

ANTIGUA AND BARBUDA



THE TOURISM AND BUSINESS (SPECIAL INCENTIVES) ACT, 2013

No. 22 of 2013

*[Published in the Official Gazette Vol. XXXIV No. 26
dated 17th April, 2014.]*

Printed at the Government Printing Office, Antigua and Barbuda,
by Ralph George, Government Printer
— by Authority, 2014.

THE TOURISM AND BUSINESS (SPECIAL INCENTIVES) ACT, 2013

ARRANGEMENT

Sections

**PART I
PRELIMINARY**

1. Short title
2. Interpretation

**PART II
APPLICATION PROCEDURE AND INCENTIVES AGREEMENT**

3. Functions of the Executive Director and his staff
4. Application for special incentives
5. The Role of the Executive Director in processing applications
6. Granting of special incentives and preparation of Investment Agreement
7. Conditions of Investment Agreement

**PART III
MONITORING AND INSPECTION**

8. Monitoring and inspection
9. Sale or transfer of tourism development project or tourism related project

**PART IV
GUARANTEES**

10. Transfer of capital profits
11. Settlement of disputes

**PART V
MISCELLANEOUS**

12. Offence of unauthorised disclosure of a document
13. Service of documents
14. Regulations
15. Amendment of Schedules
16. Duration of Act

SCHEDULES

- Schedule I
- Schedule II
- Schedule III
- Schedule IV

[L.S.]



I Assent,

Louise Lake-Tack,
Governor-General.

19th March, 2014.

ANTIGUA AND BARBUDA
THE TOURISM AND BUSINESS (SPECIAL INCENTIVES) ACT, 2013

No. 22 of 2013

AN ACT to provide special incentives in the areas of the Tourism industry and other specified business activities, where applications are sent through the Antigua and Barbuda Investment Authority for a limited time period and other related matters.

ENACTED by the Parliament of Antigua and Barbuda as follows—

PART 1
PRELIMINARY PROVISIONS

1. Short title

This Act may be cited as the Tourism and Business (Special Incentives) Act, 2013.

2. Interpretation.

In this Act—

“Authority” means the Investment Authority established under the Investment Authority Act;

“Board” means the Board of Management of the Authority established under section 6 of the Investment Authority Act;

“application” means an application for special incentives made pursuant to section 4;

“business activity” means a business activity which falls under a business industry set out in Schedule I;

“Condominium” has the meaning assigned to it in the Registration of Condominium Titles Act, Cap. 376;

“Executive Director” means the Executive Director of the Authority appointed under section 8 of the Investment Authority Act;

“Guest house” means a building containing not less than five bedrooms, but no more than ten bedrooms and may also contain-

- (a) one or more kitchens in which meals may be prepared by the operator of the guest house for the guests; and
- (b) one or more dining rooms shared in common by all of the guests;

“hotel” includes any building or group of buildings (occupied together) for the accommodation for reward of guests and the curtilage thereof and all structures within such curtilage containing or intended to contain when completed not less than ten bedrooms;

“Investment Authority Act” means the Investment Authority Act No.15 of 2006;

“Minister” means the Minister responsible for Finance;

“Project” means a tourism development project, a tourism related project, or a business activity;

“qualifying investor” means a natural or legal person who makes a lawful direct investment in Antigua and Barbuda involving a commitment of capital expenditure of an amount specified in Schedule IV;

“special incentives” means the incentives granted by the Cabinet, in accordance with the provisions of this Act, as set out in Schedule IV;

“tourism development project” includes-

- (a) the construction or extension of a hotel, guest house, a villa resort, a condominium or an upscale residential complex;
- (b) conversion of an existing building by reconstruction or renovation into a hotel, a guesthouse, a villa resort, a condominium or an upscale residential complex of a least five bedroom;

“tourism related project” includes a restaurant, the provision of tourist recreational facilities and equipment to provide tourist recreational services;

“upscale residential complex” means a group of luxury homes developed in accordance with a master plan and offers a wide range of recreational facilities;

“villa resort” means a cluster of dwelling units available for rent by holiday makers with supporting leisure facilities.

PART II

APPLICATION PROCEDURE AND INCENTIVES AGREEMENT

3. Functions of the Executive Director and his staff

(1) Subject to subsection (2), the Executive Director shall receive all applications made under this Act and the Executive Director shall submit all complete applications to the Board, for a recommendation to be made for the grant or refusal of special incentives.

(2) An application which involves an investment of a sum that exceeds \$100,000,000.00, which is found to be complete and in accordance with the requirements set out in section 5(1) and (2) by the Executive Director, shall be sent directly to the Cabinet by the Executive Director for the grant or refusal of special incentives.

(3) The staff of the Investment Authority shall be responsible for assisting the Executive Director in carrying out his functions under this Act by—

- (a) assisting qualifying investors in obtaining all necessary licences and required permits in relation to an application made under this Act;
- (b) being the focal point body for addressing any technical concerns and providing any other assistance which may be necessary to ensure that the processes and procedures to be followed in relation to this Act are carried out in an efficient and expeditious manner; and
- (c) processing applications made to the Authority and providing technical assistance to the Executive Director as necessary.

(4) The staff referred to in subsection (3) shall be technical members of staff of the Authority, suitably qualified and experienced in finance, tourism and building construction for the efficient carrying out of the processing of applications under the supervision of the Executive Director.

4. Application for Special incentives

(1) Notwithstanding section 16 of the Investment Authority Act, a qualifying investor who desires to develop or operate a Project shall make an application for special incentives to the Executive Director, in relation to the Project.

(2) An application shall be made in the form provided for in Schedule II and shall be accompanied by the prescribed application fee.

5. The Role of the Executive Director in processing applications

(1) The Executive Director shall ensure that due diligence is undertaken and may request from a qualifying investor, clarification and further information, in respect of an application made.

(2) Where the Executive Director makes a request for clarification and further information pursuant to subsection (1), the qualifying investor shall submit the relevant information to his staff for processing, within fourteen days of receipt of the request or within such time as may be specified by the Executive Director.

(3) An application is deemed to be received when the clarification or additional information requested under subsection (2) is submitted to the Executive Director, who shall then submit such an application to the Board.

6. Fast tracking of the Grant of Special incentives and preparation of Investment Agreement

(1) The Board shall, within ten days of receipt of an application submitted pursuant to sections 4 and 5, submit a recommendation for an approval or refusal of an application to the Cabinet.

(2) Within ten days of receipt of an approval for the granting of special incentives from the Cabinet in relation to an application made pursuant to sections 3(2), 4 and 5, the Executive Director shall prepare an Investment Agreement between the Government and the qualifying investor, providing for the special incentives granted to the qualifying investor and subject to the provisions hereof of the terms and conditions to which the special incentives shall be subject.

(3) An Investment Agreement under subsection (2) shall entitle the qualifying investor to receive, on behalf of this Project, the special incentives specified in the Investment Agreement, subject to the provisions of this Act.

(4) The Cabinet may, in addition to the special incentives which it grants in relation to a Project, direct that such other incentives and conditions, as it may deem necessary, be specified in the Investment Agreement.

(5) Where an application is refused under subsection (1), an applicant shall be informed by the Executive Director, in writing, of such refusal.

7. Conditions of Investment Agreement

(1) An Investment Agreement shall, in addition to other matters, specify the following—

- (a) the special incentives that the applicant is eligible to receive in relation to a Project;
- (b) the commencement and termination dates in relation to the special incentives granted;
- (c) the time frames for commencement and completion of a Project;
- (d) the condition that the special incentives granted for the importation of building materials and articles of equipment, which will take effect subject to the approval of—
 - (i) the Town and Country Planner of the designs of a Project; or
 - (ii) the Director of Public Works of the specification, quality and quantity of building materials and articles of equipment for a Project; and
- (e) the condition that Antiguan and Barbudan nationals are employed as far as it is practicable, in all positions within a Project, save and except where a suitably qualified national is not available, and that once employed, such a national receives the training that is necessary, to the level commensurate with the position which they hold, so as to enable them to achieve upward mobility within a Project;
- (f) any other conditions as directed by the Cabinet, pursuant to section 6 (4).

(2) An Investment Agreement shall be signed on behalf of the Government by the Minister and the Minister shall lay before the Parliament a copy of every Investment Agreement executed under this Act within sixty days after its execution.

8. Monitoring and inspection

(1) The Executive Director shall be responsible for monitoring, inspecting and enforcing the terms and conditions of the Investment Agreement in accordance with his duties under section 8 of the Investment Authority Act.

(2) For the purposes of subsection (1), an authorised member of staff may enter and inspect the premises of a Project, at any reasonable time, for the purposes of this section and may request such documents or such other information as he may deem necessary to assist him in carrying out his functions under this section.

(3) A person who is required to grant entry or provide information pursuant to subsection (2) and fails to do so in good faith or obstructs an authorised member of staff of the Authority in the performance of his duties, commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding three months.

(4) For the purpose of this section, an "authorised member of staff" means a member of the staff of the Authority who is authorised to carry out the duties of monitoring and inspection, delegated by the Executive Director pursuant to subsection (1).

9. Sale or transfer of tourism development project or tourism related project

The incentives granted under the provisions of this Act shall not be transferrable to any new owner or lessee of a Project without the prior approval of the Cabinet.

PART III GUARANTEES

10. Transfer of capital profits

(1) Subject to any laws relating to taxation and exchange control, a qualifying investor shall be allowed to repatriate all capital and profits, relating to his Project, including but not limited to—

- (a) net profits or dividends;
- (b) payments in respect of loan servicing where an international loan has been obtained;
- (c) the proceeds in the event of sale or liquidation of the Project or any interest attributable to the tourism development project or the tourism related project; or
- (d) payments of emoluments and other benefits to foreign personnel employed in Antigua and Barbuda in connection with the Project.

(2) Notwithstanding the provisions of subsection (1), a qualifying investor may, in the following circumstances, be temporarily prevented from repatriating monies relating to this Project—

- (a) where the Project is bankrupt, insolvent or it is deemed necessary to protect the rights of stakeholders or creditors;
- (b) where criminal charges against a the qualifying investor in relation to his Project are pending before the courts; or
- (c) to ensure that the qualifying investor complies with orders or judgments in legal proceedings.

(3) Cabinet may, as a condition of an Investment Agreement, waive the payment of the applicable control duties or taxes in respect of the repatriation of monies.

11. Settlement of disputes

(1) Where a dispute arises in relation to a matter under this Act, all efforts shall be made to settle the dispute through amicable negotiations.

(2) Where a dispute is not settled in the manner provided for under subsection (1) the dispute may be submitted to arbitration in accordance with any of the following methods as may be mutually agreed by the parties—

- (a) in accordance with the laws on arbitration of Antigua and Barbuda; or
- (b) within the framework of any bilateral or multilateral agreement on investment protection agreed to by the Government of Antigua and Barbuda and the Government of the country from which the qualifying investor originates.

PART IV

MISCELLANEOUS

12. Offence of unauthorised disclosure of a document

(1) A person shall not, in the course of his official duties in the administration of this Act, communicate any document or information under his possession or control to any person not authorized by law to have such document or information.

(2) A person who contravenes the provisions of subsection (1) commits an offence, and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year.

13. Service of documents

(1) A document may be served on the Executive Director by delivering it or by sending it by registered post addressed to the Executive Director at the Authority.

(2) A document may be served on a qualifying investor by delivering it his last known address.

14. Regulations

The Minister may make regulations to give effect to the provisions of this Act.

15. Amendment of Schedules

The Minister may by Order, amend the Schedules.

16. Duration of Act

(1) This Act shall continue in force for a period of two years from the date of commencement and shall then expire unless its duration is extended by resolution of Parliament.

(2) A resolution under subsection (1) shall specify the period for which duration of this Act is extended.

SCHEDULE I

Section 2

SPECIFIED BUSINESS ACTIVITIES

Manufacturing

Any business activity that involves the physical or chemical transformation of material or components into new products or, the industrial processing of raw material and intermediate products derived from the agricultural sector and is licensed by the Bureau of Standards.

Agriculture, Fisheries & Agri-Business

Any business activity that enhances contribution of jobs, income and foreign exchange of the agriculture sector to the national economy, and is certified by the Ministry of Agriculture.

Includes the following:

- the cultivation of plants for their aromatic, savory or medicinal properties.
- the cultivation & harvesting of fish.
- the cultivation of flowers, fruits, vegetables and ornamental plants in a garden, orchard or nursery.
- the cultivation of aquatic animals and plants in a natural or controlled marine or fresh water environment
- the cultivation of plants in liquid nutrient.
- the breeding, feeding and rearing of domestic animals.
- Forestry and Mining.

ICT

Any business activity that enhances foreign exchange earnings or savings through the use of information and communication technology. Qualifying activities include Consultancy services

related to the installation of computer hardware; software development & implementation, data base and/or data claims processing, order fulfillment, telephone and direct mail sales, computer aided design geographic information, electronic publishing, voice center operations, remote secretarial services, customer and technical support services, indexing and abstracting services, research and technical writing services.

Financial Services

Any business activity that involves the creation, management and investment of wealth for a regional or international clientele, and is licensed by the Antigua and Barbuda Financial Services Regulatory Commission. Qualifying investments include; International Business Companies, Trusts Companies, Insurance Companies and Banks.

Any business activity that involves the imparting of knowledge and skills, for a regional or international clientele, and is licensed by the Ministry of Education. Such business activity includes; schools, colleges, universities, technical and vocational institutions, etc.

Health & Wellness

Any business activity that provides medical and wellness services to regional or international clientele, and is certified by the Ministry of Health. Qualifying investments include the following; health clubs, gyms, spas, retirement homes, rehabilitation centers, hospitals, health clinics, medical facilities and veterinary institutions.

Creative Industry

Any business activities involving the use of creative talents for the creation of wealth, foreign exchange earnings and employment. Qualifying activities include the following:

- Production of Films and Film strips.
- Videos and sound recordings.
- Digital media productions.
- The publishing of books, textbooks, atlases and maps, brochures, pamphlets, musical works, newspapers, trade journals, comics, engravings and postcards, forms, posters, reproduction of art, magazines, periodicals, journals, maps, atlases, posters, playing cards, catalogues, albums, diaries, business forms etc.
- Photography.
- Musical recording productions.
- Magazine publishing.
- Television productions.

- Art and handicraft.
- Festivals and carnivals.
- Mass performers and designers.
- Performing arts- Theatrical productions.

Energy

Any business activity that involves research and experimental development services and engineering, research and experimental development services on Social Services and humanities, and inter disciplinary research and experimental development services.

SCHEDULE II

Section 4

ANTIGUA AND BARBUDA

APPLICATION FOR SPECIAL INCENTIVES

This application form must be accompanied with the prescribed fee. This fee must be payable in cash to the staff of the Authority who deal with Special Incentives of the Authority.

This fee is not refundable

Please submit the completed application form to:

[Address of Authority)

Incomplete Application forms will be returned.

SECTION 1 GENERAL

1. Proposed Project

Please briefly describe the proposed project

[Empty box for project description]

* A detailed strategic or business Plan and financial projections for 3 years must be attached to this application.

2. Business Details

Business Name _____

Contact Person _____

Address _____

Telephone _____ Facsimile _____

Email Address _____

3. Investor Detail (s)*^

Investor 1

Surname _____

First Name _____ Business Percentage _____

Telephone _____ Facsimile _____

Email Address _____

Primary Nationality _____ Secondary Nationality _____

Investor 2

Surname _____

First Name _____ Business Percentage _____

Telephone _____ Facsimile _____

Email Address _____

Primary Nationality _____ Secondary Nationality _____

Investor 3

Surname _____

First Name _____ Business Percentage _____

Telephone _____ Facsimile _____

Email Address _____

Primary Nationality _____ Secondary Nationality _____

*Please include a photocopy of your passport to verify these details. If you have more than one passport, please also provide copies of them. The national insurance and Tax Compliance certificate must also be attached.

^If the shareholder is a company, attach full particulars, including: name, registered address, details of shareholders and directors, and the total percentage of shareholding by non-residents of Antigua and Barbuda.

4. Relevant Businesses

Does the applicant have other business (es) beyond Antigua and Barbuda that are relevant to this application?

- Yes No

If "Yes" please provide a brief explanation:

5. Form of Intended Business

Please select the intended form of your business

- Local Company limited by shares
 Company limited by shares
 Partnership
 Sole Proprietorship
 Overseas Company

Other (Please specify) _____

6. Implementation Schedule

Please provide a brief description of the project's implementation schedule:

A detailed Implementation Schedule must be attached to this application.

7. Permits Required

Number Required Details

- Resident Permit _____
 Work Permit _____

* Please provide a Police Clearance from your state of origin.

SECTION 2 COMPANY & FINANCIAL STRUCTURE

Questions 8 and 9 in this section are only applicable to companies

8. Directors

Full name Country of Residence/ Domicile Nationality Qualifications

9. Financial Structure*

Total authorised capital _____

Local Foreign

Issued Capital

Paid up equity

i. Cash _____
 ii. In kind _____

*Evidence of investment funds in the form of a commitment letter from the funding bank stating; the purpose of the loan, the amount of the funds approved, the terms and drawn down schedule and/ or banker's verification of equity capital.

Loan Capital

i. Source _____
 ii. Term _____
 iii. Rate of interest/Repayment arrangement _____
 iv. Shareholder's advance _____

10. Investment Costs*

Local Overseas Total

Land and buildings _____
 Plant and equipment _____
 Vehicles and Furniture _____
 Engineering and installation costs _____
 Other _____
 Working capital _____
Total Investment Costs

*A complete cash flow/profitability projection for three years must be attached to this application.

11. Estimates Annual Turnover

Year 1 Year 2 Year 3 Average

Export earnings _____
 Domestic sales _____

12. Employment (numbers)*

Year 1 Year 2 Year 3 Average

Management _____
 Skilled _____
 Non-skilled _____

* Do not include investors
 L=Local, F=Foreign

13. Work Permit Requirement**

No. Position Description of Skills Starting Date
 (dd/mm/yy)

^ Where work permits are required, please attach full details of the position, reasons why, and when the position(s) are expected to be filled.

14. Capital Goods to be Imported

Description Value (t)

 Total _____

15. Raw Materials to be used*

Type Description

** Indicate where hazardous

SECTION 3 LAND USE PLANNING

16. Land Lease

Have you purchased or secured your land lease?

Yes No

If "No" and you would like assistance from the Authority, please describe what help you need:

17. Environmental Impact*

Please describe the environmental impact of your Project on the surrounding lands (if any)

*Please attach an Environmental Impact Assessment if appropriate

*Certification of approval by an Investor for a new Investment

SECTION 4 MANAGEMENT, CONTROL & CO-ORDINATION

18. Management

Would the tourism development project or the {tourism related project} be managed by some one other than the owner or investor? Yes No

If "yes" please complete the following:

Manager's Name _____
Telephone _____ Facsimile _____

19. Auditor

Has an external auditor/accountant been appointed?

Yes No

If "yes" please complete the following

Business Name _____
Telephone _____ Facsimile _____
Address _____

20. Local Banker(s)

Bank Name _____
Address _____

Bank Name _____
Address _____

21. Liquidation, Bankruptcy and Prior Convictions (if Applicable)

If the proposed owners, directors, or managers of the company have had a prior conviction, (including tax-fraud), been financially liquidated or declared bankrupt in any country within the past 5 years, you must disclose full details as per the Statutory Declaration.

Each applicant must sign a separate Statutory Declaration stating whether or not he has been convicted of any serious offence. If yes, he is required to provide full details of such offence(s) and conviction(s).

Please provide brief details here and attach a complete disclosure to this application:

22. Check List

Have you attached the following?

- The relevant application fee-payable by cash
- Copy of all passport(s) held by investors
- Full details and evidence of the financial level of investment and Other details relating to the proposed investment
- Attach Copy to Authority Business Name or Certificate of Incorporation of Company
- Copy of police clearance
- Bank reference or proof of investment related assets of { } Million or more
- A complete cash flow/profitability projection for three years
- Attach full employment details where work permits are required

- Attach an Environmental Impact Assessment
- Complete disclosure of any convictions, liquidations and bankruptcies
- Signed Statutory Declaration

If the shareholder is a company, attach full particulars, including; name, registered address, details of shareholders and directors, and the total percentage of shareholding by non-residents of Antigua and Barbuda.

SCHEDULE III

Section 6

RECOMMENDATION

1. Title (The name of applicant)
2. Key Issue (Whether application in relation to the Project has been approved or refused)
3. Background
 - a. The qualifying investor (description of the applicant) (submit copy of application)
 - Legal status (incorporation, registration, operation)
 - Character of qualifying investor
 - Business and credit history of qualifying investor
 - Qualification and/or access to management and technical expertise to undertake the project
 - b. Description of the tourism development project or [tourism related project] (description of the business)
 - Nature of project activity
 - Location
 - Products/ services (product or services produced or to be produced)
 - Production/Marketing market and /or target market)
 - Employment (number of persons employed and/or to be employed)
 - Cost and Financing (actual capital expenditure, source and origin of funds)

- Concessionary status
- Project Implementation Schedule (proposed construction and/or the proposed/or actual date open or to be opened to business)

c. Requirements

- Licences
- Permits
- Incentives

4. Proposed Direction

a. State special incentives which should be recommended:

b. If the special incentives may be granted, state whether the granting of the same will have a major, minor or no impact on government policy:

5. Benefits and Adverse Consequences

a. State the economic, social and environmental benefits to be derived if the special incentives are granted:

b. State any negative economic, social and environmental impacts on the economy, if the application was refused:

6. Alternatives Considered

State any alternative which may be granted to the qualifying investor and the reasons why the alternative is being recommended and likely impact of the alternative approach:

7. Assumptions

State any assumptions that have to be made in recommending the grant of special incentives:

8. Related Concerns

State any concerns which could result, if the special incentives are granted:

9. Financial Implications

State the financial implication for government revenue within the current year, the next year or at full maturity:

10. Consultation Record

State whether the relevant government agencies/ministries were consulted:

SCHEDULE IV

Section 2

Capital Investment XCD	Customs Duties & Taxes	Exemption on Income Tax		Exemption / Reduction Withholding Tax Years	Property Tax Reduction	Reduction of Stamp Duty on Land Transfers and Non-Citizen Licenses
		Years	Loss Carried Fwd (Years)			
Up to \$1,000,000		NO SPECIAL INCENTIVES				
\$1,000,001-\$10,000,000		6	3	6	25%	25%
\$10,000,001-\$25,000,000		12	4	12	35%	35%
\$25,000,001-\$75,000,000	Waiver of Import duty, ABST & RRC on all capital items	15	5	15	50%	50%
\$75,000,001-\$100,000,000		20	7	20	75%	75%
Over \$100,000,000		25	7	25	waive	waive

Passed by the House of Representatives on the 19th day of December, 2013.

Passed by the Senate on the 30th day of December, 2013.

D. Gisele Isaac-Arrindell,
Speaker.

Hazlyn M. Francis,
President.

Ramona Small,
Clerk to the House of Representatives.

Ramona Small,
Clerk to the Senate.