



GUYANA

ACT No. 3 of 2006

BERBICE RIVER BRIDGE ACT 2006

I assent.

Bharrat Jagdeo,
President.
31st January, 2006.

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AN ACT to make provision for a privately financed Berbice River Bridge and to confer regulatory authority to the Minister responsible for Public Works and for matters incidental thereto and connected therewith.

A.D. 2006

Enacted by the Parliament of Guyana:-

Part I
Preliminary

Short title.

1. This Act may be cited as the Berbice River Bridge Act 2006.

Interpretation.

2. In this Act, unless the context otherwise requires -

"Bridge" means the Berbice River Bridge, running from the Village of D'Edward on the western bank of the Berbice River to Crab Island on the eastern bank, authorised to be erected under this Act and includes the piers, fender piles and fenders thereof and any erection or other structure, footpath, roadway, tramway, conveyor belt, pipe, tube, viaduct, aqueduct or other means of conveyance over, under or across the Berbice River and the lands adjacent thereto used in connection with the Bridge as more specifically defined in the Concession Agreement;

"Bridge Project" means the design, construction, development and operation and maintenance of the Berbice River Bridge pursuant to a Concession Agreement in accordance with this Act;

"Concessionaire" means the Berbice Bridge Company Inc. who pursuant to a Concession Agreement shall carry out the Bridge Project;

"Concession Agreement" means the mutually binding agreement or agreements with the terms and conditions for the implementation of the Bridge Project, between the Government and the Concessionaire;

"Minister" means the Minister responsible for Public Works;

"Toll Bridge" means the Bridge;

“Toll Device” means an instrument, prescribed by the Minister by regulations, affixed to a vehicle for the purpose of ascertaining cost for the use of the Bridge.

Part II

Authority of Minister responsible for Public Works

Authority to enter into Concession Agreement.

3. The Minister shall -
- (a) enter into a Concession Agreement in accordance with this Act for the implementation of the Bridge Project;
 - (b) monitor compliance of the Concessionaire's obligations under the terms and conditions of the Concession Agreement;
 - (c) regulate the operation and maintenance of the Bridge.

Part III

Toll Order

Toll Order.

- 4.(1) The Minister may, by order called the “toll order”
- (a) designate the Bridge as a Toll Bridge and as a Public Road;
 - (b) authorise for a specific period, the Concession period, any person, in return for undertaking such obligations as may be specified in a Concession Agreement with respect to the design, construction, maintenance, operation, improvement or financing of the Bridge, to enjoy the rights conferred in the order, including the right to levy, collect and retain toll in respect of the use of the Bridge on the terms and conditions specified in the Concession Agreement;
 - (c) specify the terms and conditions under which a person referred to in paragraph (b) may assign or delegate to any other person, any of the rights or obligations specified in the agreement referred to in that paragraph;
 - (d) specify -
 - (i) the classes of vehicles or other conveyances or persons from whom toll may be collected and retained;
 - (ii) the payment of tolls by such classes of vessels for whose passage the Bridge is retracted;

- (iii) the maximum amounts of the tolls that shall be charged during the Concession period or any part thereof in respect of individual persons or any class of vehicles.
- (iv) the basis of calculation of such amounts in respect of the use of the Bridge by vehicles or other conveyances and other users of each class specified;
- (v) that a person liable to pay toll shall not use, or cause or permit, any vehicle, vessel or person of which he is in charge to use the Bridge unless the toll has been paid or arrangements, to the satisfaction of the Concessionaire for its payment have been made;
- (vi) the place where the toll is to be collected and the form and manner of such collection;
- (e) exempt the emergency services and civilian and military law enforcement agencies from the payment of toll when in pursuit of their duties;
- (f) provide for the issue, inspection and collection of tickets, tokens, vouchers, permits, receipts and other forms of authorisation, electronic or otherwise, for the purpose of the use of the Bridge;
- (g) make provisions for penalties for any breach of a provision of the order;
- (h) provide for any other matter as the Minister believes necessary.

(2) Subject to subsection (1) (d) (iii) and to the terms of the Concession Agreement, the Concessionaire may specify different toll amounts in relation to the use of the Bridge by reference to such circumstances or combination of circumstances as the Concessionaire may, after consultation with the Minister, determine.

Obligations as to secrecy.

5. All persons engaged in the Bridge Project shall regard and deal with as secret and confidential all information contained in the Concession Agreement, the disclosure of which is likely to cause financial loss to any party to the agreement.

Provided that any information requested by the Parliamentary Sectoral Committee on Economic Services related to the Bridge project shall be promptly supplied.

Duration of Concession Period.

6. A toll order may provide for the Concession period to end on a date determined by reference to -

- (a) the achievement of a specified financial objective;
- (b) the passage of a specified number of vehicles or other conveyance;
- or
- (c) such other factors or combination of factors, as may be specified in the order.

Part IV Concession Agreement

Concession
Agreement.

7.(1) The Concession Agreement shall provide -

- (a) for the return to the Minister upon the expiry of the Concession period in accordance with section 14 or at such earlier time as may be provided in the Concession Agreement of all of the Concessionaire's right, title and interest in and to the Bridge, including all improvements comprising the Bridge Project, free and clear of all liens, encumbrances and obligations in connection with the Bridge;
- (b) that all construction works to be performed in connection with the Bridge Project shall be awarded to the prospective contractor offering the best combination of experience and value (in the reasonable determination of the Minister and the Concessionaire) following an open and competitive tender for such construction works;
- (c) that all operation and maintenance works to be performed in connection with the Bridge Project shall be awarded to the prospective operator offering the best combination of experience and value (in the reasonable determination of the Minister and the Concessionaire) following an open and competitive tender for such operations and maintenance works.

(2) The Concession Agreement shall further provide for such other matters as the parties deem appropriate for the Bridge Project, including -

- (a) nature and scope of works to be performed and services to be provided by the Concessionaire;
- (b) the conditions for provision of those services and the extent of exclusivity of the Concessionaire's rights under the Concession Agreement;
- (c) the assistance that the Minister may provide to the Concessionaire in obtaining licenses and permits

- to the extent necessary for the implementation of the Bridge Project;
- (d) any requirements relating to the establishment of and minimum capital investment required in connection with the implementation of the Bridge Project;
 - (e) the ownership of assets related to the Bridge project and the obligations of the parties, as appropriate, concerning the acquisition of the project site and any necessary easements and the design, procurement, construction and commissioning of any ancillary infrastructure and roadways;
 - (f) the remuneration (if any) of the Concessionaire;
 - (g) procedures for the review and approval of engineering designs, construction plans and specifications by the Minister and the procedures for testing and final inspection, approval and acceptance of the Bridge Project;
 - (h) the extent of the Concessionaire's obligations to provide the Minister as appropriate, with reports and other information on its operations;
 - (i) any rights of the Minister to review and approve major contracts to be entered into by the Concessionaire, in particular with the Concessionaire's shareholders or other affiliated persons;
 - (j) guarantees of performance to be provided and insurance policies to be maintained by the Concessionaire in connection with the implementation of the Bridge Project;
 - (k) the duration of the Concession Agreement;
 - (l) the governing law and mechanisms for the settlement of disputes;
 - (m) the rights and obligations of the parties with respect to confidential information;
 - (n) the nature and types of other support and assistance that may be provided by the Minister or any other competent agency of the Government to enhance the likelihood of the successful implementation of the Bridge;
 - (o) the extent to which the relief contemplated by sections 18, 19 and 20 shall apply to contractors and sub-contractors of the Concessionaire;
 - (p) the formulae for calculating the amounts of any tolls and toll adjustments, including any applicable caps and restrictions;
 - (q) terms and conditions to facilitate third-party financing of the Bridge Project, including authorisation granted to the Concessionaire to

assign its interests in the Concession Agreement and to enter into fixed and floating charges with respect to any of its property, as collateral security for project loans; and

- (r) undertakings by the Minister to enter into customary acknowledgements and consents in respect of any such assignments and charges, including recognition of lender step-in rights in the event of loan defaults (subject to demonstration to the Minister of the lender's technical and financial ability to perform the Concession Agreement).

No guarantees
of the Bridge
Project
Indebtedness

8. The Minister shall not be authorised to enter into any guarantees of indebtedness incurred by a Concessionaire to third parties in connection with the implementation of the Bridge Project.

Power of
Concessionaire
to assign or
delegate or sub-
contract.

9.(1) The Concession Agreement may authorise the Concessionaire to assign or delegate his rights under a toll order for the Concession period, or any part thereof, subject to such terms and conditions as the Concessionaire, with the prior approval of the Minister in writing, thinks fit or as may be specified in the Concession Agreement.

(2) The Concession Agreement may authorise a Concessionaire to sub-contract its obligations under the Concession Agreement, or any part thereof, subject to such terms and conditions as the Concessionaire, with the prior approval of the Minister in writing, thinks fit or as may be specified in the Concession Agreement.

(3) Every delegation under subsections (1) and (2) is revocable by the Concessionaire with the prior approval of the Minister in writing and the delegation of the rights and obligations shall not preclude the performance of those rights and obligations by the Concessionaire.

Exercise of
functions by
Concessionaire.

10. A toll order may authorize the Concessionaire to exercise such functions in relation to the Bridge as may be specified in the order.

Exercise of
functions by
Government.

11. A function exercisable by the Concessionaire may, be exercised by the Government -

- (a) in the event of a national emergency declared by the President; or
(b) if the Minister determines that -
(i) its exercise is necessary or expedient in the interests of public

- safety; or
- (ii) the Concessionaire has defaulted in the performance of its obligations under the Concession Agreement (following the expiry of all applicable cure periods in the Concession Agreement and any direct agreement relating thereto with project lenders); save, that the Minister shall not be liable for anything done or omitted by the Concessionaire in the exercise or purported exercise of its authority under this section.

Duty to maintain Bridge.

12. The Concessionaire shall -

- (a) maintain the Bridge in good repair and condition, in accordance with internationally accepted engineering and operating practices and otherwise as provided in the Concession Agreement; and
- (b) comply with such design, construction, operating, maintenance and safety standards as may be specified in the Concession Agreement or otherwise prescribed.

Closure of Bridge.

13.(1) Subject to subsection (3), the Concessionaire may close the Bridge to traffic in order to perform maintenance or repair work on the Bridge for such time as is necessary to do the work.

(2) The Concessionaire -

- (a) may close the bridge on the occurrence of an accident that endangers the life, health or safety of persons using the Bridge; and
- (b) shall as soon as practicable after such closure, notify the Minister thereof.

(3) Where, save for emergencies, the Concessionaire plans to close the whole or part of the Bridge for more than seventy-two hours, the Concessionaire shall -

- (a) give to the Minister at least thirty days written notice or such shorter period as may be agreed with the Minister; and
- (b) not commence the closure without the approval of the Minister.

(4) Every person who uses any part of the Bridge while it is closed to traffic in accordance with this section -

- (a) does so at his own risk; and
- (b) neither the Concessionaire nor the Government shall be liable for any injury, loss or damage sustained by that person.

(5) Where the Bridge or part thereof is closed, the Concessionaire shall notify the public of such closure by -

- (a) placing signs in conspicuous positions on the Bridge; and
- (b) the publication of a notice in a local daily newspaper.

(6) Any person who uses the Bridge in contravention of this section commits an offence.

Transfer on
termination of
Concession
Agreement

14.(1) Where the Concession Agreement terminates or is terminated before the end of the Concession period, then, subject to any direct agreement relating to the security assignment of the Concession Agreement for the benefit of the project lenders, until appropriate arrangements are made by the Concessionaire and any person and approved by the Minister, the Minister -

- (a) shall take reasonable steps to secure the appointment of a new Concessionaire; and
- (b) may collect and retain tolls in the same way as the Concessionaire, for a period of not more than two years until a new Concessionaire is appointed or an extension toll order takes effect or the Concession period ends.

(2) A Concession Agreement may contain a provision as to the circumstances in which, and extent to which, any sum received by the Minister by way of tolls collected by virtue of subsection (2)(b), is to be applied for the benefit of the former Concessionaire or his creditors, as the case may be.

PART V Toll

Recovery of
unpaid tolls

15.(1) Any person who fails to pay a toll in accordance with this Act or any regulations made thereunder commits an offence.

Payment of
toll.

16.(1) Toll shall be paid to the Concessionaire -

- (a) if a Toll Device is not attached to the vehicle, by the person, in whose name the vehicle is licensed or the driver;
- (b) if a Toll Device is attached to the vehicle, by the person to whom the Toll Device is registered.

(2) Photographic or electronic evidence of the use of the Bridge shall be proof, in the absence of evidence to the contrary, of any obligation to pay a toll.

Part VI General

Reports by
Concessionaire.

17. The Concessionaire shall, in respect of each quarterly period, submit a report to the Minister in the form and manner determined by the Minister.

Exemption from
stamp duties.
Cap. 80:01

18.(1) Notwithstanding anything in the Tax Act, all deeds, contracts, conveyances, transfers, receipts, agreements, incorporation documents and any other document, made or given by the Minister under this Act or by the Concessionaire in connection with the Bridge Project (including but not limited to any and all documents creating collateral security over the Concessionaire's assets to secure financing for the Bridge Project) shall be exempted from Stamp Duties and Registrar Fees and charges.

(2) To the extent set forth in the Concession Agreement, the benefits and privileges of this section may be extended to contractors and sub-contractors or the Concessionaire.

Exemption from
import duties.

19.(1) All goods, equipment or services imported for purposes of the design, construction, expansion, rehabilitation, repair, testing or commissioning of the Bridge Project shall be exempted from taxes, import duties, purchase tax, consumption tax, motor vehicle taxes and all other taxes; license fees and other similar fees or charges.

Cap. 82:01

(2) The Concession Agreement shall be deemed a Government Contract for the purposes of the **First Schedule**, Part III, Paragraph (1) B (ii), Item 12 of the Customs Act.

(3) To the extent set forth in the Concession Agreement, the benefits and privileges of this section may be extended to contractors and sub-contractors of the Concessionaire.

Income tax
holiday.

20.(1) All income earned by the Concessionaire shall be exempted from corporation tax, income tax and withholding tax for the duration of the Concession Agreement or for the extended periods that the Minister responsible for finance may deem necessary, on being satisfied that the terms and conditions of the Concession Agreement may be amended or varied.

(2) All dividends payable by the Concessionaire to a shareholder (including any shareholder holding preference shares)

shall be exempted from corporation taxes, income taxes and withholding tax.

(3) All interest paid by the Concessionaire to investors in securities the Concessionaire shall be exempt from corporation taxes, income taxes and withholding tax.

(4) All income earned by a contractor or sub-contractor pursuant to the Concession Agreement shall be exempted from income tax for the Concession period.

Regulations

21.(1) Subject to negative Resolution of the National Assembly, the Minister may make regulations generally for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing, such regulations may provide for -

- (a) safety and protection of the Bridge Project;
- (b) traffic, shipping or navigation rights relating to or incidental to the Bridge Project;
- (c) subject to sections 18, 19 and 20, fees and costs chargeable for any act to be performed under this Act;
- (d) the penalties for the contravention of any offence under this Act;
- and
- (e) such other matter as may be necessary to carry out the purposes of this Act.

Authorisation
to invest

22. Subject to the approval of the Minister of Finance and the restrictions or conditions as the Minister may impose in his discretion, the New Building Society shall be authorized to invest in securities issued by the Concessionaire.

Passed by the National Assembly on 29th December, 2005.

S.E. Isaacs,
Clerk of the National Assembly.

(BILL No. 21/2005)