

A BILL

entitled

AIRPORT REDEVELOPMENT CONCESSION ACT 2016

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SCHEDULE

Amendments to the Customs Tariff Act 1970

WHEREAS the Government of Bermuda intends to enter into an agreement with the Canadian Commercial Corporation for the redevelopment of the Airport;

AND WHEREAS the Bermuda Airport Authority and the Developer intend to enter into an agreement for the redevelopment of the Airport, and the Developer intends to subcontract the Construction and Airport Operations to one or more Subcontractors, including Aecon;

AND WHEREAS it is in the national interest to support the redevelopment by granting certain permissions, concessions and exemptions to facilitate and assist with the redevelopment of the Airport;

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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:

Preliminary

Citation

1 This Act may be cited as the Airport Redevelopment Concession Act 2016.

Interpretation

2 In this Act, unless the context otherwise requires—

“Aecon” means Aecon Construction Group Inc., a corporation formed under the laws of Canada, and its Affiliates, permitted assigns and successors in title;

“Affiliate” in respect of a person, means any other person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first person;

“Agreement” has the meaning given in section 2 of the Bermuda Airport Authority Act 2016;

“Airport” means the L.F. Wade International Airport;

“Airport Lands” has the meaning given in section 2 of the Bermuda Airport Authority Act 2016;

“Airport Operations” means the operation, management, administration, maintenance and lifecycle replacement of the Airport, but excludes Retained Government Services and Construction;

“Airport Redevelopment” means the redevelopment and operation of the Airport by the Developer, including the Construction, Airport Operations, Capital Projects, capital works, capital refurbishment, capital improvements, financing, provision of Commercial Services, the equipping, furnishing, repairing, operating and maintaining of the Airport and at the Airport;

“Authority” means the Bermuda Airport Authority established by the Bermuda Airport Authority Act 2016;

“Canadian Commercial Corporation” means the Crown Corporation of the Government of Canada by that name, and its permitted assigns and successors in title;

“Capital Project” has the meaning given in section 2 of the Bermuda Airport Authority Act 2016;

“Commercial Services” has the meaning given in section 2 of the Bermuda Airport Authority Act 2016;

“Construction” has the meaning given in section 2 of the Bermuda Airport Authority Act 2016;

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“Construction Contractor” means the Canadian Commercial Corporation or its assigns, transferees or replacement;

“Control” means, with respect to the relationship between or among two or more persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such person;

“Developer” has the meaning given in section 2 of the Bermuda Airport Authority Act 2016;

“Finance Parties” has the meaning given in section 2 of the Bermuda Airport Authority Act 2016;

“Management Co” means the local company incorporated in Bermuda and registered on 20 September 2016 as Aecon International Management Services Ltd, and its permitted assigns and successors in title;

“permitted assigns” has the meaning given in the Agreement;

“Retained Government Services” has the meaning given in section 2 of the Bermuda Airport Authority Act 2016;

“Subcontractor” means any person who performs any portion of the Airport Redevelopment, whether hired by the Developer, the Construction Contractor or Aecon, or by a person hired by the Developer, the Construction Contractor or Aecon, and including each joint venture partner (if applicable), each tier of contractor, subcontractor and sub-subcontractor;

“work permit” has the meaning given in section 57(2A) of the Bermuda Immigration and Protection Act 1956.

Tax concessions and exemptions

Customs duty

3 The amendments to the Customs Tariff Act 1970 set out in the Schedule shall have effect.

Stamp duty

4 Notwithstanding the provisions of the Stamp Duty Act 1976, no stamp duty shall be payable by the Developer, the Construction Contractor, Aecon or the Finance Parties, or chargeable in respect of any instrument relating to the Airport Redevelopment or the financing thereof made or executed by the Developer, the Construction Contractor, Aecon or the Finance Parties.

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Land-holding

5 Notwithstanding the provisions of—

- (a) the Companies Act 1981;
- (b) the Bermuda Immigration and Protection Act 1956; or
- (c) any other legislation relevant to the holding of or taking a mortgage on land by restricted persons (as defined in section 72 of the Bermuda Immigration and Protection Act 1956),

the Developer and any of the Finance Parties shall be exempt from the requirement to have a licence or any consents, sanctions or permits and to make payments (including taxes and fees) which would otherwise be required in relation to their acquisition, holding or occupation of the Leased Premises as a lessee or mortgagee-in-possession for the purposes of the Airport Redevelopment, or in connection with the financing thereof.

Land tax

6 The Developer, the Construction Contractor, Aecon and the Finance Parties shall not be liable to any land tax under the Land Valuation and Tax Act 1967 in respect of any valuation unit (within the meaning of that Act) on the Airport Lands.

Tax assurance

7 In the event of there being enacted in Bermuda—

- (a) any legislation imposing tax computed on profits or income, or computed on any capital asset, gain or appreciation; or
- (b) any legislation imposing services tax or any value-added tax or levy,

such tax or levy shall not be applicable to the Developer, Aecon, Management Co, the Construction Contractor and all Subcontractors or any of their operations, insofar as the tax or levy relates to the Airport, Airport Operations, Commercial Services, Construction or Capital Projects or otherwise in connection with the Airport Redevelopment.

Employment

8 (1) The Developer, Aecon, Management Co and the Construction Contractor shall be exempt from any and all charges (including taxes and fees) otherwise payable under Head 6 paragraph (5) of the Government Fees Regulations 1976 (work permit fees) in relation to any employee who is employed full-time in relation to the Airport Redevelopment.

(2) With respect to the Construction and to any Capital Projects, capital works, capital refurbishment or capital improvements that are undertaken concerning the Airport Operations and provision of Commercial Services, the Developer, Aecon, Management Co, the Construction Contractor and all Subcontractors shall be exempt from paying the employer's share of payroll tax otherwise payable in respect of all employees to the extent employed in such activities.

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(3) With respect to Airport Operations, the Developer and Management Co shall be exempt from paying the employer's share of payroll tax otherwise payable in respect of all employees to the extent employed in such activities.

(4) For the purpose of subsections (2) and (3), the employer's share of payroll tax means that portion of payroll tax which the employer is not entitled to deduct from an employee's wages under section 19 of the Payroll Tax Act 1995.

Foreign currency

9 (1) With respect to any transactions, charges, receipts or payments, (including but not limited to borrowing and income, the opening and maintaining of foreign currency accounts in Bermuda or outside Bermuda and the crediting thereof with foreign currency), made in relation to or in connection with the Airport Redevelopment or the financing thereof, the Developer, Aecon, Management Co, the Construction Contractor and the Finance Parties shall be exempt from the Exchange Control Act 1972 and the Exchange Control Regulations 1973.

(2) Notwithstanding the provisions of the Exchange Control Act 1972, Exchange Control Regulations 1973 and any other related legislation, the Developer, Aecon, Management Co, Construction Contractor and the Finance Parties shall be permitted to remit, and all their employees to receive and retain, payments and other emoluments in US dollars rather than Bermuda dollars.

(3) The Developer, Aecon, Management Co, the Construction Contractor and the Finance Parties and each of their employees shall be exempt from foreign currency purchase tax for the purposes of any transactions in connection with the Airport Redevelopment or the financing thereof.

Environmental exemption

Environmental exemption

10 (1) In this section—

“environmental legislation” means any provision of law designed to protect the environment which is in effect on the commencement of this Act;

“exempted parties” means the Canadian Commercial Corporation, the Developer, Aecon, Finance Parties, all subcontractors, and all of their respective officers and directors;

“pre-existing contamination” means any pollution, contamination, environmental hazard or other environmental degradation in existence in, on or under the Airport Lands or in any building or structure in, on or under the Airport Lands as at the date of the Agreement.

(2) Subject to subsection (4), the exempted parties shall be exempt from the application of all environmental legislation in respect of pre-existing contamination, and shall not be subject to any orders, directives or other mandatory instruments issued pursuant to environmental legislation in respect of pre-existing contamination.

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(3) Subject to subsection (4), no action shall be brought or continued against any of the exempted parties for any alleged breach or non-compliance with any environmental legislation or any nuisance or other claim arising out of alleged pre-existing contamination, including in respect of pre-existing contamination migrating from the Airport Lands.

(4) The application and extent of the exemptions available to the exempted parties pursuant to subsections (2) and (3) shall be subject to compliance with such terms and conditions as are—

- (a) agreed between the Authority and the Developer;
- (b) approved by the Minister responsible for the Authority and the Minister responsible for the environment; and
- (c) posted on the Authority's website.

(5) In any action or proceeding, a certificate signed by the Chairman of the Authority certifying that any of the exempted parties is in compliance with such terms and conditions as mentioned in subsection (4) shall be deemed to be conclusive proof of such compliance.

Final provisions

Commencement and duration of concessions and exemptions

11 (1) This Act shall come into operation on such date as the Minister of Finance may appoint by notice in the Gazette.

(2) Any concession or exemption which is provided by this Act shall cease to have effect on the thirtieth anniversary of the date of the Agreement.

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SCHEDULE

(Section 3)

AMENDMENTS TO THE CUSTOMS TARIFF ACT 1970

Amends Fifth Schedule

1 The Fifth Schedule to the Customs Tariff Act 1970 is amended by inserting the following CPC after CPC 4224—

“

Description	Goods for the Airport Redevelopment
CPC	4225
Duty Rate	0%
Eligible Beneficiary	All importers
Qualifying Goods	All goods
End Use Conditions / Restrictions	1. Goods must be imported and used only for the Airport Redevelopment. 2. Goods must be imported during the construction and operational phase of the Airport Redevelopment. 3. The controller of the Developer shall certify that the goods are eligible for this relief.
Specific Controls / Diversion	The holder of an authorisation to import goods under this relief, whenever so required by the Collector of Customs, shall permit the Collector or any person authorised by him for that purpose, to inspect any goods declared for this relief and to enter any premises in order to inspect such goods.
Construction	In this CPC, the expressions “Airport”, “Airport Redevelopment” and “Developer” have the meanings given in the Airport Redevelopment Concession Act 2016. For the avoidance of doubt, the general provisions of this Schedule

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	shall be construed as one with this CPC.
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Amends Sixth Schedule

2 The Sixth Schedule to the Customs Tariff Act 1970 is amended by inserting the following CPC after CPC 5031—

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Description	Goods for the Airport Redevelopment
CPC	5032
Duty Rate	0%
Eligible Beneficiary	All importers
Qualifying Goods	All goods
Temporary Importation Conditions / Restrictions	1. Goods must be imported and used only for the Airport Redevelopment. 2. Goods must be imported during the construction and operational phase of the Airport Redevelopment. 3. The controller of the Developer shall certify that the goods are eligible for this relief.
Specific Controls / Diversion	The holder of an authorisation to import goods under this relief, whenever so required by the Collector of Customs, shall permit the Collector or any person authorised by him for that purpose, to inspect any goods declared for this relief and to enter any premises in order to inspect such goods.
Construction	In this CPC, the expressions “Airport”, “Airport Redevelopment” and “Developer” have the meanings given in the Airport Redevelopment Concession Act 2016. For the avoidance of doubt, the general provisions of this Schedule shall be construed as one with this CPC.

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EXPLANATORY MEMORANDUM

This Bill seeks to grant certain permissions, concessions and exemptions to facilitate and assist with the redevelopment of the L. F. Wade International Airport to the Developer and other specified entities involved with the redevelopment.

Clause 1 is self explanatory.

Clause 2 provides definitions, many of which are linked to the Bermuda Airport Authority Bill 2016.

Clause 3 introduces the Schedule which inserts two new CPCs into the Fifth and Sixth Schedules to the Customs Tariff Act 1970 to grant duty relief in relation to goods certified as imported and used only for the Airport Redevelopment.

Clause 4 provides that no stamp duty shall be payable by the Developer, the Construction Contractor, Aecon or the Finance Parties, or chargeable in respect of any instrument relating to the Airport Redevelopment or its financing thereof made or executed by such persons.

Clause 5 disapplies, as regards the Developer and the Finance Parties, any requirements in the Companies Act 1981, the Bermuda Immigration and Protection Act 1956 or any other relevant legislation, which would otherwise require a restricted person (as defined in section 72 of the 1956 Act) to obtain a licence or any consents, sanctions or permits and to make payments in relation to their acquisition, holding or occupation of the Leased Premises as a lessee or mortgagee-in-possession for the purposes of the Airport Redevelopment, or in connection with the financing thereof.

Clause 6 provides that Developer, the Construction Contractor, Aecon and the Finance Parties shall not be liable to any land tax under the Land Valuation and Tax Act 1967 in respect of any valuation unit (within the meaning of that Act) on the Airport Lands.

Clause 7 provides that if any legislation is passed which imposes tax computed on profits or income, or computed on any capital asset, gain or appreciation, or imposes services tax or any value-added tax or levy, it shall not be applicable to the Developer, Aecon, Management Co, the Construction Contractor or Subcontractors insofar as the tax or levy relates to the Airport Redevelopment.

Clause 8 subsection (1) provides that the Developer, Aecon, Management Co and the Construction Contractor shall be exempt from work permit fees in relation to any employee who is employed full-time in relation to the Airport Redevelopment. Subsection (2) provides that those entities and Subcontractors are exempt from paying the employer's share of payroll tax to the extent employees are employed in the Construction or Capital Projects etc undertaken concerning the Airport Operations and provision of Commercial Services. Subsection (3) provides, with respect to the Airport Operations, that the Developer and Management Co are exempt from paying the employer's share of payroll tax (defined in subsection (4)).

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Clause 9 provides that, with respect to transactions etc related to the Airport Redevelopment or its financing, the Developer, Aecon, Management Co, the Construction Contractor and the Finance Parties shall be exempt from the Exchange Control Act 1972 and the Exchange Control Regulations 1973, and permitted to pay their employees in US dollars (notwithstanding the provisions of those Acts and any other related legislation). Subsection (3) provides that the Developer, Aecon, Management Co, the Construction Contractor and the Finance Parties and each of their employees shall be exempt from foreign currency purchase tax for the purposes of any transactions in connection with the Airport Redevelopment or the financing thereof.

Clause 10 subsections (2) and (3) provide that Canadian Commercial Corporation, the Developer, Aecon, Finance Parties, all subcontractors, and all of their respective officers and directors (the "exempted parties") shall be exempt from environmental legislation in relation to pre-existing contamination, and that no action shall be brought or continued against any of the exempted parties for any alleged breach or non-compliance with any environmental legislation or any nuisance or other claim arising out of alleged pre-existing contamination, including in respect of pre-existing contamination migrating from the Airport Lands. Subsection (4) provides that these exemptions are subject to compliance with such terms and conditions as are agreed between the Developer and the Authority, approved by the Minister responsible for the Authority and the Minister responsible for the environment, and posted on the Authority's website. Subsection (5) provides that in any action or proceeding, a certificate signed by the Chairman of the Authority certifying compliance with such terms and conditions shall be deemed to be conclusive proof of such compliance.

Clause 11 provides for commencement, and for the duration of the concessions and exemptions.