

ANTIGUA AND BARBUDA

THE INVESTMENT AUTHORITY BILL 2006

No. of 2006

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ANTIGUA AND BARBUDA

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A BILL FOR

AN ACT to establish an investment authority, to promote investment opportunities, introduce a system of registration of business enterprises that may benefit from lawful incentives and concessions, to assist investors to obtain facilities related to business enterprises and generally to improve the investment regime of Antigua and Barbuda, and for incidental and connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. This Act may be cited as the Investment Authority Act, 2006.

Short title

2. In this Act—

Interpretation

“Authority” means the Antigua and Barbuda Investment Authority established by section 3;

“Board” means the Board of Management established by section 5;

“Director” means the person appointed as Executive Director under section 8;

“incentive and concession” means a relief or exemption from tax or duty specified in Schedule 1;

“investment” includes a lawful contribution to establish or expand a commercial enterprise, convertible currency, local currency, tangible or intangible property, movable or immovable property, a national foreign security, a financial instrument, a receivable, a licence and a lease and a commercial right or concession;

“investment certificate” means a certificate issued under section 16;

“investor” means a natural or legal person who makes a lawful direct investment involving a commitment of capital in Antigua and Barbuda;

“Minister” means the Minister of Finance; and

“prescribed” means prescribed in regulations made under this Act.

THE AUTHORITY

3. (1) There is established a body to be called the Antigua and Barbuda Investment Authority. Establishment of Authority

(2) The Authority shall be a body corporate with perpetual succession and a common seal and may—

- (a) acquire, hold, mortgage and dispose of real and personal property;
- (b) enter into contracts;
- (c) sue and be sued;
- (d) so far as is possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity; and
- (e) do all such things as are necessary for the purposes of its functions under this Act.

4. (1) The Authority shall advise the Government on the formation and implementation of policies and programmes to attract investment within Antigua and Barbuda, and to promote the increased export of goods and services from Antigua and Barbuda. Duties of the Authority

(2) The Authority shall also—

- (a) implement programmes and activities to promote Antigua and Barbuda as a jurisdiction in which to invest;
- (b) collect, compile and disseminate information on available investment opportunities in Antigua and Barbuda;
- (c) provide information to investors and prospective investors on the legal, financial, real property, industrial relations requirements and other matters relating to the establishment of business enterprises in Antigua and Barbuda;
- (d) establish procedures consistent with this Act to process applications for investment projects efficiently;
- (e) provide local and foreign investors and prospective investors with information on potential joint venture partnerships;
- (f) provide support services, including, but not limited to, the provision of information on existing market opportunities, product quality requirements, packaging and labelling standards;
- (g) liaise with government agencies, departments and authorities to identify and secure suitable land that may be required by investors and prospective investors to implement investment projects;
- (h) provide services to assist investors and prospective investors to obtain such certificates, approvals, authorisation or permits as may be required by law to establish and operate business enterprises;

- (i) undertake activities to support and encourage investment by local entrepreneurs, including, but not limited to, the training and provision of business advisory services;
- (j) generally facilitate and support business development, export production, and do all such things as may be lawfully done to achieve its objectives and perform its functions under this Act;
- (k) issue investment certificates in accordance with the provisions of this Act; and
- (l) issue approvals for income tax exemptions under section 10(2) of the Income tax Act, Cap. 212.

(3) The Authority shall publicise the system of registration and incentives and concessions established by this Act, and for that purpose may send information, including the Investment Code set out in Schedule 4, to prospective investors, but the issue of such information shall not constitute an offer, or a legal liability on the part of, the Government.

5. (1) The Authority may, in consultation with the Director, employ such employees as are required for the proper discharge of its functions under this Act, who shall be public officers. Staff

(2) For the performance of its functions under this Act, the Authority may employ the services of consultants or qualified professionals.

6. (1) The Authority shall be governed by a Board of Management and Schedule 2 shall have effect with respect to the constitution and proceedings of the Board. Board of Management

(2) The Board shall be responsible for the overall organisation and administration of the Authority, and for ensuring the execution of the Authority's duties.

(3) The Board shall appoint a Secretary of the Authority.

7. The Prime Minister may give the Authority directions of a general nature in respect of the policies to be followed by it in the exercise of its powers and the performance of its functions under this Act and the Authority shall give effect to such directions. Prime Minister to give directions to the Authority

8. (1) The Minister shall appoint an Executive Director who shall be a citizen of Antigua and Barbuda and who shall have standing, knowledge and experience, either professional or academic, in commerce, tourism, law, banking, finance or real estate, on such terms and conditions as the Minister may determine, subject to the provisions of this Act. Appointment of Executive Director

(2) The Director shall be the administrative head of the Authority and shall perform the duties assigned to him under this Act and such other duties as the Authority may determine.

(3) The Director may resign from office at any time by giving three months' written notice to the Chairman of the Board.

9. (1) The Director shall, subject to the provisions of this Act and the general direction of the Board, be responsible for the management and administration of the Authority and for— Duties of Director

- (a) the development and preparation of appropriate plans for the promotion of suitable investment strategies in Antigua and Barbuda;
- (b) the organisation and direction of the officers, employees and staff of the Authority; and
- (c) the disbursement and accounting for all funds of the Authority and for their administration and control.

(2) The Director shall monitor the progress of any investment enterprise in respect of which an investment certificate has been issued under this Act.

10. (1) The Director may be removed from office by the Board for— Removal of
Director from
office

- (a) misconduct in or in connection with his office or duties;
- (b) failure or inability through physical, mental or emotional impairment to perform his duties under this Act; or
- (c) conviction by a court of competent jurisdiction of a criminal offence involving dishonesty or immorality or of any other crime which in the opinion of the Board is likely to bring the Authority into disrepute.

(2) The Director shall not be dismissed under the provisions of subsection (1)(c) until the period for lodging an appeal against the conviction has expired, without such an appeal being lodged.

FUNDS OF THE AUTHORITY

11. The funds and resources of the Authority shall consist of— Funds and
resources of the
Authority

- (a) money appropriated by Parliament for the purposes of the Authority;
- (b) any money and property paid or provided to the Authority by way of grants, fees, subsidies, donations, gifts, charges, rent, interest and other income derived from the investment of the Authority's funds;
- (c) any money derived from the disposal of or dealing with real or personal property held by the Authority;
- (d) money borrowed under this Act or derived from financial accommodation extended to the Authority under this Act; and
- (e) all other money lawfully received by or made available to the Authority.

12. (1) Subject to subsection (2), the Authority may borrow money required by it for the purpose of carrying out its functions under this Act. Borrowing powers of the Authority

(2) No money shall be borrowed under this section unless the Minister approves in writing the amount to be borrowed, the source of the borrowing and the terms on which the borrowing is to be made.

13. The funds of the Authority shall be applied towards— Application of the funds of the Authority

- (a) the performance of its functions under this Act; and
- (b) the payment of salaries, wages, fees, allowances, gratuities and other similar benefits of the employees of the Authority.

14. (1) Subject to subsection (2) the Authority shall cause to be kept proper books of accounts and other books or records in which shall be recorded all financial transactions of the Authority and shall cause to be prepared within two months of the Authority's financial year a financial statement for that financial year. Accounts and audit

(2) The accounts of the Authority shall be prepared according to accepted international accounting standards and shall be audited annually by the Director of Audit or by such person as the Director of Audit may appoint.

(3) The Board, the Director and all employees of the Authority shall afford the Director of Audit or other auditor appointed by the Director of Audit, access to all books, documents cash and securities of the Authority and, on request, shall give the Director of Audit or other auditor appointed by the Director of Audit any information within his knowledge.

15. The Authority shall send a written report of its activities to the Prime Minister on the first day of March, June, September and December in each year, and on the first day of June in each year shall send an annual written report to the Prime Minister summarising the previous four reports and containing such advice in accordance with section 4(1) as it considers appropriate, which report shall be laid on the table of the House of Representatives. Authority to submit regular reports

REGISTRATION OF INVESTMENT ENTERPRISES

16. (1) No investor or prospective investor who intends to invest in an enterprise in Antigua and Barbuda may benefit from any incentives or concessions applicable to such an investment under any law in force unless he has applied for and received an investment certificate in accordance with this section. Registration of investment enterprise

(2) An application for an investment certificate shall be sent to the Authority at its main place of business, shall be in such form as may be specified by the Authority from time to time and shall include—

- (a) the name and address of the existing or proposed business enterprise, its legal nature, and the name, address and nationality of each shareholder, partner or stakeholder;
- (b) the nature of the existing or proposed business activity and the intended level of foreign investment;
- (c) the source of funding whether from Antigua and Barbuda or elsewhere;
- (d) the number of persons estimated to be employed and the categories of jobs to be created; and
- (e) such other information as may be prescribed.

(3) The Director may request the applicant to provide such further information or clarification or explanation as he may require.

(4) Subject to subsection (5) the Board shall consider an application and shall approve or reject it within one calendar month of its receipt by the Authority and, if the application is approved, shall make such recommendations to the Minister in relation to the grant of incentives or concessions as it considers appropriate.

(5) The Board may either generally or as otherwise provided by the instrument of delegation, delegate any of the powers conferred on it by subsection (4) to the Director.

(6) In the case of an application being approved the Authority shall send an investment certificate in such form as may be specified by the Authority from time to time to the applicant within seven days of the approval.

17. (1) Subject to subsection (2) the Board or, if the power of delegation referred to in section 14(5) has been exercised, the Director may attach to any investment certificate such conditions as it or he may consider necessary and appropriate.

Board may attach conditions to a certificate

(2) An investment certificate shall specify its period of validity.

(3) The holder of an investment certificate shall submit to the Director an annual progress report of the enterprise during the first five years of its operation subsequent to the grant of the certificate.

(4) The holder of an investment certificate shall allow to the Director or his agent unhindered access to the premises of the enterprise to inspect any books, equipment, machinery or any other facility used in the operation of the enterprise.

18. (1) An investment certificate shall entitle the holder during the period of its validity to incentives and concessions in respect of the investment enterprise to which the certificate relates.

Entitlement to incentives and concessions

(2) The incentives and concessions to which the holder of the certificate shall be entitled shall be specified by the Minister.

19. (1) The holder of an investment certificate shall not change, alter or amend the nature of the enterprise to which the certificate relates without the prior written consent of the Authority. Changes in the nature of the enterprise

(2) The holder of an investment certificate who wishes to alter the nature of his enterprise shall give to the Authority thirty days' notice in writing of his intention to make any changes in the ownership, structure or nature of the enterprise or in the scope or activity of the business enterprise in respect of which the certificate was issued.

(3) The Authority shall consider the changes proposed and if it consents to them shall issue an amended certificate to reflect the changes to which it consents.

20. An investor who, having submitted— Complaints

- (a) an application for an investment certificate under section 16;
or
- (b) a notice under section 19,

and not having been notified of the decision of the Board within six weeks of submission of the application or notice, may lodge a complaint in writing with the Minister, who shall investigate the complaint and inform the applicant of the result within fourteen days of the lodging of the complaint.

21. (1) The Authority may revoke an investment certificate if— Revocation of certificate

- (a) the holder has not complied with a condition attached to the certificate;
- (b) the holder has not commenced operation of the enterprise within ninety days, or such other period as may be agreed by the Authority, and notified to the holder in writing after receipt of the certificate; or
- (c) the holder has not complied with a requirement of this Act or of regulations made under this Act.

(2) Where the Director has reasonable grounds to believe that an investment certificate has been issued on a false or fraudulent representation, or on incorrect information, or that one of the grounds for revocation set out in subsection (1) exists, he shall give written notice to the holder of the certificate, requiring the holder to show, within one month of receipt of the notice, why the investment certificate should not be revoked.

(3) Where the Authority is satisfied that the holder of an investment certificate has failed, without reasonable excuse, within the period of one

month specified in subsection (2) to show cause why a certificate should not be revoked, the Authority shall revoke the investment certificate.

(4) Subject to section 23, the holder of an investment certificate which has been revoked shall cease to be entitled to any of the incentives or concessions to which the certificate entitled him.

22. Where the owner or operator of a business enterprise which is registered under this Act intends to terminate the operation of the enterprise, he shall give to the Authority thirty days prior written notice of his intention, and the investment certificate which applies to the enterprise shall automatically be terminated on the date that the notice is received by the Director.

Notice of intention to terminate enterprise

23. Revocation or termination of a certificate shall not affect the rights or liabilities of the enterprise in respect of any pre-existing obligation.

Preservation of pre-existing obligations

24. The Authority shall maintain a register in which shall be recorded details of issued, amended and revoked investment certificates and of incentives and concessions granted under this Act.

Register to be maintained

MISCELLANEOUS

25 (1) A person or body to whom this section applies shall not be liable in damages for anything done or omitted in the performance or purported performance of any functions of the Authority conferred by or under this Act or any other enactment, or any other functions conferred by or under this Act, unless it is shown that the act or omission was in bad faith.

Limitation of liability

(2) This section applies to—

- (a) the Minister or any person who is, or is acting as, an officer, employee or agent of the Minister, or performing any function on behalf of the Minister;
- (b) the Authority or any person who is, or is acting as, an officer, employee or agent of the Authority or performing any function on behalf of the Authority; and
- (c) the Board, or any member of the Board, or any person who is, or is acting as, an officer, employee or agent of the Board or performing any function on behalf of the Board.

26. No act done or proceeding taken under this Act shall be questioned on the ground of the existence of any vacancy in the membership of the Board nor on the ground of any omission, defect or irregularity not affecting the merits of the case.

Protection of the Authority

27. (1) The Minister may by regulations make provision for the purpose of carrying this Act into effect and for the better carrying out of the objects and purposes of this Act, and, in particular, but without prejudice

Regulations and Orders

to the generality of the foregoing, for or with respect to any matter that may be prescribed under this Act by regulations.

- (2) The Minister may—
 - (a) by regulations amend paragraphs 1 to 6 (inclusive) and 10 of Schedule 2; and
 - (b) by Order amend Schedule 4.
- (3) Regulations under this Act may—
 - (a) make different provision in relation to different cases or circumstances;
 - (b) apply in respect of particular persons or particular cases or particular classes of persons or particular classes of cases, and define a class by reference to any circumstances whatsoever; and
 - (c) contain such transitional, consequential, incidental or supplementary provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

28. (1) From the date of commencement of this Act all lands, buildings, equipment and all other forms of property whether real or personal and all interests therein of whatsoever nature belonging to and used exclusively for the purposes of the Industrial Development Board shall be vested in the Authority and managed by the Authority.

Transitional provisions

(2) The right to manage the real and personal property of the Authority shall include the right to upkeep, maintain, dispose of or sell that property.

(3) From the date of commencement of this Act the benefits and burdens of any contract for or in connection with the Industrial Development Board or to which the Industrial Development Board was a party (including the right to receive all monies due and payable to the Industrial Development Board) which subsists or was in force immediately before the commencement of this Act, shall be deemed to have been transferred from the Industrial Development Board to the Authority.

(4) From the date of commencement of this Act, any agreement respecting any property whether real or personal, and whether in writing or not, which affected the Industrial Development Board and whether or not the rights and liabilities and obligations thereunder could be assigned, shall have effect as if the Authority were a party thereto or affected thereby instead of the Industrial Development Board, and as if every reference therein were a reference to the Authority in place of the Industrial Development Board.

(5) Any proceedings pending or in course immediately before the coming into force of this Act to which the Industrial Development Board was a party shall be continued as if the Authority was a party to those proceedings instead of the Industrial Development Board.

(6) On the coming into force of this Act all pensions being paid to former employees of the Industrial Development Board shall be paid by the Authority and the amounts of those pensions shall be increased from time to time in all respects as though those pensions were granted under the Pensions (Non-established Government Employees) Act, Cap 310.

(7) On the coming into force of this Act the Authority shall—

(a) cause to be prepared the final accounts and a final report in relation to the business of the Industrial Development Board up to the date of the coming into force of this Act, and sections 15, 16 and 17 of the Industrial Development Board Act (Cap 215) shall apply to those accounts and report despite the repeal of that Act; and

(b) cause to be transferred all the records of the Industrial Development Board to them.

(8) The Minister may by regulations made under this Act provide for such further transitional and saving provisions to have effect in connection with the coming into operation of any provision of this Act as is necessary or expedient.

(9) Regulations made under subsection (8) may be given retrospective operation to a day not earlier than the day this Act comes into force.

(10) Subsections (8) and (9) shall expire one year after they come into force.

29. The enactments specified in Schedule 3 are amended in the manner indicated in that Schedule. Consequential Amendments

30. The Industrial Development Board Act (Cap 215) is repealed. Repeal

SCHEDULE 1

INCENTIVES AND CONCESSIONS

1. For a new or established business which—

- (a) has a capital investment of up to \$1,000,000; or
- (b) employs up to 26 persons who are citizens of, or lawfully resident in, Antigua and Barbuda,

and in either case has at least one director or owner lawfully resident in Antigua and Barbuda, the following incentives and concessions may be provided—

- (i) Exemption from payment of duty under the Customs Duty Act, 1993 on the importation or purchase of raw materials, building materials, furniture, furnishings, fixtures, fittings, appliances, tools, spare parts, plant, machinery and equipment for use in the construction and operation of the business;
- (ii) Exemption from payment of duty under the Customs Duty Act, 1993 on the importation or purchase of vehicles for use in the operation of the business;
- (iii) Reduction of property tax under the Property Tax Act, 2000 of up to 10% in respect of land and buildings (other than residential premises) used in the operation of the business;
- (iv) Exemption from payment of income tax under section 5 of the Income Tax Act, Cap. 212, on the income of the business, for a period of up to 3 years from the grant of the concession, with an ability in respect of that period to carry forward losses for periods of 1 year for each tax year;
- (v) Reduction of stamp duty under the Non-citizens Land Holding Regulation Act, Cap. 293, and of stamp duty payable by the purchaser or transferee, and by the vendor or transferor, under the heading “CONVEYANCE or TRANSFER ON SALE of any property” in the Schedule to the Stamp Act, Cap 410, of up to 10% in respect of land and buildings (other than residential premises) used in the operation of the business; and
- (vi) Exemption from payment of tax under section 40 of the Income Tax Act, Cap. 212, for a period of up to three years from the grant of the concession.

2. For a new or established business which—

- (a) has a capital investment of over \$1,000,000;
- (b) employs over 26 persons who are citizens of, or lawfully resident in, Antigua and Barbuda; and
- (c) has at least one director or owner lawfully resident in, Antigua and Barbuda,

the following incentives and concessions may be provided—

- (i) Exemption from payment of duty under the Customs Duty Act, 1993 on the importation or purchase of raw materials, building materials, furniture, furnishings, fixtures, fittings, appliances, tools, spare parts, plant, machinery and equipment for use in the construction and operation of the business;
- (ii) Exemption from payment of duty under the Customs Duty Act, 1993 on the importation or purchase of vehicles for use in the operation of the business;
- (iii) Reduction of property tax under the Property Tax Act, 2000 of up to 20% in respect of land and buildings (other than residential premises) used in the operation of the business;
- (iv) Exemption from payment of income tax under the Income Tax Act, Cap. 212, on the income of the business, for a period of up to 5 years from the grant of the concession, with an ability in respect of that period to carry forward losses for periods of 2 years for each tax year;
- (v) Reduction of stamp duty under the Non-citizens Land Holding Regulation Act, Cap. 293, and of stamp duty payable by the purchaser or transferee, and by the vendor or transferor, under the heading “CONVEYANCE or TRANSFER ON SALE of any property” in the Schedule to the Stamp Act, Cap 410, of up to 20% in respect of land and buildings (other than residential premises) used in the operation of the business; and
- (vi) Exemption from payment of tax under section 40 of the Income Tax Act, Cap. 212, for a period of up to 5 years from the grant of the concession.

3. For a new or established business which—

- (a) has a capital investment of over \$10,000,000;
- (b) employs over 51 persons who are citizens of, or lawfully resident in, Antigua and Barbuda; and
- (c) has at least one director or owner lawfully resident in, Antigua and Barbuda,

the following incentives and concessions may be provided—

- (i) Exemption from payment of duty under the Customs Duty Act, 1993 on the importation or purchase of raw materials, building materials, furniture, furnishings, fixtures, fittings, appliances, tools, spare parts, plant, machinery and equipment for use in the construction and operation of the business;
- (ii) Exemption from payment of duty under the Customs Duty Act, 1993 on the importation or purchase of vehicles for use in the operation of the business;
- (iii) Reduction of property tax under the Property Tax Act, 2000 of up to 30% in respect of land and buildings (other than residential premises) used in the operation of the business;
- (iv) Exemption from payment of income tax under the Income Tax Act, Cap. 212, on the income of the business, for a period of up to 10 years from the grant of the concession, with an ability in respect of that period to carry forward losses for periods of 3 years for each tax year;
- (v) Reduction of stamp duty under the Non-citizens Land Holding Regulation Act, Cap. 293, and of stamp duty payable by the purchaser or transferee, and by the vendor or transferor, under the heading “CONVEYANCE or TRANSFER ON SALE of any property” in the Schedule to the Stamp Act, Cap 410, of up to 30% in respect of land and buildings (other than residential premises) used in the operation of the business; and
- (vi) Exemption from payment of tax under section 40 of the Income Tax Act, Cap. 212, for a period of up to 10 years from the grant of the concession.

4. For a new or established business which—

- (a) has a capital investment of over \$25,000,000;
- (b) employs over 75 persons who are citizens of, or lawfully resident in, Antigua and Barbuda; and
- (c) has at least one director or owner lawfully resident in, Antigua and Barbuda,

the following incentives and concessions may be provided—

- (i) Exemption from payment of duty under the Customs Duty Act, 1993 on the importation or purchase of raw materials, building materials, furniture, furnishings, fixtures, fittings, appliances, tools, spare parts, plant, machinery and equipment for use in the construction and operation of the business;

- (ii) Exemption from payment of duty under the Customs Duty Act, 1993 on the importation or purchase of vehicles for use in the operation of the business;
- (iii) Reduction of property tax under the Property Tax Act, 2000 of up to 40% in respect of land and buildings (other than residential premises) used in the operation of the business;
- (iv) Exemption from payment of income tax under the Income Tax Act, Cap. 212, on the income of the business, for a period of up to 12 years from the grant of the concession, with an ability in respect of that period to carry forward losses for periods of 4 years for each tax year;
- (v) Reduction of stamp duty under the Non-citizens Land Holding Regulation Act, Cap. 293, and of stamp duty payable by the purchaser or transferee, and by the vendor or transferor, under the heading “CONVEYANCE or TRANSFER ON SALE of any property” in the Schedule to the Stamp Act, Cap 410, of up to 40% in respect of land and buildings (other than residential premises) used in the operation of the business; and
- (vi) Exemption from payment of tax under section 40 of the Income Tax Act, Cap. 212, for a period of up to 12 years from the grant of the concession.

5. For a new or established business which—

- (a) has a capital investment of over \$75,000,000;
- (b) employs over 100 persons who are citizens of, or lawfully resident in, Antigua and Barbuda; and
- (c) has at least one director or owner lawfully resident in, Antigua and Barbuda,

the following incentives and concessions may be provided—

- (i) Exemption from payment of duty under the Customs Duty Act, 1993 on the importation or purchase of raw materials, building materials, furniture, furnishings, fixtures, fittings, appliances, tools, spare parts, plant, machinery and equipment for use in the construction and operation of the business;
- (ii) Exemption from payment of duty under the Customs Duty Act, 1993 on the importation or purchase of vehicles for use in the operation of the business;
- (iii) Reduction of property tax under the Property Tax Act, 2000 of up to 50% in respect of land and buildings (other than residential premises) used in the operation of the business;

- (iv) Exemption from payment of income tax under the Income Tax Act, Cap. 212, on the income of the business, for a period of up to 15 years from the grant of the concession, with an ability in respect of that period to carry forward losses for periods of 5 years for each tax year;
- (v) Reduction of stamp duty under the Non-citizens Land Holding Regulation Act, Cap. 293, and of stamp duty payable by the purchaser or transferee, and by the vendor or transferor, under the heading “CONVEYANCE or TRANSFER ON SALE of any property” in the Schedule to the Stamp Act, Cap 410, of up to 50% in respect of land and buildings (other than residential premises) used in the operation of the business; and
- (vi) Exemption from payment of tax under section 40 of the Income Tax Act, Cap. 212, for a period of up to 15 years from the grant of the concession.

6. For a new or established business which—

- (a) has a capital investment of over \$100,000,000;
- (b) employs over 150 persons who are citizens of, or lawfully resident in, Antigua and Barbuda; and
- (c) has at least one director or owner lawfully resident in, Antigua and Barbuda,

the following incentives and concessions may be provided—

- (i) Exemption from payment of duty under the Customs Duty Act, 1993 on the importation or purchase of raw materials, building materials, furniture, furnishings, fixtures, fittings, appliances, tools, spare parts, plant, machinery and equipment for use in the construction and operation of the business;
- (ii) Exemption from payment of duty under the Customs Duty Act, 1993 on the importation or purchase of vehicles for use in the operation of the business;
- (iii) Reduction of property tax under the Property Tax Act, 2000 of up to 75% in respect of land and buildings (other than residential premises) used in the operation of the business;
- (iv) Exemption from payment of income tax under the Income Tax Act, Cap. 212, on the income of the business, for a period of up to 20 years from the grant of the concession, with an ability in respect of that period to carry forward losses for periods of 7 years for each tax year;

- (v) Reduction of stamp duty under the Non-citizens Land Holding Regulation Act, Cap. 293, and of stamp duty payable by the purchaser or transferee, and by the vendor or transferor, under the heading “CONVEYANCE or TRANSFER ON SALE of any property” in the Schedule to the Stamp Act, Cap 410, of up to 75% in respect of land and buildings (other than residential premises) used in the operation of the business; and
- (vi) Exemption from payment of tax under section 40 of the Income Tax Act, Cap. 212, for a period of up to 20 years from the grant of the concession.

SCHEDULE 2

CONSTITUTION AND PROCEEDINGS OF THE BOARD

The governing body of the Authority

1. (1) The Board shall consist of—
 - (a) two representatives of the Ministry of Finance, one being the Financial Secretary for the time being, the other being a person to be nominated by the Minister;
 - (b) a representative of the Ministry of Tourism who shall be nominated by the Minister of Tourism;
 - (c) a representative of the Ministry of Foreign Affairs who shall be nominated by the Minister with responsibility for foreign affairs;
 - (d) a representative of the Ministry of Agriculture who shall be nominated by the Minister of Agriculture;
 - (e) a representative of the Chamber of Industry and Commerce who shall be nominated by the Chamber;
 - (f) a representative of the Antigua and Barbuda Industrial and Small Enterprise Association who shall be nominated by the Association;
 - (g) a member of the National Economic and Social Council who shall be nominated by the Council; and
 - (h) one person representing the private sector nominated by the Minister after consultation with such persons and organisations operating in the private sector as appear to him to be appropriate.
- (2) The Minister shall appoint one of the persons referred to in subparagraph 1(a) to be Chairman of the Authority and the other to be Deputy Chairman.

Tenure

2. The persons appointed under paragraph 1 who are not appointed by virtue of their office shall be appointed in writing by the Minister for a term of two years and may at the expiration of such term be reappointed by him for a further term not exceeding two years in accordance with the nomination of the Minister or organisation responsible for so doing.

Resignation of a member of the Board

3. A member of the Board who is not a member by virtue of his office may resign his office at any time by letter addressed to the Chairman, and the resignation shall take effect from the date that the letter is received by the Chairman.

Appointment of Board members to be published in the Gazette

4. The Minister shall cause the names of the members of the Board as first constituted and any changes in membership to be published in the Gazette.

Seal of the Authority

5. (1) The common seal of the Authority shall be affixed to all deeds, documents and other instruments requiring the common seal of the Authority only after a resolution of the Board in each case authorising such action.

(2) The common seal of the Authority shall be authenticated by the signature of the Chairman or in his absence, the Deputy Chairman, and the Secretary of the Authority.

(3) The common seal of the Authority shall be kept in the custody of the Secretary of the Authority.

Meetings of the Board

6. (1) The Board shall meet at least once every month and at such other times as may be necessary or expedient for the transaction of its business.

(2) The quorum at meetings of the Board shall be five.

(3) Subject to subparagraph (4) each member of the Board shall be entitled to one vote.

(4) The decisions of the Board shall be by a majority of votes, and in the event the votes are equal, the chairman presiding at the meeting shall have an additional casting vote.

(5) The Minister may appoint a person to act temporarily in the place of any member of the Board who may be temporarily absent or unable to act.

(6) The Chairman may invite a Minister or his nominee to attend meetings of the Board for consultation in respect of a proposed investment on which the advice of his Ministry is considered essential or which might have a significant impact on the sector of the economy which is the responsibility of his portfolio.

(7) Subject to this Act, the Board may regulate its own procedure in respect to meetings.

(8) Minutes of each meeting of the Board shall be recorded by the Secretary and shall be confirmed by the Board at its next meeting and signed by the Chairman.

Conflict of interest

7. (1) If a member of the Board has any pecuniary interest, direct or indirect, in any investment project in respect of which an application for a investment certificate has been made, or any contract, proposed contract, licence or other matter and is present at a meeting of the board at which the application, contract, proposed contract, licence or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the application, contract, proposed contract, licence or other matter or vote on any question with respect to it and shall be excluded from the meeting for the duration of the consideration, discussion and voting procedure.

(2) If any person fails to comply with the provisions of subsection (1) he shall be guilty of an offence and liable—

- (a) on summary conviction to a fine not exceeding \$20,000 or imprisonment for a term not exceeding 2 years, or both; or
- (b) on conviction on indictment to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 5 years, or both,

unless he proves that he did not know that the application, contract, proposed contract, licence or other matter in which he had a pecuniary interest was the subject of consideration at that meeting.

(3) A disclosure under subsection (1) shall be recorded in the minutes of the Board.

(4) No act or proceeding of the Board shall be questioned on the ground that a member of the Board has contravened this section.

Pecuniary interests for the purposes of paragraph 7

8. (1) For the purposes of paragraph 7, a member of the Board shall be treated, subject to the following provisions of this paragraph and to paragraph 9, as having indirectly a pecuniary interest in an application, contract, proposed contract, licence or other matter if—

- (a) he or any nominee of his is a member of a company or other body with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the application or other matter under consideration;
- (b) he is a partner, or is in the employment of a person with whom the contract was made or is proposed to be made, or who has a direct pecuniary interest in the application or other matter under consideration; or
- (c) he, or any partner of his is a professional adviser to a person who has a direct or indirect pecuniary interest in an application, or other matter under consideration.

(2) Subsection (1) does not apply to membership of or employment under any public body.

(3) In the case of married persons the interest of one spouse shall be deemed for the purpose of paragraph 7 to be also the interest of the other.

Removal or exclusion of disability, etc.

9. (1) The Minister may at his discretion and subject to such conditions as he may think fit appoint persons to act as members of the Board for any specified period, in any case in which the number of members of the Board disabled by paragraph 7 at any one time would be so great a proportion of the whole as to impede the transaction of business.

(2) Nothing in paragraph 7 precludes any member of the Board from taking part in the consideration or discussion of, or voting on, any question whether an application should be made to the Minister for the exercise of the powers conferred by subparagraph (1).

(3) Paragraph 7 does not apply to an interest in an application, contract, proposed contract, licence or other matter which a member of the Board has as a member of the public or to an interest in any matter relating to the terms on which the right to participate in any service is offered to the public.

(4) Where a member of the Board has an indirect pecuniary interest in an application, contract, proposed contract, licence or other matter by reason only of a beneficial interest in securities of a company or other body, and the nominal value of those securities does not exceed \$5,000 or one-thousandth of the total nominal value of the issued share capital of the company or other body, whichever is the less, and if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-thousandth of the total issued share capital of that class, paragraph 7 shall not prohibit him from taking part in the consideration or discussion of the application, contract, proposed contract, licence or other matter or from voting on any question with respect to it, without prejudice, however, to his duty to disclose his interest.

Removal of a member of the Board

10. The Minister may remove a member of the Board from office on being satisfied that the member—

- (a) is unable, due to physical or mental impairment, to exercise his functions;
- (b) is guilty of misconduct which, in the opinion of the Minister, is likely to bring the Authority into disrepute;
- (c) is convicted of an offence involving dishonesty or immorality;

- (d) fails within one year without reasonable excuse to attend and participate in three successive meetings of the Board;
- (e) fails to disclose a personal interest in an investment project which is being or has been considered by the Board; or
- (f) is an undischarged bankrupt.

SCHEDULE 3

ENACTMENTS AMENDED

The Customs Duty Act 1993

The Customs Duty Act, 1993 is amended in section 4—

- (a) by numbering the existing provision as subsection (1); and
- (b) by adding at the end the following subsection—

“(2) No customs duty shall be charged on the importation of such goods, and by such persons, as may be specified by the Minister of Finance in accordance with section 18 of the Investment Authority Act, 2006.”.

The Property Tax Act, 2000

The Property Tax Act, 2000 is amended in section 13 by inserting after subsection (3) the following subsection—

“(3) The Minister may reduce the rate of tax to be paid by such persons, and for such lands, as may be specified by him in accordance with section 18 of the Investment Authority Act, 2006, up to a maximum of 75%.”.

The Non-citizens Land Holding Regulation Act, Cap 293

The Non-citizens Land Holding Regulation Act, Cap 293, is amended in section 23—

- (a) by numbering the existing provision as subsection (1); and
- (b) by adding at the end the following subsection—

“(2) The Minister of Finance may reduce the rate of stamp duty payable under section 18 by such persons, and in respect of such land, as may be specified by him in accordance with section 18 of the Investment Authority Act, 2006.”.

The Income Tax Act, Cap. 212

The Income Tax Act, Cap. 212 is amended—

- (a) in section 8(1) by adding at the end the following paragraph—
 - “(q) income to such an extent, and of such persons, as may be specified by the Minister of Finance in accordance with section 18 of the Investment Authority Act, 2006.”;
- (b) in section 10(2) by repealing the word “Cabinet” and substituting “Investment Authority”; and
- (c) in section 40 by adding after subsection (6) the following subsection—
 - “(6a) The Minister of Finance may remit tax payable under this section for such period as he may specify under section 18 of the Investment Authority Act, 2006.”.

The Stamp Act, Cap 410

The Stamp Act, Cap 410, is amended in the Schedule by inserting after the item headed “CONVEYANCE or TRANSFER ON SALE of any property” the following—

“EXEMPTIONS

Conveyance or Transfer on Sale to such an extent as may be specified by the Minister of Finance in accordance with section 18 of the Investment Authority Act, 2006.”.

SCHEDULE 4

INVESTMENT CODE

ANTIGUA AND BARBUDA

INVESTMENT CODE

This Code provides guidance on the conditions for investment in Antigua and Barbuda and on the rights privileges and responsibilities of investors under a Scheme of Incentives and Concessions established by the Investment Authority Act 2006. The incentives available under the Act may be fiscal or non fiscal inducements and concessions, including tax relief in the form of exemptions or concessionary rates to which an investor may be entitled.

To become eligible for consideration under the Scheme it is necessary to make an investment of capital in Antigua and Barbuda. "Investment" means an asset committed by the investor in a business established or to be established in Antigua and Barbuda and includes:

- (a) movable and immovable property and any other rights such as mortgages, liens or pledges, and similar rights;
- (b) shares, stock, securities and debentures of a company or any other form of participation in a company;
- (c) claims to money or to any activity having an economic value directly related to an investment;
- (d) intellectual property rights, including copyright and related rights, trade marks, geographical indications, drawings, models and industrial designs, patents, layouts-designs, distinctive signs and know-how;
- (e) rights conferred by law or under contract, to undertake any economic and commercial activity, including any rights to search for, cultivate, extract or exploit natural resources;
- (f) a loan to an enterprise where the enterprise is an affiliate of the investor;
- (g) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;

- (h) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt instrument or a loan;
- (i) real estate or other property rights, acquired or used for the purpose of economic benefit or other business purposes; and
- (j) interests arising from the commitment of capital or other resources to the development of economic activity, such as under contracts involving the presence of an investor's property in Antigua and Barbuda, including concessions or construction or turnkey contracts; or contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;

The following assets are not eligible for inclusion as investments or as part of investments:

- a debt instrument;
- claims to money that arise solely from commercial contracts for the sale of goods or services
- portfolio investment or investment that is equivalent to less than 10% of the assets committed to an enterprise
- any intangible asset or other claims to money, that do not involve at least one of the types of interests as set out in paragraphs (a) - (j) above.

Equality of Treatment

Both "foreign" and "local" investors are eligible for consideration under the Scheme.

The Government will treat foreign investors and local investors entirely equally with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investment in its territory.

Applicability and Limitations

The Scheme does not apply to any measures adopted by Antigua and Barbuda to limit the participation of the investments of an investor for reasons of national security or public order; any investment made with capital or assets of illicit origin; or any enterprises to be conducted in the Free Trade and Processing Zone established pursuant to the Free Trade and Processing Zone Act No. 12 of 1994.

Potential investors should note that foreign investment in economic activity is subject to such laws in force in Antigua and Barbuda as are applicable to that sector of economic activity. The Scheme is also subject to the provisions of international treaties and agreements.

The Scheme is also subject to any measures the Government may take to:

- protect public morality;
- prevent crime and maintain public order;
- maintain its essential security interests;
- protect human, animal and plant life and non-living exhaustible natural resources;
- protect the balance of payments and react to balance of payments difficulties;
- secure compliance with laws or regulations relating to the prevention of deceptive and fraudulent practices, money laundering, narco-trafficking and terrorism and the effects of a default on contracts;
- secure compliance with laws relating to taxation;
- ensure or guarantee compliance with the penal, labour and tax laws and judgements;
- secure compliance with laws or regulations relating to the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
- protect national treasures of artistic, historical, anthropological, palaeontological and archaeological value;
- give effect to international obligations including treaties on the avoidance of double taxation;
- give effect to benefits granted as a result of agreements establishing customs unions, common markets, economic or monetary unions, or similar arrangements.

Personnel Issues

Subject to the provisions of the Antigua and Barbuda Labour Code, which includes provisions relating to work permits and trade union recognition as well as statutory conditions relating to employment in Antigua and Barbuda, a foreign investor may employ such number of foreign nationals in the management of a business enterprise as may be required.

Where foreign nationals are employed in a business enterprise pursuant to section (1) the foreign investor is required to ensure that employees who are citizens of Antigua and Barbuda understudy the foreign nationals and that provision is made where appropriate in the enterprise for the transfer of skills to such employees within a reasonable time.

Transfers of Funds

A foreign investor may without delay and on a non-discriminatory basis transfer into and out of Antigua and Barbuda, in a freely convertible currency, funds relating to an investment, including funds for:

- repayment of foreign loans or interest on foreign loans;
- payment of dividends of non citizen shareholders, or to citizens of Antigua and Barbuda who reside abroad;
- payment of royalties or fees in respect of an agreement for the transfer of foreign technology;
- payments of emoluments and other benefits to foreign staff employed in Antigua and Barbuda or in connection with the enterprise;
- transfer abroad of profits or proceeds derived from the sale, disposal or termination of the enterprise, or capital assets derived from the enterprise.

However, the Government retains the right, under circumstances of exceptional or serious balance of payments difficulties, to limit transfers of funds temporarily, on a fair and non-discriminatory basis. The government also has the right to prevent a transfer of funds under laws relating to bankruptcy; insolvency; creditors' rights; criminal offences; the reporting of transfers of currency or other monetary instruments; or the enforcement of judgments.

Protection of Property

Investments in Antigua and Barbuda will not be nationalised, expropriated or subject to indirect measures having an equivalent effect, except where any such measures are adopted for the public good and in accordance with due process of law, on a non-discriminatory basis and accompanied by prompt, adequate and effective compensation.

Compensation in such cases will amount to the fair market value of the expropriated investment immediately before the expropriation or the impending expropriation became public knowledge, whichever is earlier. It shall include interest from the date of dispossession of the expropriated property until the date of payment. Compensation will be paid without delay, in convertible currency, and will be effectively realisable and be freely transferable.

Compensation for Losses

A foreign investor in Antigua and Barbuda who suffers losses on his investment as a consequence of war, armed conflict, revolution, state of emergency, natural disaster, insurrection or civil disorder or as a result of requisition or destruction of its investment by the Government's forces or authorities which was not required by the necessity of the situation will receive, in respect of resources made available for reparation, restitution, indemnification, compensation or other settlement, treatment no less favourable than that accorded to local investors.

However, in the case of a natural disaster, the Government can only undertake to use its best efforts in respect of resources made available for compensation and its distribution.

Incentives and Concessions

An investor shall be entitled to be considered for the following incentives and concessions:

- ✓ Exemption from payment of Customs Duty
- ✓ Reduction of Property Tax
- ✓ Exemption from Income Tax
- ✓ Reduction of Stamp Duty
- ✓ Exemption from Withholding Tax

The amount of such incentives and concessions will depend on the amount of the investment and the number of employees in the proposed business.

There may also be incentives and concessions under particular laws that relate to particular types of business.

Transparency

The laws, regulations, administrative practices and procedures of general application, and judicial decisions that affect or pertain to investments or investors in Antigua and Barbuda are promptly published. Where the government establishes policies that affect or pertain to investments or investors which are not expressed in laws and regulations or by other means listed in this paragraph, the Government will make them publicly available.

As far as possible, the Government provides interested persons a reasonable time for comment on any proposed measures and publishes in advance such laws, regulations, administrative practices and procedures of general application that it proposes to adopt.

On request by a member of the public the Government will provide, in a timely manner, information and responses to questions pertaining to any actual or proposed laws, regulations, administrative practices and procedures of general application, or pertaining to any judicial decision.

However, the government will not disclose or allow access to any confidential or proprietary information, including information concerning particular investors or investments, the disclosure of which would impede law enforcement, be contrary to its laws protecting confidentiality, or prejudice the legitimate commercial interests of investors.

Disclosure requirements

An investor will be required to furnish certain information on the nature of the activities and mode of operations, in keeping with the particular laws and regulations of the Government and the need for transparency. However, an investor will not be required to disclose confidential or proprietary information that could prejudice legitimate commercial interests.

Corporate Social Responsibilities

Investors will be required to recognise the economic and social objectives and the policies and priorities of the Government as well as the goals of the CARICOM Single Market and Economy (CSME); observe workers' rights relating to collective bargaining; and safeguard the environment. They will not be permitted to engage in unethical practices or corrupt activities.

It should particularly be noted that the Government will not waive or otherwise derogate from its domestic environment laws, nor will it waive or otherwise derogate from its domestic labour laws in order to encourage the establishment, acquisition, expansion or retention of an investment in its territory.

Expediting the Process

The period between submission of an investment application by an investor and approval or denial by the Government will not exceed eight weeks. Similar time limits apply to other permits and licences. However, in exceptional cases, especially activities requiring environmental impact assessment or detailed scrutiny, the Government may stipulate that more time than normal not exceeding eight additional weeks is required for the project proposal to be evaluated.

Registration

An investor must apply for investment registration under the Antigua and Barbuda Investment Authority Act and obtain an investment certificate before his eligibility for incentives and concessions can be considered.

Dispute Resolution

Disputes between an investor and the Government regarding the eligibility of a foreign investment for registration will be resolved first by means of negotiation with a view to an amicable settlement. However, disputes which are not settled by such negotiations may be submitted by either party to arbitration pursuant to any of the following methods as may be agreed between the investor and the Government:

- (a) any arbitration laws in force;
- (b) any specific arbitration procedures that may otherwise be agreed between the investor and the Government;
- (c) any bilateral or multilateral agreement or investment protection treaty to which the Government and the country of which the investor is a citizen are parties;
- (d) the Convention on the Settlement of Investment Disputes between States and nationals of Other States of October 14th 1966 or any other international agreement for the settlement of investment disputes to which Antigua and Barbuda is a party;

Where no method or procedure for arbitration of an investment dispute is agreed between the Government and the investor, either party may apply to the High Court for a determination of any question arising from the dispute including the right of the parties to submit the dispute to arbitration in a given venue.

Where any interest in or right over property or investment is compulsorily taken possession of or compulsorily acquired, an investor may apply to the High Court for a determination of:

- (a) the legality of the taking of possession or compulsory acquisition;
- (b) the nature, value and extent of the property interest or right so taken or acquired;
- (c) the amount of compensation to be paid in respect of the taking or acquisition;

- (d) the period within which compensation is to be paid; and
- (e) the right to promptly repatriate such compensation without hindrance and without deduction of taxes after settlement of all outstanding obligations;

EXPLANATORY MEMORANDUM

The Bill would establish an investment authority for Antigua and Barbuda which would promote investment opportunities in the Islands, introduce a system of registration of business enterprises that would be enabled to benefit from lawful incentives and concessions, and would assist investors to obtain facilities for business enterprises. It would generally improve the investment regime in Antigua and Barbuda. It would come into force as soon as it received assent.

Clause 1 provides the short title.

Clause 2 is an interpretation clause.

Clause 3 establishes the Authority.

Clause 4 and Schedule 4 set out the duties of the authority which will be generally to advise Government on policy relating to inward investment, and businesses as to how to establish themselves lawfully, and how to benefit from the concessions available.

Clause 5 provides for the appointment of staff of the Authority.

Clause 6 and Schedule 2 establishes a Board of management and provides for the appointment of a secretary for the Authority.

Clause 7 enables the Prime Minister to give policy directions to the Authority.

Clause 8 provides for the appointment of a Executive Director of the Authority by the Minister.

Clause 9 sets out the Director's duties.

Clause 10 specifies the grounds and procedure removing the director from office.

Clause 11 sets out what may constitute the funds of the Authority.

Clause 12 gives the Authority the usual borrowing powers, subject to the approval of the Minister.

Clause 13 limits the expenditure of the Authority.

Clause 14 makes the usual provisions as to the accounts of the Authority and their audit.

Clause 15 requires the Authority to submit an annual report which has to be reported to parliament.

Clause 16 sets out the procedure for obtaining an investment certificate.

Clause 17 specifies conditions subject to which certificates may be issued.

Clause 18 and Schedule 1 entitle a certificate holder to fiscal concessions which are to be specified by the Minister in each case.

Clause 19 deals with the result of a change in the activities of a business undertaking whose owner has a certificate.

Clause 20 provides a complaints procedure.

Clause 21 makes provision for the revocation of certificates.

Clause 22 enable a business owner to give notice of termination of his enterprise.

Clause 23 preserves concessions that have been previously granted on termination of an enterprise.

Clause 24 requires the Authority to maintain a register of certificates.

Clause 25 makes the usual exemption from liability for officers and others acting in good faith.

Clause 26 gives protection to the Authority in the event of accidental omission of formalities.

Clause 27 enables regulations to be made.

Clause 28 contains transitional provisions relating to the abolition of the existing Industrial Development Board and the transfer of its assets and liabilities to the Authority.

Clause 29 and Schedule 3 make the amendments to other Acts which enable the concessions to be lawfully made.

Clause 30 repeals the Industrial Development Board Act.