

A BILL

entitled

BERMUDA IMMIGRATION AND PROTECTION
AMENDMENT ACT 2015

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WHEREAS it is expedient to amend Part VI of the Bermuda Immigration and Protection Act 1956 and Regulations made under that Act;

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

Citation

1 This Act may be cited as the Bermuda Immigration and Protection Amendment Act 2015.

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Amends section 72

2 In section 72(1) of the Bermuda Immigration and Protection Act 1956 (“the principal Act”)—

- (a) in paragraph (c) of the definition of “financial assistance”, at the end insert “where the provider obtains an equitable interest in the property in question”;
- (b) in the appropriate place in alphabetical order insert—

“permanent resident” means a person who has been granted a permanent resident’s certificate by the Minister under section 31A or 31B;”.

Amends definitions of “hotel residence” and “tourist accommodation” to remove requirement to designate eligible units

3 (1) In the definition of “hotel residence” in section 72(1) of the principal Act—

- (a) insert “and” after paragraph (a);
- (b) repeal paragraph (c) and the “and” preceding it.

(2) In the definition of “tourist accommodation” in section 72(1) of the principal Act repeal “, and that is designated as eligible tourist accommodation by regulations made under section 102D(1)(ba)”.

Repeals and replaces section 76

4 Section 76 of the principal Act is repealed and replaced as follows—

“Restricted person holding or acquiring land without a licence

76 No restricted person shall hold or acquire land in Bermuda unless the restricted person has a licence or a deferral certificate.”

Amends section 77

5 In section 77 of the principal Act, after “restricted person” insert “(other than the spouse of a person who possesses Bermudian status)”.

Amends section 82

6 In section 82(1)(c)(iv) of the principal Act, delete “Industrial Development” and substitute “Economic Development”.

Amends sections 85 and 86 with retrospective effect

7 (1) In section 85(1), after paragraph (a) insert—

“(aa) where an estate representative acquires land and either he is a restricted person or a beneficiary of the estate is a restricted person, the deferral commencing on the date of death of the person whose estate he represents;”.

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(2) In section 85(2), repeal paragraph (a).

(3) After subsection (3), insert—

“(4) Where an estate representative acquires land in the case mentioned in subsection (1)(aa) and the Minister has already extended the deferral period in accordance with subsection (3), the Minister may, in writing, extend the deferral period for further additional periods not longer than the original deferral period, but may only do so if he is satisfied that there are exceptional circumstances.”

(4) In section 86(1) and (2) of the principal Act, delete “section 85” and substitute “section 85(1) or (2)”.

(5) After section 86(2) of the principal Act, insert—

“(2A) Any person who seeks a further deferral under section 85(3) or (4) may apply to the Minister for a deferral certificate, including in the application information concerning his identity, a description of the land, the date of the acquisition or holding of the land, and the reasons why he seeks a further deferral.”

(6) In section 86(3) of the principal Act, after “subsection (1)” insert “or (2A)”.

(7) The amendments to sections 85 and 86 of the principal Act made by this section shall be deemed to have come into effect on 22 June 2007; and accordingly new section 85(4) shall empower the Minister to extend the deferral period for a case falling within section 85(1)(aa) that expired at any time before the coming into operation of this Act, if an application is made in accordance with new section 86(2A).

Amends section 89 and amends BR 58/2007

8 (1) In section 89(1) of the principal Act, repeal paragraph (b).

(2) In consequence of the amendment in subsection (1), revoke regulation 9 of the Bermuda Immigration and Protection (Territorial Restrictions) Regulations 2007.

Repeals and replaces section 92 and makes consequential amendments

9 (1) Section 92 of the principal Act is repealed and replaced as follows—

“Restriction on acquiring condominium units

92 (1) The Minister may approve an application for a licence to hold or acquire an interest or estate in a condominium unit (other than tourist accommodation or a hotel residence) by or in respect of a restricted person only if the restricted person is eligible to hold or acquire the condominium unit under subsection (2).

(2) The following individuals are eligible to hold or acquire the following condominium units—

(a) an individual described in section 89(4)(a) to (d) may hold or acquire any condominium unit;

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- (b) an individual who is a permanent resident or who has a residential certificate issued pursuant to section 32 may hold or acquire any condominium unit if—
 - (i) its annual rental value is greater than the prescribed minimum; and
 - (ii) it is in a development that was developed privately without sponsorship by the government.”

(2) In consequence of the repeal by subsection (1) of former section 92(3) (designation by regulation of certain condominium units)—

- (a) in section 89(3)(b) of the principal Act, repeal “if the unit is designated as a condominium unit by the regulations”;
- (b) in the Bermuda Immigration and Protection (Territorial Restrictions) Regulations 2007—
 - (i) in regulation 2, delete the definitions of “designated condominium development” and “designated condominium unit”;
 - (ii) delete the word “designated” wherever it appears in the expressions “designated condominium development” and “designated condominium unit in each of the following provisions: regulation 2 (in the definitions of “non-residential unit” and “residential unit”) and regulations 6, 7 and 8.

Amends section 97

10 In section 97(1) of the principal Act, at the end insert “, in a case where a transfer of legal title to a restricted person is required”.

Amends section 98

11 (1) In section 98(1) of the principal Act—

- (a) in paragraph (e), after “Bermuda” insert “, except permitted land.”; and
- (b) after subsection (1) insert—

“(1ZA) In subsection (1)(e), “permitted land” means an interest in one other property, whether the licence-holder is the owner or a beneficiary under a trust.”

(2) In section 98(1) of the principal Act, after subsection (1A) insert—

“(1B) The condition in subsection (1)(c) does not apply to a licence issued to a restricted person who is a permanent resident.”

Amends section 102C(1)(ba)

12 In section 102C(1)(ba)(v) of the principal Act, delete “private Acts” and substitute “other enactments”.

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Amends section 102C(1)(c) and amends BR 59/2007

13 (1) In section 102C(1)(c) of the principal Act, after “land held” insert “, by a restricted person who is not a permanent resident, ”.

(2) In consequence of the amendment in subsection (1), in the Bermuda Immigration and Protection (Rental and Use) Regulations 2007, after regulation 2 insert—

“Application

2A These Regulations do not apply to restricted persons who are permanent residents.”

(3) For the avoidance of doubt, on the coming into operation of this Act—

- (a) any permit which has been granted under the Bermuda Immigration and Protection (Rental and Use) Regulations 2007 to a restricted person who is a permanent resident shall lapse and any conditions on the permit shall cease to have effect; but
- (b) a restricted person who is a permanent resident may only use licensed land in accordance with the licence as granted under Part VI of the principal Act or varied in accordance with section 99 of the principal Act.

Amends section 102D and revokes BR 5/2011

14 In consequence of the amendments made by sections 3 and 9—

- (a) section 102D(1)(ba) of the principal Act is repealed; and
- (b) the Bermuda Immigration and Protection (Designation of Eligible Condominium Units, Tourist Accommodation and Hotel Residences) Regulations 2011 are revoked.

Amends BR 57/2007

15 The second column of the table in regulation 2 of the Bermuda Immigration and Protection (Minimum Annual Rental Values) Regulations 2007 (minimum annual rental value for residential valuation unit, other than a condominium unit, available to restricted persons) is amended as follows—

- (a) in the entry relating to permanent residents delete “\$63,600” and substitute “None”;
- (b) in the entry relating to all other restricted persons, delete “\$177,000” and substitute “\$153,000”.

Amends BR 58/2010

16 In the Bermuda Immigration and Protection (Tourist Accommodation and Hotel Residences) Regulations 2010, the following provisions are revoked—

- (a) in regulation 2(4), the words “and (2)”;
- (b) regulation 3(3) and (4);

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(c) regulation 6(2).

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EXPLANATORY MEMORANDUM

This Bill seeks to amend Part VI of the Bermuda Immigration and Protection Act 1956 (“the principal Act”) and certain Regulations made under that Act.

Clause 1 is self-explanatory.

Clause 2 amends section 72(1) of the principal Act (definitions for Part VI). Paragraph (a) adds words at the end of paragraph (c) of the definition of “financial assistance”, restricting that paragraph to cases where the provider of value to or for the benefit of another person to acquire land obtains an equitable interest in the property in question. Paragraph (b) inserts a definition of “permanent resident” (which follows that in section 23 of the principal Act).

Clause 3 amends the definitions of “hotel residence” and “tourist accommodation” in section 72(1) of the principal Act to remove the requirement that eligible units be designated by regulations. (Clause 14 makes provision in consequence of these amendments).

Clause 4 repeals and replaces section 76 of the principal Act, which prohibits a restricted person from holding land without a licence, to remove the words relating to the intention of the restricted person to occupy the land or use or develop it for profit (whether for his own benefit or for the benefit of another person).

Clause 5 amends section 77 of the principal Act, which prevents a trustee from holding or acquiring land in trust for a restricted person, to exclude from the reference to a restricted person the spouse of a Bermudian.

Clause 6 amends section 82 of the principal Act to correct an outdated reference to the title of the Economic Development Act 1968 which was changed in 2007.

Clause 7 amends sections 85 and 86 of the principal Act. Subsections (1) and (2) move the provisions which were in section 85(2)(a) to become section 85(1)(aa), so that estate representatives falling within that paragraph (a restricted person or where the beneficiary of the estate is a restricted person) benefit from the standard three year deferral period in section 85(1). Existing section 85(3) already permits a further three year deferral period on application, and subsection (3) of clause 7 inserts a new section 85(4) which will permit third and subsequent extensions by the Minister of the deferral period in the section 85(1) (aa) case in exceptional circumstances only, on application made under section 86(2A) inserted by subsection (4). Subsections (5) and (6) are drafting clarifications. Subsection (7) provides for these amendments to have effect from 22 June 2007 (commencement of the Bermuda Immigration and Protection Amendment Act 2007 which replaced Part VI of the principal Act with the new Part VI entitled “Protecting Land in Bermuda for Bermudians”), and permits the Minister to extend retrospectively deferral periods in the case now falling within section 85(1)(aa) (estate representatives) in accordance with amended sections 85 and 86.

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Clause 8 subsection (1) repeals section 89(1)(b) of the principal Act so as to remove the territorial restriction of land available to restricted persons by parish (currently 450 acres for the parishes of Southampton and St George's, and 400 acres for the other parishes). The overall limit of 2,500 acres in Bermuda remains.

Clause 9 subsection (1) repeals and replaces section 92 of the principal Act to relax the restrictions on acquiring condominium units. The Minister will be able to approve a licence for a permanent resident, or a restricted person with a residential certificate, to hold or acquire an interest in a condominium unit (other than tourist accommodation or a hotel residence) if the annual rental value exceeds the prescribed minimum (currently set at nil in the Bermuda Immigration and Protection (Minimum Annual Rental Values) Regulations 2007 for permanent residents, and \$32,400 for other restricted persons) and the development was developed privately without government sponsorship. This amendment, read with the amendment to section 98 made by clause 11, permits a permanent resident, or a restricted person with a residential certificate, to hold or acquire an interest in two such condominium units. Subsection (2) makes consequential amendments. (Clause 14 makes further provision in consequence of these amendments).

Clause 10 amends section 97(1) of the principal Act (time limit for acquiring land) to provide that the licence will not lapse after six months in a case which does not require a transfer of title.

Clause 11 subsection (1) amends section 98 of the principal Act so that the standard licence conditions for all restricted persons will permit an interest in one other property (whether as owner or beneficiary under a trust) so that all restricted persons will be able to own an interest in a maximum of two properties in Bermuda. Subsection (2) disapplies condition (c) in section 98(1) for restricted persons who are permanent residents, since the Bermuda Immigration and Protection (Rental and Use) Regulations 2007 will no longer apply to them (see clause 13).

Clause 12 amends section 102C(1)(ba)(v) of the principal Act to remove a reference to relief under private Acts and substitute a reference to "other enactments" - this is to include Acts such as the Morgan's Point Resort Act 2014, which is not a private Act. Private Acts cannot validly grant relief from tax or customs duty (this point has been recently addressed in section 14 of the Customs Tariff Amendment Act 2015).

Clause 13 subsection (1) narrows the regulation-making power in section 102C(1)(c) of the principal Act, so that the Bermuda Immigration and Protection (Rental and Use) Regulations 2007 will not apply to restricted persons who are permanent residents. Subsection (2) inserts a new regulation 2A into those Regulations to provide that they do not apply to restricted persons who are permanent residents - this means that permanent residents will no longer need a permit nor have to pay any fee to rent out property. Subsection (3) provides transitional clarification.

Clause 14 repeals section 102D(1)(ba) of the principal Act and revokes the Bermuda Immigration and Protection (Designation of Eligible Condominium Units, Tourist Accommodation and Hotel Residences) Regulations 2011, in consequence of the amendments made by clauses 3 and 9 (removal of designation requirements). As a result, all the restrictions on the number of eligible units in the various developments which are

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listed in the Schedule to those Regulations, and the prescribed number of fractionals within those units, fall away.

Clause 15 amends the Bermuda Immigration and Protection (Minimum Annual Rental Values Regulations 2007. Paragraph (a) reduces to nil the minimum annual rental value for a residential valuation unit (other than a condominium unit) available to permanent residents. (The minimum annual rental value for a condominium unit available to permanent residents is already nil). Paragraph (b) reduces from \$177,000 to \$153,000 the minimum annual rental value for a residential valuation unit (other than a condominium unit) available to restricted persons, which is a return to the maximum before it was increased in June 2012.

Clause 16 amends the Bermuda Immigration and Protection (Tourist Accommodation and Hotel Residences) Regulations 2010 to remove restrictions on occupancy of tourist accommodation. Paragraph (b) removes the 90 day limit on occupation of tourist accommodation in regulation 3(3), and the 120 day limit on occupation of more than one such unit of accommodation by an owner, his family and guests in regulation 3(4) currently subject to an overall maximum occupancy period of six months in any twelve month period. Paragraph (c) removes the prohibition in regulation 6(2) of ownership by a person of more than two fractionals in tourist accommodation, which currently restricts ownership by a person to a maximum period of six months in a year, since the requirement under regulation 6(1) is for a vendor to divide ownership of a fractional unit into a minimum of four equal fractions (ie three months each). Paragraph (a) makes a consequential amendment as a result of the revocation of regulation 6(2).