel opening date;

(d) a full rebate in relation to the employer's share of the payroll tax paid in respect of persons employed by the hotel for a period of fifteen years after the hotel opening date.

Clause 4 sets out the terms and conditions subject to which the rebates are granted. The land tax exemption is subject to confirmation that in years six through fifteen at least 70% of the hotel's staff are Bermudian. The payroll tax exemption is subject to the operation of a management training programme at the hotel for Bermudians.

Clause 5 relates to relief from customs duty and provides for the giving of certain information to the Collector of Customs in relation to goods necessary for the building, furnishing and equipping the hotel redevelopment.

Clause 6 relates to the payment of customs duty on the use or disposal of goods which were imported duty free.

Clause 7 creates criminal offences subject to the penalties provided in Clause 8.

Clause 9 makes provision for offences committed by officers of corporations.

Clause 10 gives the Minister the power to amend or repeal provisions of section 3, 4 or 5 of the Act where there has been a breach of any of the given circumstances.

Clause 11 gives the Minister the power to issue guidance.

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Clause 12 gives the Minister the power to make regulations.

Clause 13 clarifies that this Bill does not modify the requirements of the Development and Planning Act 1974 as regards obtaining any planning permission necessary for the hotel redevelopment.

Clause 14 provides consequential amendments to the Revenue Act 1898 in furtherance of clause 6.

Clause 15 provides for commencement by Notice in the Gazette.