

**SAINT LUCIA**

**No. 7 of 2015**

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[L.S.]

PEARLETTE LOUISY,  
*Governor-General.*

*July 2, 2015.*

## SAINT LUCIA

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No. 7 of 2015

AN ACT to facilitate a public private partnership between the Government of Saint Lucia, The Saint Lucia Air and Sea Ports Authority and a Concessionaire, for the redevelopment of the Hewanorra International Airport and for related matters.

[ 21st July, 2015 ]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the Authority of the same, as follows:

## PRELIMINARY

**Short title**

1. This Act may be cited as the Hewanorra International Airport Development Act, 2015.

**Interpretation****2. In this Act**

“Airport” means the Hewanorra International Airport;

“Authority” means the Saint Lucia Air and Sea Ports Authority;

“bidding procedure” means the procedure used to secure a winning bidder by methods as agreed to by the Government and the Authority;

“charges” includes any regulated aeronautical fees and charges levied at the airport under Part III of the Act ;

“concessionaire” means the special purpose company formed under the laws of Saint Lucia by the winning bidder to sign the concession contract;

“concession contract” means the long term agreement between the Government, Authority and Concessionaire resulting from the procurement process;

“Government” means the Government of Saint Lucia;

“Minister” means the Minister responsible for Infrastructure;

“parties” means the signatories to the concession contract;

“prescribed” means prescribed in the Regulations;

“prequalification documents” means the formal request for qualifications from a potential bidder which sets out pertinent information on the procurement process to include -

- (a) the timetable for the bidding process;
- (b) the prequalification criteria;
- (c) the bidding rules.

“winning bidder” means the bidder who was chosen from the bidding procedure as the most suitable investor for the purposes of the concession contract;

### **Binding of the Crown**

3. This Act binds the Crown.

### **Purpose of Act**

4. The purpose of this Act is to provide for the redevelopment of the Hewanorra International Airport by public private partnership through a concession contract with a Concessionaire to provide capital investments, address capacity constraints, meet forecasted growth, optimize commercial activities, operate the airport for a specified period and increase operational efficiencies.

### **Conflict with other enactment**

5. If there is a conflict between this Act, the Regulations and the concession contract and any other enactment, in matters relating to the public procurement for the redevelopment of Hewanorra International Airport, this Act, the Regulations and the contract shall prevail.

## **PART I ADMINISTRATION**

### **Appointment of Bid Evaluation Committee**

6. A Bid Evaluation Committee shall be appointed by the Minister in consultation with the Authority.

### **Constitution of Bid Evaluation Committee**

7.— (1) The Bid Evaluation Committee shall consist of seven persons.

(2) A person appointed to the Bid Evaluation Committee must possess the requisite qualification, including, experience or proven capacity in one or more of the fields of procurement, finance or law, to include –

- (a) two representatives of the Ministry responsible for finance;

- (b) two representatives of the Authority;
- (c) a representative of the Attorney General's Chambers;
- (d) a representative of the private sector;
- (e) a representative of an internationally recognised accounting firm.

#### **Functions of Bid Evaluation Committee**

**8.** The Bid Evaluation Committee is responsible for the evaluation of bids, proposals or quotations, and the preparation of the Bid Evaluation Report.

#### **Validity of Actions of Bid Evaluation Committee**

**9.** Any act done or proceeding taken under this Act by the Bid Evaluation Committee is presumed to be valid despite any omission, defect or irregularity which does not affect the merits of the act or proceedings taken under this Act.

## **PART II PROCUREMENT PROCESS AND CONTRACT**

#### **Bidding procedure**

**10.** —(1) The bidding procedure shall be carried out in accordance with international best practices to include both a prequalification and a bid phase.

(2) In the prequalification phase prequalification documents are provided to a bidder who responds to the invitation to pre-qualify, to provide information required to prepare and submit an application for prequalification based on technical and financial criteria.

(3) In the bid phase, a bidder who has passed the prequalification phase in subsection (2) shall be invited to submit a final bid that includes technical and financial details.

(4) Where the bidding procedure is concluded, the Bid Evaluation Committee shall prepare an evaluation report to include the procedure, examination and method of evaluation of the bids and identify the bid which best meets the qualification criteria.

**Allocation of risks**

11. The Government, Authority and Concessionaire shall enter into a concession contract based on allocation of risks to the parties best able to support them.

**Content of concession contract**

12. —(1) The concession contract shall provide that-

- (a) the site and immoveable assets of the Airport shall be leased to the Concessionaire for the term of the concession contract and shall remain the property of the Authority;
- (b) subject to paragraph (c), the concession contract shall not exceed 30 years from the date of execution, with the option to extend the term as agreed by the parties to the concession contract;
- (c) the concession contract may be subject to early termination in accordance with the terms of the concession contract;
- (d) in the case of early termination of the concession contract each party being found liable, shall be liable to pay compensation in accordance with the agreed terms of the concession contract;
- (e) the Concession contract shall pay to the Authority a share of the annual gross revenues generated by the Airport as agreed by the parties;
- (f) the concession contract shall be governed by the laws of Saint Lucia.

(2) In addition to subsection (1) a concession contract shall include the terms and conditions that are set out in the bidding documents or request for proposals.

(3) Without prejudice to subsection (2), the concession contract must include -

- (a) the names, addresses, telephone, email addresses and fax numbers, of the contact persons of the parties to the concession contract;

- (b) the scope of the work and services to be undertaken;
- (c) the contract price;
- (d) the conditions of acceptance;
- (e) the conditions and mode of payment;
- (f) the modalities of 'force majeure';
- (g) the provisions for termination of the concession contract;  
and
- (h) the procedure for dispute resolution.

### **Incentives**

13. Cabinet may, grant incentives for the purposes of the concession contract as specified in the Schedule.

### **Dispute resolution**

14.—(1) The parties shall ensure that a dispute which arises out of a concession contract is dealt with in a prompt manner.

(2) Where the parties are unable to resolve a dispute in subsection (1), the parties shall refer to international arbitration to resolve the dispute.

## **PART III FEES AND CHARGES**

### **Collection of fees and charges**

15.—(1) Subject to subsection (2), the Authority shall receive and retain all fees generated by the Airport operations.

(2) The Concessionaire shall receive fees and charges generated from the airport operations from the date upon the commencement of operations until termination of the concession contract.

### **Navigation and Communication charge**

16.—(1) The Government shall set a Navigation and Communication charge to be paid by every arriving aircraft at the Airport.



(2) The Minister shall set the level of the Navigation and Communication charge as prescribed.

(3) The Concessionaire shall collect all Navigation and Communication charges on behalf of the Government in accordance with the concession contract.

#### **Security charge**

**17.**—(1) The Government shall set a security charge to be paid by every departing passenger from the Airport.

(2) The Minister shall set the level of the security charge as prescribed.

(3) The Concessionaire shall collect all security charges on behalf of the Government in accordance with the concession contract.

#### **Fees and charges**

**18.** Fees and charges for services provided by the Airport shall be charged in accordance with the rates as prescribed.

#### **Other fees and charges**

**19.** —(1) Other fees and charges may be created in accordance with the concession contract.

(2) The Authority shall, on consultation with the Minister, identify other fees and charges to be levied pursuant to the concession contract.

#### **Adjustment of fees and charges**

**20.**—(1) All fees and charges may be adjusted during the term of the concession contract.

(2) All fees and charges may be prescribed by the Minister, in consultation with the Authority, by Order published in the Gazette.

(3) The Authority shall act as the regulator of the fees and charges as specified in the concession contract.

**PART IV  
STAFF**

**Transfer of staff**

**21.**—(1) All employees of the Authority and its affiliates working at or in relation to the Airport, except for those specifically retained by the Authority, shall be transferred to the Concessionaire in accordance with the Labour Act, No. 37 of 2006.

(2) All rights and benefits accrued to and for the benefit of the employees transferred in subsection (1) shall inure to the benefit of the employees whose employment has been transferred to the Concessionaire and the Concessionaire shall honour and comply with those rights and benefits.

**PART V  
MISCELLANEOUS**

**Confidentiality**

**22.** The Bid Evaluation Committee, Authority, parties, all officers and persons associated with the procurement process shall keep confidential all information relating to the procurement process.

**General Penalty**

**23.** A person who contravenes this Act commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding five years.

**Regulations**

**24.** —(1) The Minister may, on the recommendation of the Authority, make regulations for the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations to provide for -

- (a) fees and charges of the Airport's operations as required from time to time;
- (b) details of the procurement and other procedures;
- (c) dispute resolution through international arbitration;

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- (d) any transitional matter arising as a consequence of the coming into operation of this Act;
- (e) anything which may be or is to be prescribed under this Act.

**Repeal**

25. The Airport Development Act, No. 2 of 2011 is repealed.

**Transitional**

26. Subject to the terms and in accordance with the concession contract all rights, privileges and other obligations concerning the operation of the airport, to which immediately before the commencement of this Act, the airport were entitled or subject to, are transferred and conferred or imposed upon the Concessionaire for the purposes of this Act.

**SCHEDULE**

(section 13)

**INCENTIVES**

100 per cent customs duty exemption on imports including -

- (a) fixtures and fittings;
- (b) inputs for construction and renovations;
- (c) alternative energy and energy saving equipment and devices;

for use by the Concesionaire for the Airport operations, for a period to be determined by Cabinet.

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Passed in the House of Assembly this 26th day of May, 2015.

PETER I. FOSTER,  
*Speaker of the House of Assembly.*

Passed in the Senate this 9th day of June, 2015.

CLAUDIUS J. FRANCIS,  
*President of the Senate.*