

**BERMUDA IMMIGRATION AND PROTECTION AMENDMENT
ACT 2007**



BERMUDA

2007 : 16

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Date of Assent: 25 May 2007
Operative Date: 22 June 2007

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SCHEDULE

WHEREAS land in Bermuda is regarded by Bermudians as a sacred trust for their use and enjoyment;

WHEREAS the ownership of land in Bermuda was made subject to acreage limits by the Alien Act 1907 and the holding and acquisition of land in Bermuda by non-Bermudians has been subject to licensing since then;

AND WHEREAS it is necessary, for the achievement of the historical purpose behind these limits, to strengthen their enforcement and to prevent circumvention of the licensing system through the use of trusts or schemes;

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:

Short title

1 This Act, which amends the Bermuda Immigration and Protection Act 1956 (the "principal Act"), may be cited as the Bermuda Immigration and Protection Amendment Act 2007.

Commencement

2 This Act, or any provision of this Act, comes into operation on such day or days as the Minister may appoint by notice published in the Gazette.

**PART I
AMENDMENTS TO PRINCIPAL ACT**

Section 4 repealed and replaced

3 Section 4 of the principal Act is repealed and replaced by the following —

"Construction of references to "Bermudian status"

4 Any reference in this Act to the acquisition, possession or enjoyment of Bermudian status shall be construed as a reference to the acquisition, possession or enjoyment of such status by virtue of section 16 of this Act or section 6 of the Bermudian Status by Birth or Grant Register Act 1992."

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Section 9 amended

- 4 (1) Sections 9(2) and (2A) of the principal Act are repealed.
- (2) Section 9(3) of the principal Act is amended —
- (a) by repealing paragraphs (a) to (c);
 - (b) by renumbering paragraphs (d) to (f) as paragraphs (a) to (c); and
 - (c) by replacing the full stop at the end of paragraph (f), renumbered as paragraph (c), with a semi-colon followed by the word “or” and adding next after that paragraph the following —
 - “(d) the Convention between the United Kingdom and the United States of America relative to the disposal of real and personal property, signed at Washington on March 2, 1899.”.

Part VI repealed and replaced

5 Part VI of the principal Act is repealed and replaced by the following —

**“PART VI
PROTECTING LAND IN BERMUDA FOR BERMUDIANS**

Interpretation

Definitions

- 72 (1) In this Part, unless the context otherwise requires —
- “annual rental value” has the meaning given that term in section 1 of the Land Valuation and Tax Act 1967;
 - “benefit” means any benefit whatsoever, including an indirect benefit, an eventual benefit and a potential benefit;
 - “condominium” means an agreement for the sharing of land whereby the land is divided into individual parts and common parts so that —
 - (a) the individual parts are capable of being enjoyed separately; and
 - (b) persons having rights in individual parts can enjoy the common parts in common with other persons having rights in other individual parts;

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“condominium unit” means one of a number of residential valuation units capable of being privately held or acquired within one or more of the individual parts of a condominium development;

“deferral certificate” means a certificate issued under section 86;

“financial assistance” means—

- (a) all payments, loans, transfers of property and gifts made to a trustee or other person, group of persons or entity;
- (b) all payments, loans, transfers of property, gifts and guarantees made to a third person (including a trustee or other person, group of persons or entity) on behalf of, or for the benefit of, a person or group of persons; or
- (c) any other direct or indirect provision of value to or for the benefit of another person, group of persons or entity;

"land" includes land covered by water and any building erected on land and any estate, interest, right or easement in, over or under any land or building;

"land trust" means a trust of land in Bermuda, within the meaning of subsection (2);

"licence" means a document signed, dated and issued by the Minister under section 96;

“licensed bank or deposit company” means an institution, as defined in the Banks and Deposit Companies Act 1999, that is licensed under that Act as a bank or deposit company;

“residential valuation unit” means a valuation unit, as defined in the Land Valuation and Tax Act 1967, that is in the valuation list in force under that Act and is taxed as a residential unit;

"restricted person" means —

- (a) in the case of an individual, a person who does not possess Bermudian status;
- (b) in the case of a corporation, an exempted company as defined in the Companies Act 1981 or a corporation incorporated outside Bermuda;
- (c) in the case of a partnership—

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- (i) an overseas partnership, within the meaning of the Overseas Partnerships Act 1995;
 - (ii) an exempted partnership, within the meaning of the Exempted Partnerships Act 1992; or
 - (iii) any other partnership if one or more of the partners is a person described in paragraph (a), (b) or (d) or a partnership described in subparagraph (i) or (ii); or
- (d) in any other case, any entity or group of persons comprised of, or owned or controlled by, persons who are restricted persons under paragraph (a), (b) or (c);

“scheme” includes —

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, whether or not in writing and whether or not enforceable by legal proceedings; and
- (b) any plan, proposal, action, course of action or course of conduct; and

“trustee” includes any person who owns land in Bermuda, against whom another person (in this Act a beneficiary) or a person directly or indirectly deriving rights from a beneficiary may enforce rights at law or in equity, however they arise, such that the person in ownership is not able to dispose of the land and use the proceeds of disposition as a beneficial owner absolutely entitled to unencumbered property.

(2) A land trust exists where land in Bermuda is held directly or indirectly by a trustee and, for greater certainty, every reference to a trust in this Part shall be read as a reference to a land trust.

General

Purpose of Part VI

73 The purpose of this Part is to protect land in Bermuda for ownership by individuals who possess Bermudian status by —

- (a) requiring restricted persons to have licences to hold or acquire land in Bermuda and preventing them from appropriating it;

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- (b) requiring trustees to have licences to hold or acquire land in Bermuda for the benefit of restricted persons and preventing them from appropriating it; and
- (c) preventing corporations from acquiring or holding land in Bermuda, unless they do so in accordance with this Part.

Non-application of this Part

74 This Part does not apply to the following transactions, unless the transaction is part of a scheme whereby a restricted person obtains a benefit contrary to the purpose of this Part —

- (a) holding or acquiring an easement in, over or under any land; and
- (b) a reconveyance or release of land upon satisfaction of a mortgage or other charge on the land.

Prohibitions on Holding, Acquiring or Appropriating Land

Prohibition on corporate land-holding or acquisition

75 (1) No corporation shall hold or acquire land in Bermuda without obtaining Ministerial consent, where required to do so under the Companies Act 1981 or any other Act.

(2) For greater certainty, Ministerial consent under the Companies Act 1981 or another Act to the holding or acquisition of land by a corporation does not exempt the corporation from complying with the provisions of this Part, the Regulations or any licence issued to it.

Restricted person holding or acquiring land without a licence

76 No restricted person shall hold or acquire land in Bermuda with the intention of occupying it, or of using or developing the land for profit at any time whether for his own benefit or for the benefit of another person, unless the restricted person has a licence or a deferral certificate.

Trustee holding or acquiring land without a licence

77 No trustee shall hold or acquire land in Bermuda in trust for a person that the trustee knows or has reasonable grounds to suspect is a restricted person, unless the trustee has a licence or a deferral certificate.

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Appropriating land

78 (1) No restricted person shall appropriate land in Bermuda with the intention of occupying it, or of using or developing the land for profit at any time whether for his own benefit or for the benefit of another person.

(2) No trustee shall appropriate land in Bermuda for the benefit of a restricted person.

(2A) No trustee shall appropriate land in Bermuda for a beneficiary who possesses Bermudian status, at the direction of a restricted person, unless —

- (a) the restricted person receives no benefit from the appropriation; or
- (b) the beneficiary is the child or grandchild of the restricted person and the trustee obtains the Minister's approval in writing before appropriating the land.

(3) For the purposes of this section, a person appropriates land by assuming at any time any of the rights of an owner of the land, whether at law or in equity.

(4) A restricted person is deemed to have the intention referred to in subsection (1) in the following circumstances —

- (a) the restricted person provides or procures or arranges for another person to receive financial assistance for the acquisition of the land, whether or not pursuant to any scheme; or
- (b) the land is held by a person who, by virtue of a scheme made for the benefit of the restricted person, would be regarded by a reasonable person in possession of all the facts as a person acting for the benefit of the restricted person and not as an absolute owner beneficially entitled to the land.

(5) Subsection (1) does not apply in the case of a restricted person who provides financial assistance to his child or grandchild for the acquisition of the land, if the restricted person obtained the Minister's approval in writing before providing the assistance.

(6) This section does not apply to a restricted person or a trustee who holds a deferral certificate or a licence in respect of the land.

(7) In this section "child" includes step-child and adopted child.

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Other participants

79 (1) No person shall be knowingly concerned in the holding, acquisition or appropriation of land by a restricted person or a trustee contrary to section 76, 77 or 78.

(2) For the purposes of subsection (1), a person is concerned in holding, acquiring or appropriating land if the person does anything to facilitate it or to bring it about, including providing advice in regard to the manner in which the land may be held, acquired or appropriated contrary to the purpose of this Part, conveying the land or holding the land as an agent or nominee or otherwise for the benefit of the restricted person.

Taking a mortgage or charge on land

80 (1) No restricted person or trustee of a trust which is holding or acquiring land for the benefit of a restricted person, and no agent or nominee of a restricted person or of such a trustee shall, without the prior approval of the Minister, accept or take, directly or indirectly, any mortgage or charge on land in Bermuda, whether legal or equitable.

(2) This section does not apply to a licensed bank or deposit company or to a non-resident insurance undertaking, as defined in section 1 of the Non-Resident Insurance Undertakings Act 1967.

Scheme to defeat purpose of this Part

81 (1) No person shall participate in a scheme that the person knows or has reasonable grounds to suspect will enable a restricted person or a trustee, directly or indirectly —

- (a) to hold or acquire land in Bermuda contrary to the purpose of this Part; or
- (b) to appropriate land in Bermuda contrary to section 78.

(2) In determining whether there was a scheme referred to in subsection (1), the court shall have regard to —

- (a) the manner in which the scheme was entered into or carried out;
- (b) the form and substance of the scheme, including any powers or rights of a restricted person in regard to it;
- (c) the result, in relation to the operation of this Part, that would be achieved by the scheme; and

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- (d) the benefit that has accrued, will accrue or may reasonably be expected to accrue to the restricted person or to the trustee of a trust that is holding or acquiring land for the benefit of a restricted person.

No offence under sections 76, 77 and 78

82 (1) Subject to subsection (2), no person contravenes section 76, 77 or 78 by reason only that the person —

- (a) holds or acquires land as a mortgagee or holds or acquires a charge on land, if the person has obtained the approval of the Minister under section 80;
- (b) is a bona fide temporary occupant or a bona fide tenant who leases land for a term that does not exceed five years, where there is no scheme or option whereby he may extend the term beyond a total of five years;
- (c) leases land under any of the following —
- (i) the Companies Act 1981, section 129(1)(a)(i) or (ii) or 143(a)(i) or (ii);
 - (ii) the Exempted Partnerships Act 1992, section 19(1)(a);
 - (iii) the Overseas Partnerships Act 1995, section 11(1)(a);
 - (iv) the Industrial Development Act 1968, section 6; or
 - (v) an order made under section 4 of the Hotels Concession Act 2000; or
- (d) is a corporation that is not a restricted person that holds or acquires land for the benefit of its shareholders.

(2) Subsection (1) does not apply to —

- (a) a person who holds or acquires land by a judgment of foreclosure or as a mortgagee in possession; or
- (b) a transaction that is part of a scheme referred to in section 81(1).

Consent of the Director of Public Prosecutions

83 No criminal proceedings shall be instituted in respect of an offence under sections 75(1) or 76 to 81 without the written consent of the Director of Public Prosecutions.

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Licences

Applications for licences

84 (1) A restricted person or a trustee to whom section 76 or 77 applies who intends to hold or acquire land in Bermuda shall apply to the Minister for a licence.

(2) The application shall be accompanied by —

- (a) the application fee prescribed in the Government Fees Regulations 1976;
- (b) the prescribed information, documents and attestations; and
- (c) such other information or documents as the Minister may require for the purpose of considering the application.

(3) This section does not apply to a restricted person or a trustee who holds, acquires or leases land as described in section 82(1).

Licensing requirements deferred

85 (1) The requirement to obtain a licence under this Part is deferred for a period of three years in the following cases —

- (a) where a restricted person acquires land by devise or inheritance, the deferral commencing on the date that the land was acquired;
- (b) where a restricted person acquires the land by a judgment of foreclosure or as a mortgagee in possession, the deferral commencing on the date the land was acquired;
- (c) where a person who holds land subsequently becomes a restricted person, or where a trustee holds a land trust for a person who subsequently becomes a restricted person, the deferral commencing on the date that the person becomes a restricted person;
- (d) where a person acquires land without knowledge that he is a restricted person but later obtains such knowledge (or might reasonably be expected to have done so), the deferral commencing on the date that the person first obtains such knowledge (or might reasonably be expected to have done so);
- (e) where a restricted person acquires land without knowledge but later obtains knowledge that he has acquired the land (or might reasonably be expected to

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have done so), the deferral commencing on the date that the person first obtains such knowledge (or might reasonably be expected to have done so);

- (f) where a trustee holds or acquires land in trust for a beneficiary whom he does not know (and has no reasonable grounds to suspect) is a restricted person but who is a restricted person, the deferral commencing on the date that the trustee first obtains knowledge that the beneficiary is a restricted person (or might reasonably be expected to have done so); or
- (g) where a trustee holds, under licence, land acquired by devise or inheritance in a land trust for a restricted person who is a minor, the deferral commencing on the date that the trustee's licence expires pursuant to section 94(2)(a).

(2) The requirement to obtain a licence under this Part is deferred for a period of one year in the following cases —

- (a) 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;
- (b) where the licence of a person who holds land under a licence issued under this Part is revoked, the deferral commencing on the date of revocation;
- (c) where a partnership becomes a restricted person, the deferral commencing on the date on which the partnership becomes a restricted person; or
- (d) where an entity or group of persons becomes a restricted person under paragraph (d) of the definition of "restricted person", the deferral commencing on the date on which the entity or group becomes a restricted person.

(3) The Minister may, in writing, extend the deferral period referred to in subsection (1) or (2) for one additional period not longer than the original deferral period.

Deferral certificate

86 (1) Any person who believes that he is entitled to a deferral under section 85 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

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or holding of the land, and the reasons why he believes that he is entitled to a deferral.

(2) The Minister shall issue a deferral certificate to every person whom he determines is entitled to a deferral under section 85.

(3) No person who has made an application under subsection (1) shall be prosecuted for an offence under section 76 or 77 before the application has been determined by the Minister.

Notice of applications for licences

87 After receiving an application for a licence, the Minister shall publish a notice in the Gazette, inviting persons to send to him in writing, within 14 days of the day of publication of the notice, any objections that they may have to the application.

Ministerial review of applications for licences

88 Subject to sections 89 to 95, the Minister may in his discretion, after reviewing any objections made in response to a notice published under section 87, approve or refuse to approve an application for a licence.

Territorial restrictions

89 (1) Subject to subsections (3) and (4), the Minister may approve an application for a licence only if —

- (a) the area of the land to which the application relates and the area of all licensed land in Bermuda total no more than 2000 acres; and
- (b) the area of the land to which the application relates and the area of all licensed land in the parish where the land is located total no more than 400 acres.

(2) For the purposes of subsection (1), the calculation of the areas of land shall be determined in accordance with the regulations.

(3) Subsection (1) does not apply in respect of land that is licensed land at the time of the application or to the first disposition of a condominium unit by the developer of a condominium development, if the unit is designated by the regulations.

(4) Subsection (1) does not apply to an application for a licence made by —

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- (a) the spouse of the owner of the land described in the application, if the owner possesses Bermudian status or holds the land under a licence;
- (aa) the owner of the land described in the application, if the owner holds the land in trust for his spouse;
- (b) the child of a person who possesses Bermudian status and who owns the land described in the application;
- (c) the parent of a person who possesses Bermudian status and who owns the land described in the application; or
- (d) a person to whom the Minister could have granted a licence under paragraph (a), (b) or (c) within the three year period ending with the date of the application.

(5) In this section, “licensed land” means land in respect of which a licence has been issued under this Part and includes land in respect of which an application for a licence has been approved but for which no licence has yet been issued.

Restriction on acquiring undeveloped land

90 The Minister may only approve an application for a licence to hold or acquire undeveloped land if it is made by or in respect of a restricted person who is an individual described in section 89(4)(a) to (d).

Restriction on acquiring residential valuation units

91 (1) The Minister may not approve an application for a licence to hold or acquire a residential valuation unit if that unit has an annual rental value that is less than the prescribed minimum.

(2) Notwithstanding subsection (1), the Minister may approve an application for a licence made by or in respect of a restricted person to hold or acquire a residential valuation unit that has an annual rental value below the prescribed minimum applicable to that person only if the application is made by or in respect of an individual described in section 89(4)(a) to (d).

(3) The Minister may only approve an application for a licence to hold or acquire two or more residential valuation units on the same lot if it is made by or in respect of a restricted person who —

- (a) is an individual described in section 89(4)(a) to (c),

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- (b) acquires the land by devise or inheritance from a spouse who possessed Bermudian status, or
 - (c) jointly owns the land with a spouse, parent or child who possesses Bermudian status,
- (4) The Minister may only approve an application referred to in subsection (3) that is made by, or in respect of, a restricted person who does not meet the requirements in subsection (3)(a) to (c) if —
- (a) the restricted person is an individual;
 - (b) one of the units has an annual rental value above the prescribed minimum; and
 - (c) the land is already licensed.

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 by or in respect of a restricted person only if—

- (a) the restricted person is eligible to hold or acquire the condominium unit under subsection (2); or
 - (b) the restricted person is an individual and the condominium unit is an eligible unit under subsection (3).
- (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;
 - (b) an individual who is a permanent resident may hold or acquire a condominium unit if it is in a development that was developed privately without sponsorship by the government; and
 - (c) an individual who has a residential certificate issued pursuant to section 32 may hold or acquire any condominium unit if its annual rental value is greater than the prescribed minimum.
- (3) A condominium unit is an eligible unit if —
- (a) it is designated by the regulations; or
 - (b) it meets the following criteria —

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- (i) it is one of a number of units designated by the regulations that is eligible to be held or acquired by a restricted person; and
- (ii) it has an annual rental value that is greater than the prescribed minimum.

Restriction on acquiring subdivided land

93 The Minister may not approve an application for a licence to hold or acquire a lot of land that was previously held under licence if the land has been subdivided and transferred to an individual who possesses Bermudian status pursuant to a variation approved by the Minister that meets the conditions set out in section 100.

Restriction on acquiring land by devise or inheritance

94 (1) The Minister may approve an application for a licence to hold or acquire land acquired by devise or inheritance only if the restricted person applying for the licence, or in respect of whom the application is made, is an individual.

(2) Notwithstanding subsection (1), the Minister may approve an application by a trustee for a licence to hold or acquire land referred to in that subsection in a land trust of which the restricted person is the beneficiary if —

- (a) the restricted person is a minor to whom the Minister could have issued a licence, had he been over the age of majority on the date of the application, and the licence expires on his reaching the age of majority, or such age, not greater than 25 years, as the Minister determines; or
- (b) the restricted person is incapable of administering the land due to an infirmity and is a person to whom the Minister could have issued a licence at the time of the application, but for the infirmity.

Land trust for infirm person

95 The Minister may approve an application by a trustee for a licence to hold or acquire the land as bare trustee for a restricted person who is incapable of administering the land due to an infirmity, other than an application referred to in section 94(2), only if —

- (a) the land was held by the restricted person under licence before the infirmity; and

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- (b) the licence issued to the trustee expires on the restricted person regaining his capacity to administer the land, or on his death, whichever occurs first.

Ministerial approval of applications

96 (1) If the Minister approves an application, he shall sign and date the licence and notify the applicant of the approval and the terms and conditions to which the licence is subject.

(2) The Minister shall not issue the licence to the applicant until the applicant pays the prescribed land-holding charge.

(3) The Minister's approval of an application for a licence shall lapse if the land-holding charge is not paid within six months after the application was approved, or within such additional period as the Minister may approve in writing.

Time limit for acquiring land

97 (1) A licence shall lapse if the land to which the licence relates is not acquired on or before the day that is six months after the application for the licence was approved.

(2) The Minister may, in writing, extend the time period referred to in subsection (1) for one additional period of six months.

(3) A person who holds a licence that has lapsed under this section or any other provision of this Part shall return the licence to the Chief Immigration Officer.

(4) Nothing in subsection (1) bars the making of a new application.

Licence conditions

98 (1) The following standard conditions apply to all licences issued under this Part —

- (a) the land may only be used for the purpose for which it is held or acquired, as set out in the application for the licence;
- (b) the land may not be developed or altered so as to add a unit that is capable of being assessed as a residential valuation unit;
- (c) the land may only be rented out or used for profit in accordance with a permit issued by the Minister;

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- (d) the land may not be subdivided and the boundaries of the land may not be changed; and
- (e) within 12 months of the date of the approval of the application or such longer period not exceeding three years as the Minister may allow, all other land in Bermuda held on the date of the issue of the licence by or for the benefit of the restricted person, including land held by a trustee in trust for that person's benefit, shall be disposed of to a third party.

(2) The Minister may impose such other conditions as he thinks fit on a licence issued under this Part by noting them on the licence.

Variance of licence conditions

99 (1) On application by a licensee, the Minister may vary any condition of the licence, including a standard condition referred to in section 98(1), by noting the variation on the licence.

(2) If land is held under a licence but, as a result of any change, a licence is no longer required, the licence lapses and the conditions on the licence cease to have effect.

Variation of licence condition – subdivision of land

100 Notwithstanding section 99(1), the Minister may not approve an application to vary a condition on a licence that restrains the licensee from subdividing the land unless —

- (a) the land has more than one residential valuation unit on it;
- (b) the subdivision results in the restricted person retaining at least one lot with a residential valuation unit on it with an annual rental value that is above the minimum prescribed for a restricted person, other than a permanent resident; and
- (c) each of the other lots created by the subdivision is transferred to an individual who possesses Bermudian status.

Revocation of licences

101 The Minister may revoke a licence if —

- (a) the licensee contravenes a provision of this Part or the regulations or a condition of the licence;

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- (b) the licensee submits false information or documentation or makes a false declaration in an application for the licence, or in a registration under this Act; or
- (c) the licensee is convicted of a criminal offence.

Registration of Land

Registration required

102 (1) Every person who holds or acquires land under a licence shall, within three months after the later of the acquisition of the land or the issue of the licence, deposit in the Office of the Registrar-General for recording and registration —

- (a) a copy of the licence;
- (b) a memorandum in writing setting out the description and area of the land and the person's estate or interest in it;
- (c) a copy of the lot plan together with the grid reference of the approximate centre of the lot, using the Bermuda National Grid 2000; and
- (d) copies of any other documents that are prescribed.

(2) If a person who does not require a licence acquires land held under a licence, the person shall, within three months after the date of acquisition, deposit in the Office of the Registrar-General for registration and recording copies of any prescribed documents evidencing the person's interest or estate in the land.

(3) If land is held under a licence but as a result of any change a licence is no longer required, the person who holds the land shall notify the Registrar-General in writing of the change, within three months after it occurs.

(4) The Minister may, in writing, extend a time period referred to in this section.

(5) A person required to register under this section shall pay such fee as may be prescribed under the Government Fees Regulations 1976.

Register to be kept

102A The Registrar-General shall maintain a register, by parish, of land held or acquired under licence in such form, and containing such particulars, as are prescribed.

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Reports to Minister

Reports from banks and deposit companies and others

102B(1) A licensed bank or deposit company shall make a written report to the Minister respecting any transaction in which it participates, if the bank or company knows, or has reasonable grounds to suspect, that a licence required under this Part in relation to the transaction, or an aspect of the transaction, has not been obtained.

(2) Any person who knows, or has reasonable grounds to suspect, that a transaction or an aspect of a transaction in which the person participates is part of a scheme referred to in section 81(1) shall make a written report to the Minister.

(3) The report shall include a description of the land, the names and addresses of the parties to the transaction or scheme and the particulars of the knowledge, or the grounds for the suspicion, referred to in subsection (1).

(4) Notwithstanding any duty of confidentiality, fiduciary duty or duty arising under any law or contract, no civil proceedings may be commenced against a bank, company or person referred to in subsection (1) or (2) for giving information to the Minister, even if the information is not required to be given under that subsection and even if the Minister does not request it, if —

- (a) the bank, company or person believes that the information may relate to a transaction or scheme described in that subsection; and
- (b) the information is given in good faith.

Regulations

Regulations subject to the affirmative resolution procedure

102C (1) The Minister may make such regulations as are necessary to give effect to this Part and its purpose, including regulations—

- (a) governing land-holding charges payable under section 96(2), and in particular—
 - (i) providing for the charge to be a percentage of the value of the land in respect of land acquired by purchase;

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- (ii) providing for different charges in different circumstances and different charges for different classes of restricted persons; and
 - (iii) providing for a reduction, deferred payment or refund of land-holding charges in particular cases;
- (b) respecting the designation, for the purposes of sections 89(3) and 92(2) and (3), of condominium units and the number of units that are eligible to be held or acquired by restricted persons; and
- (c) governing the renting out or use for profit of land held under a licence or land in respect of which the issue of a licence is deferred under section 85 and in particular —
- (i) prohibiting or requiring a permit for such renting or use of the land; and
 - (ii) requiring the payment of a charge, including a charge based on the rent or other proceeds from the land, different charges in different circumstances, different charges for different classes of restricted persons, and charges for visitors who rent accommodation on the land.

(2) The affirmative resolution procedure shall apply to regulations made under subsection (1).

Regulations subject to the negative resolution procedure

- 102D (1) The Minister may make regulations —
- (a) prescribing the form and manner in which applications for licences are to be made and the information, documents and attestations that must accompany them;
 - (b) prescribing rules for calculating areas of land for the purposes of section 89;
 - (c) prescribing minimum annual rental values, in particular those applicable to —
 - (i) restricted persons generally and restricted persons who are permanent residents;
 - (ii) condominium units and other residential valuation units; and

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- (iii) non-residential valuation units; and
 - (d) respecting registrations under section 102 and the register maintained under section 102A, and in particular—
 - (i) prescribing the form and manner of registrations; and
 - (ii) prescribing information to be provided and documents to be deposited in the Office of the Registrar-General.
- (2) The negative resolution procedure shall apply to regulations made under subsection (1).

Production of Documents Relating to Land Trusts

Powers of the Chief Immigration Officer to order production
102E (1) Without prejudice to his powers under section 125, the Chief Immigration Officer may require any person to produce for inspection any document relating to a land trust that the person may have in his possession or under his control, if the Chief Immigration Officer considers such inspection necessary to obtain any of the following information —

- (a) the date that the trust was made;
 - (b) a description of the land held by the trustees and their estate or interest in it;
 - (c) the names and addresses of the trustees, the beneficiaries and all persons who have transferred property to the trustees to be held upon the terms of the trust, and their dates of birth if they are individuals;
 - (d) the particulars of any property transferred to the trustees; and
 - (e) the particulars of any financial assistance provided by a restricted person in any way in connection with the land held by the trustee.
- (2) If the land trust in relation to which a document is required was not made in writing, the Chief Immigration Officer may require the person referred to in subsection (1) to prepare a memorandum setting out any information referred to in subsection (1)(a) to (e) that the person knows or is reasonably able to ascertain.

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(3) The Chief Immigration Officer's power to require the production of a document for inspection under subsection (1) or a memorandum under subsection (2) shall be construed as including a power —

- (a) to take copies of such document or memorandum, and to retain them for a reasonable time for such purpose;
- (b) to require any information contained in a computer system to be produced in a form in which it is admissible under section 43B of the Evidence Act 1905; and
- (c) to require any supplementary information and declarations to be provided, if needed in order to have the evidence admitted under section 43B of the Evidence Act 1905.

Confidentiality of information

102F (1) The Chief Immigration Officer shall keep the information in any document or memorandum obtained under section 102E confidential and shall not disclose it to any person other than —

- (a) a public officer or public authority for the purpose of administering or enforcing this Act; or
- (b) a person named in a court order, if the Chief Immigration Officer is ordered to disclose the information by a court.

Penalties

Indictable offences

102G (1) Any person who contravenes section 76 or 77, 78(1), (2) or (2A), 79(1), 80(1) or 81(1) commits an offence and is liable on conviction on indictment to a maximum fine of \$1,000,000 or to imprisonment for five years, or to both.

(2) In addition to any penalty imposed under subsection (1), the court may make an order of forfeiture under section 102M.

Summary conviction offences

102H (1) A person is liable on summary conviction to a fine of \$50,000 or imprisonment for 12 months, or to both if that person —

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- (a) fails to register, or knowingly provides false information or documents in a registration under section 102;
- (b) contravenes a condition of a licence issued to the person under this Part;
- (c) fails to return a licence that has lapsed to the Chief Immigration Officer, as required by section 97(3); or
- (d) fails to make a report as required under section 102B(1) or (2).

(2) A corporation that contravenes section 75(1) commits an offence and is liable on summary conviction to a fine of \$50,000.

Failure to produce documents, etc.

102I (1) Any person who fails to produce a document or memorandum required by the Chief Immigration Officer under section 102E commits an offence and is liable on summary conviction to a fine of \$50,000 or imprisonment for 12 months, or to both.

(2) Any person who —

- (a) wilfully fails to produce a document or memorandum required by the Chief Immigration Officer under section 102E, or
- (b) produces a document or memorandum referred to in paragraph (a), knowing, or having reasonable grounds to suspect, that information contained in it is false,

commits an offence and is liable on conviction on indictment to a fine of \$100,000 or imprisonment for two years, or to both.

Offence by corporation

102J Where a corporation commits an offence under this Part, any director, officer, employee or other person acting on behalf of or as a nominee of the corporation who consented to, participated in, or acquiesced in the acts that constitute the offence, or may reasonably be considered to have done so, is deemed to have committed the offence and is liable —

- (a) on conviction on indictment to the same penalty as the corporation and to imprisonment for five years or to both; or

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- (b) on summary conviction to the same penalty as the corporation and to imprisonment for 12 months or to both.

Restraint Orders and Forfeiture of Land

Restraint order

102K (1) The Director of Public Prosecutions may apply to the Supreme Court for a restraint order in relation to land described in the application where he has reason to believe that —

- (a) an offence has been committed under section 76, 77 or 78(1), (2) or (2A); and
- (b) in the event of a conviction for the offence, the land is liable to forfeiture under section 102M.

(2) An application for a restraint order may be made ex parte to a Judge in Chambers.

(3) The court, if satisfied that there is reason to believe that the grounds for the application referred to in subsection (1)(a) and (b) are met, may make a restraint order prohibiting any person from dealing in the land.

(4) The court may specify in the order such other conditions as it considers reasonable, including a requirement that the land be maintained in the state that it is in on the date of the order.

Variation or discharge of restraint order

102L (1) Any person affected by a restraint order may apply to the Supreme Court to have the order varied or discharged.

(2) The court shall discharge a restraint order on land if an application for forfeiture of that land is not made within a reasonable time after the order is issued.

Forfeiture

102M (1) The Director of Public Prosecutions may, on conviction of a person for an offence under section 76, 77 or 78(1), (2) or (2A), apply to the Supreme Court for forfeiture to the Crown of the land in respect of or in relation to which the offence was committed.

(2) The Director of Public Prosecutions shall send a copy of the application for forfeiture to any person that he knows holds an interest in, or security against, the land and cause a notice of the application to be published in the Gazette.

(3) Subject to section 102N, the court may, if satisfied that the land is land in respect of or in relation to which the

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offence was committed, declare that any right, title or interest in the land be forfeited to the Crown.

(4) The judgment declaring forfeiture operates to vest in the Crown all the estate and interest in the land.

Third party claims

102N (1) The Supreme Court shall give a reasonable opportunity to persons holding any interest in, or security against, the land that is liable to forfeiture to object to the declaration or to claim their interest in the land.

(2) In a judgment declaring forfeiture, the court shall decide all claims referred to in subsection (1) but shall not recognize any interest or security held by —

- (a) any person who takes a mortgage or charge on land without the approval of the Minister required under section 80; or;
- (b) any person who participates in a scheme referred to in section 81(1).

Appointment and powers of receiver

102O (1) Where the Supreme Court declares forfeiture of the land, it may appoint a receiver and empower the receiver, subject to such conditions as the court may direct —

- (a) to take possession of the land;
- (b) to manage or otherwise deal with the land; or
- (c) to sell the land.

(2) The court may order any person having possession of the land or an interest in the land to give possession of it to the receiver.

(3) The receiver may cause the land to be sold by a public authority by public auction or tender and the public authority shall pay the proceeds of the sale into the Consolidated Fund as part of the public revenue.

(4) The receiver shall not be liable to any person in respect of any loss or damage resulting from an action taken by the receiver in relation to the land if—

- (a) the receiver has reasonable grounds for believing that he is entitled to take such action; and
- (b) the loss or damage was not caused by the receiver's negligence.”.

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Section 125 amended

6 Section 125 of the principal Act is amended by repealing subsection (3) and replacing it by the following —

“(3) Any power to require the production of a document for inspection shall be construed as including a power —

- (a) to take copies of such document, and to retain it for a reasonable time for such purpose;
- (b) to require any information contained in a computer system to be produced in a form in which it is admissible under section 43B of the Evidence Act 1905; and
- (c) to require any supplementary information and declarations to be provided, if needed in order to have the evidence admitted under section 43B of the Evidence Act 1905.”.

Section 126 amended

7 Section 126 of the principal Act is amended —

- (a) in subsection (1) by repealing the introductory words before paragraph (a) and replacing them by the following —

“Power to enter premises

126 (1) Subject to this section, an immigration officer in possession of a warrant granted by a magistrate or a Justice of the Peace under subsection (2) shall be entitled to enter any premises specified in the warrant, if need be by force, for the purpose of —”; and

- (b) by repealing subsection (2) and replacing it by the following —

“ (2) A magistrate or a Justice of the Peace may issue a search warrant on application by an immigration officer, and section 464(1), (1A), (2) and (6) to (8) of the Criminal Code 1907 apply as if the immigration officer were a police officer referred to in that section.”.

Section 136 amended

8 Section 136 of the principal Act is repealed and replaced by the following —

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“Prosecution of offences against Act

136 Offences against this Act, other than offences prosecuted on indictment under Part VI, shall be prosecuted before a court of summary jurisdiction.”.

Section 137 repealed

9 Section 137 of the principal Act is repealed.

Sections 139 and 140 amended

10 Sections 139 and 140 of the principal Act are repealed and replaced by the following—

“Time within which prosecutions may be instituted

139 Notwithstanding anything in any other provision of law, a prosecution for a summary conviction offence under this Act may be instituted at any time within the period of 12 months next succeeding the date on which the act or omission constituting the offence first became known to the informant in the proceedings.

Conduct of prosecutions

140 A prosecution for an offence against this Act, other than an offence under Part VI, may be conducted before a court of summary jurisdiction by an immigration officer duly authorized by the Minister in that behalf.”.

Section 141 amended

11 Section 141 of the principal Act is amended by repealing subsection (1) and replacing it by the following —

“Punishment for offences against Act

141 (1) A person who commits an offence against this Act, other than an offence under Part VI, shall be liable to the punishments set out in this section.”.

Section 142 amended

12 Section 142 of the principal Act is repealed and replaced by the following —

“Offences by corporations

142 Where any corporation is guilty of an offence against this Act, other than an offence against Part VI, and that offence is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager or secretary or other similar officer of the corporation or

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any person who was purporting to act in any such capacity, he, as well as the corporation, commits that offence and shall be liable to be proceeded against and punished accordingly.”.

**PART II
TRANSITIONAL PROVISIONS**

Definitions for transitional provisions

13 In sections 14 to 21 —

“former Part” means Part VI of the Bermuda Immigration and Protection Act 1956, as it read before being replaced by the Bermuda Immigration and Protection Amendment Act 2007;

“new Part” means Part VI as enacted by the Bermuda Immigration and Protection Amendment Act 2007; and

“transition day” means the day that the new Part comes into operation.

Deferral of requirement to obtain a licence in respect of land held on the transition day

14 (1) The requirement to obtain a licence under the new Part in respect of land held on the transition day is deferred for a period of three years after the transition day if—

(a) the land was acquired by, or conveyed to, the person without a licence having been issued under the former Part, without any sanction having been granted under the Acquisition of Land by British Subjects (Restriction) Act 1948, or the Alien Act 1926 or any Act replaced by that Act; and

(b) the person was not a restricted person under the former Part or an alien under any of those Acts at the time that the land was acquired by or conveyed to the person.

(2) A Commonwealth citizen who acquired land held on the transition day by devise or inheritance, by a judgment of foreclosure or as a mortgagee in possession is entitled to a deferral under subsection (1), notwithstanding that he was a restricted person under the former Part.

(3) A person who holds land on the transition day that it would be unlawful to hold under the former Part, but for section 81(2) or 82(2) of that Part, may continue to hold the land for the period authorized by those subsections, subject to the requirements imposed therein, and the requirement to obtain a licence under the new Part does not apply until the expiry of that period.

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Persons entitled to a licence for land held on the transition day

15 (1) The Minister shall issue a licence to a person who applies for one during the deferral period referred to in section 14 of this Act, in respect of land acquired before the transition day and held on the date of the application, if the Minister is satisfied that the person is entitled to a deferral under section 14(1) or (2).

(2) The Minister may issue a licence to any person referred to in section 14(3) of this Act who applies for one during the period referred to in that section.

(3) The Minister shall issue a licence to a corporation that applies for one within three years after the transition day, in respect of land that the corporation acquired for a specific purpose provided for under another Act before the transition day and continues to hold exclusively for that purpose on the date of the application, notwithstanding any non-compliance by the corporation with any requirement under the former Part.

(4) The Minister may refuse to issue a licence to a corporation in the circumstances referred to in paragraph (3) in respect of the land referred to in that paragraph if the purpose for which the land was acquired is different in whole or in part from the purpose for which the corporation holds the land on the date of the application or if the members of the corporation have changed.

(5) The new Part, except sections 89 to 95 and section 98(1), applies in respect of an application made under a licence issued under this section.

(6) The application fee, the land-holding charges and the registration fee that would otherwise apply under the new Part are waived in respect of persons who apply for and are issued a licence under this section.

Application respecting land subject to court proceedings

16 (1) The Minister may consider an application by a restricted person to acquire land and may in his absolute discretion grant or refuse to grant a licence in respect of the application if

(a) proceedings were brought in relation to the land, challenging the validity of the Minister's policy for issuing licences under the former Part before the transition day; and

(b) the application is made within three years of the transition day.

(2) The new Part, except sections 89 to 95, applies in respect of an application made under this section.

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Applications made before the transition day or the expiry of the deferral period

17 (1) An application for a licence under the former Part that has not been approved or refused before the transition day shall be continued and dealt with in accordance with the new Part.

(2) No application for a licence under the new Part, other than an application referred to in section 15 or 16 of this Act, shall be approved by the Minister and no licence shall be issued in respect of such an application until the expiry of three years after the transition day unless —

- (a) the Minister had approved the application before the transition day;
- (b) the land that is the subject of the application was licensed at the time of the application;
- (c) the application is made by a person described in section 89(4)(a) to (d) of the new Part;
- (d) the application is to acquire directly from the developer of a condominium development a condominium unit that —
 - (i) has not previously been transferred to any other person; and
 - (ii) was designated by the Minister before the transition day or in regulations made under the new Part after the transition day; or
- (e) the application is to acquire an interest in tourist accommodation directly from the developer, which interest has not previously been transferred to any other person.

Validation of licences issued under the former Part

18 (1) The following licences are deemed to be licences issued under the new Part when validated by the Registrar-General, provided that they are validated within three years after the transition day —

- (a) a licence issued under the former Part that was in effect immediately before the transition day; and
- (b) a licence granted under the Acquisition of Land by British Subjects (Restriction) Act 1948, or any sanction granted under the Alien Act 1926 or any Act replaced by that Act, that had effect under section 102 of the former Part, as if it were a licence under the former Part.

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(2) The Registrar-General shall validate any licence referred to in section (1) if a copy of the deed to the land and a copy of the licence, together with any information concerning any changes made to the information recorded on the licence since the date of issue, are deposited in the Office of the Registrar-General.

(3) Section 98(1) of the new Part does not apply to a licence referred to in subsection (1).

(4) A licence referred to in subsection (1) that is not validated within the time period for validation referred to in that subsection is deemed to be a licence under the new Part, but the land held under that licence is not licensed land for the purposes of section 17(2) of this Act or section 89 of the new Part.

Registrations and register

19 (1) A registration under section 88 of the former Part is deemed to be a registration under section 102 of the new Part when validated by the Registrar-General, provided that it is validated within three years after the transition day.

(2) The Registrar-General shall validate a registration referred to in subsection (1) when the person who holds the land or the trustee of the land trust, as the case may be, deposits in the Office of the Registrar-General for registration and recording —

- (a) a copy of the licence;
- (b) copies of such other documents evidencing the person's interest or estate in the land as are prescribed; and
- (c) information concerning any change to the information provided at the time of the original registration.

(3) A registration under section 89 of the former Part by a person who possesses Bermudian status and a registration under section 90 of the former Part by a person who acquires Bermudian status are deemed to be registrations under section 102 of the new Part.

(4) Subject to the regulations, the Register maintained under section 88 of the former Part shall be continued as the register maintained under section 102A of the new Part.

Reports from banks and deposit companies

20 Section 102B of the new Part does not apply with respect to a transaction or scheme, as defined in section 72 of the new Part, that is completed before the day on which this Act receives royal assent, provided that no part or result of the transaction or scheme continues in effect thereafter.

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Restriction on institution of prosecutions

21 Criminal proceedings for an offence under sections 76, 77, 78(1), (2) or (2A), 79(1), 80(1) or 81(1) of the new Part committed in respect of land acquired, held or appropriated before the transition day shall not be instituted during the period beginning on the transition day and ending three years after the transition day, if the land in respect of which the offence was committed is disposed of during that period.

**PART III
CONSEQUENTIAL AMENDMENTS**

Consequential amendments

22 The Acts specified in column 1 of the Schedule are amended in the manner specified in column 2 of the Schedule.

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SCHEDULE

**COLUMN 1
ACT**

**COLUMN 2
AMENDMENT**

**Church of England in
Bermuda Act 1975**

The Church of England in Bermuda Act 1975 is amended by repealing section 17.

**Corporate Bodies
Lands Act (No. 2)
1936**

The Corporate Bodies Lands Act (No. 2) 1936 is amended —

- (a) by repealing section 1 and replacing it by the following—

**“Body corporate acquiring land
must deposit documents in office of
Registrar-General**

1 Every body corporate, whether incorporated in Bermuda or elsewhere, now holding or hereafter acquiring any land in Bermuda in fee simple absolute or subject to a quit rent or rent charge or for a term exceeding twenty-one years shall, within three months after the land has been acquired, deposit in the office of the Registrar-General a memorandum in writing setting forth the description and area of such land, and the estate or interest therein of the body corporate, together with a copy of the lot plan and the grid reference of the approximate centre of the lot, using the Bermuda National Grid 2000:

Provided that nothing in the foregoing provision of this section shall apply or have effect in relation to a body corporate that has deposited such memorandum and documents under section 102 (1) of the Bermuda Immigration and Protection Act 1956.”; and

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(b) by repealing section 2 and replacing it with the following —

**“Body corporate disposing of land
must deposit documents in office of
Registrar-General**

2 Every such body corporate which sells or otherwise disposes of any land in respect of which a memorandum or document was deposited under section 1 shall, within three months of such sale or disposition, deposit in the office of the Registrar-General a memorandum in writing setting forth the description and area of such land and the estate or interest therein so sold or disposed of together with a copy of the lot plan and the grid reference of the approximate centre of the lot, using the Bermuda National Grid 2000.”.

**Development and
Planning Act 1974**

Section 35A of the Development and Planning Act 1974 is amended by repealing paragraphs (a) to (e) and substituting the following:

- “(a) any conveyance of a part of any lot or block of land by way of a deed or transfer,
- (b) the granting, assigning or exercising of a power of appointment with respect to a part of any lot or block of land,
- (c) the mortgaging or charging of a part of any lot or block of land,
- (d) the entering into of an agreement of sale and purchase of a part of any lot or block of land, or
- (e) the entering into any agreement which has the effect of granting the use of or right in a part of any lot or block of land directly or by entitlement to renewal for a period of twenty-one years or more;”.

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**Hotels Concession
Act 2000**

The Hotels Concession Act 2000 is amended in section 4(3) by repealing paragraphs (f), (g) and (h) and substituting the following paragraphs —

- “(f) a reduction or deferral of the land-holding charge payable under section 96(2) of the Bermuda Immigration and Protection Act 1956 in respect of the first disposition of each residential unit, if authorized by the regulations made under section 102C(1)(a) of that Act;
- (g) full or partial relief from, or deferral of, a charge required for the renting out or use for profit of a hotel or tourist accommodation held under a licence issued under the Bermuda Immigration and Protection Act 1956 for a period not exceeding five years from the hotel’s opening date, if authorized by the regulations made under section 102C(1)(c) of that Act;
- (h) that the hotel developer may take a lease of a hotel or residential unit for a period not exceeding 131 years, with an option to renew for a similar period.”.

**Economic Development
Act 1968**

The **Economic** Development Act 1968 is amended by repealing section 6 and substituting the following—

“Minister of Finance may approve lease of land required for approved scheme

6 Any undertaking which is a corporation may, with the prior written consent of the Minister of Finance, hold or acquire any land developed or to be developed in accordance with an approved scheme by way of lease or tenancy agreement for a term not exceeding ninety-nine years.”.

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Police and Criminal Evidence Act 2005 The Police and Criminal Evidence Act 2005 is amended in Schedule 1 by adding the following after item 19 of Part II thereof—

“Bermuda Immigration and Protection Act 1956

20. Section 76 or 77 (holding or acquiring land without a licence).

21. Section 78(1), (2) or (2A) (appropriating land).

22. Section 79(1) (other participants).

23. Section 80(1) (taking mortgage or charge on land).

24. Section 81(1) (scheme to defeat the purpose of Part VI).”.

Registrar-General (Recording of Documents) Act 1955 The Registrar-General (Recording of Documents) Act 1955 is amended in section 7 by deleting the word “and” after paragraph (c), substituting a semi-colon for the full stop at the end of paragraph (d) and adding the following after that paragraph —

“(e) for recording and registering licensed land and licences issued under the Bermuda Immigration and Protection Act 1956.”.