

Fourth Session Fourth Parliament Republic of Trinidad
and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 2 of 1995

[L.S.]

AN ACT to vest the undertaking of Trinidad and Tobago
(BWIA International) Airways Corporation in
BWIA International Airways Limited.

[Assented to 2nd February, 1995]

ENACTED by the Parliament of Trinidad and Tobago as Enactment
follows:—

1. This Act may be cited as the BWIA International Short title
Airways Limited (Vesting) Act, 1995.

Interpretation

2. In this Act—

“appointed day” means the day on which this Act comes into operation;

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“BWIA” means BWIA International Airways Limited, a company incorporated under the Companies Ordinance;

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“Corporation” means Trinidad and Tobago (BWIA International) Airways Corporation, established under the Trinidad and Tobago (BWIA International) Airways Corporation Act;

“Investment Agreement” means the agreement executed among the government of the Republic of Trinidad and Tobago, BWIA International Airways Limited, the Acker Group, Loeb Investors Co. No. 122 and Loeb Partners Corporation for the transfer of the undertaking of the Corporation to BWIA;

“Minister” means the Minister to whom responsibility for finance is assigned;

“undertaking” means—

- (a) the right, title, claim or interest of the Corporation in all property and other things of every kind, real or personal, moveable or immoveable, corporate or incorporate in possession or in action, including those assets listed in Part A of the First Schedule and all such other assets that are transferred and vested by Order of the Minister pursuant to section 7;

First Schedule

(b) liabilities and obligations of the Corporation, including those listed in Part A of the Second Schedule Second Schedule and such other liabilities and obligations that are transferred by Order of the Minister pursuant to section 7.

3. The undertaking is hereby transferred to and vested in BWIA. Vesting of undertaking

4. (1) The effect of the vesting of the undertaking shall be that from the appointed day— Effect of vesting of undertaking

(a) every contract existing before the appointed day to which the Corporation was a party except those entirely relating to liabilities and obligations to be retained by the Corporation, whether in writing or not, shall be construed and have effect as if—

- (i) BWIA is a party instead of the Corporation;
- (ii) for any reference to the Corporation, whether express or implied, there were substituted as respects anything falling to be done on or after the appointed day, a reference to BWIA;
- (iii) for any reference, whether express or implied, to the Director or to any director, officer, clerk or servant of the Corporation as respects anything falling to be done on or after the appointed day, there were substituted a reference, as the case may be, to the Director or to any director, officer, clerk or servant of BWIA as it may appoint or, in default of appointment, to a director, officer, clerk or servant of BWIA;

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- (b) all collective agreements within the meaning of the Industrial Relations Act, or any replacement or modification thereof in existence before the appointed day, to which the Corporation was a party shall be construed and have effect as if BWIA were a party thereto and for the purposes of such agreements and of any matter to be dealt with under that Act, BWIA shall be deemed to be the successor to the Corporation;
- (c) any account between the Corporation and any other party shall become an account between BWIA and that other party;
- (d) any instruction, direction, mandate, power of attorney or consent given to or by the Corporation and in existence before the appointed day shall have effect as if given to or by BWIA;
- (e) any negotiable instrument or order for payment of money, which is expressed to be drawn on or given to or accepted or endorsed by the Corporation or payable to it, shall have effect as if it had been drawn on or given to or accepted or endorsed by BWIA or payable to BWIA;
- (f) any security transferred to BWIA that before the appointed day was held by the Corporation as security for the payment or discharge of a debt or liability or obligation, whether present or future, actual or contingent shall be held by and be available to BWIA as security for the payment for discharge of that debt or liability or obligation, and any such security which extends to future advances

or liabilities shall on and from the appointed day, be held by and be available to BWIA as security for future advances by, and future liabilities to BWIA in the same manner and in all respects as future advances by or liabilities to the Corporation were secured thereby immediately before the appointed day;

- (g) any security provided by or for the Corporation that before the appointed day was held as security for the payment or discharge by the Corporation of a debt or liability or obligation, whether present or future, actual or contingent, shall be held by and be available to a holder as security for the payment or discharge by BWIA of that debt or liability or obligation, and any such security which extends to future advances or liabilities shall on and from the appointed day, be held by and be available to the holder as security for future advances and future liabilities of BWIA in the same manner in all respects as future advances to or liabilities of the Corporation were secured thereby immediately before the appointed day;
- (h) an officer, clerk or servant employed by the Corporation before the appointed day shall, unless his employment is terminated by the Corporation or by him, or through retirement become an officer, clerk or servant, as the case may be, of BWIA, and employment with the Corporation and BWIA respectively shall be deemed for all purposes other than the computation of pension and other terminal benefits, to be

single continuing employment, save that no director, secretary or auditor of the Corporation shall by reason only of this Act become a director, secretary or auditor, as the case may be of BWIA.

(2) Subsection (1)(a)(ii) and (iii) applies to any statutory instrument, and to any other document, as it applies in relation to a contract to which subsection (1)(a) applies.

Regulations

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

Exemptions
Chap. 76:01

6. The Stamp Duty Act shall not apply to the transfer and vesting of the undertaking in BWIA.

Order

7. (1) The Minister may by Order subsequent to the appointed day, transfer and vest in BWIA any part of the undertaking that is not specified in the Schedules to this Act.

(2) The transfer and vesting under subsection (1), may be subject to such conditions as the Minister may determine.

Transitional
provisions
Chap. 49:50

8. (1) Subject to subsection (2) the Trinidad and Tobago (BWIA International) Airways Corporation Act is hereby repealed.

(2) Sections 3, 4(1), 6, 7 to 18, 21, 22, 30, 31 and 35 of the Trinidad and Tobago (BWIA International) Airways Corporation Act shall continue in force and shall expire on such day as the Minister may by Order appoint.

Commencement

9. This Act shall come into operation on a day to be proclaimed by the President by Order published in the *Gazette*.

FIRST SCHEDULE

(Section 2)

PART A

ASSETS TO BE VESTED

1. All the books and records of the Corporation which are maintained at the Corporation's head office in Trinidad and Tobago and elsewhere.

2. Subject to the terms and conditions of the Investment Agreement, all those assets appearing in the Final Closing Date Balance Sheet as defined in the Investment Agreement under the heading "New BWIA 1/31/95", including—

- (a) All land, building and structures owned by the Corporation situated or located as the case may be in Trinidad and Tobago and elsewhere.
- (b) All leasehold improvements and passenger handling facilities, passenger servicing and aircraft ground handling equipment, located on any premises occupied by the Corporation in Trinidad and Tobago and elsewhere.
- (c) All computer and communications equipment located on any premises occupied by the Corporation in Trinidad and Tobago and elsewhere.
- (d) All office furniture, fittings and equipment located on any premises occupied by the Corporation in Trinidad and Tobago and elsewhere.
- (e) The shares of Allied Caterers Limited, Societe Internationale de Telecommunications Aeronautiques, Chartours Limited, Beewind Gulf Club, International Aeradio Caribbean Limited and Pan American Investment Trust.
- (f) All maintenance and operating supplies situated at Piarco, Trinidad and other landing points in the BWIA route network.

PART B

ASSETS NOT TO BE VESTED

Subject to the terms and conditions of the Investment Agreement, all those assets appearing in the Final Closing Date Balance Sheet under the heading "Eliminations Old BWIA".

SECOND SCHEDULE

(Section 2)

PART A

LIABILITIES AND OBLIGATIONS TO BE ASSUMED

Subject to the terms and conditions of the Investment Agreement, all those liabilities and obligations appearing in the Final Closing Date Balance Sheet as defined in the Investment Agreement under the heading "New BWIA 1/31/95", including—

(1) The debt due to Meridian Trust Company secured by the Corporation by a mortgage over one (1) MacDonell Douglas aircraft Reg. No. 9Y THR.

(2) The debt due to suppliers of goods and services delivered to or performed for the Corporation forty-five days or less, prior to the appointed day.

(3) The liabilities and obligations to holders of valid passenger and freight transportation coupons that were purchased at the Corporation's posted fares, or distributed in connection with promotional or charitable events.

PART B

LIABILITIES AND OBLIGATIONS NOT TO BE ASSUMED

Subject to the terms and conditions of the Investment Agreement, those liabilities and obligations appearing in the Final Closing Date Balance Sheet under the column "Eliminations Old BWIA", including—

1. The debt due to Republic Bank Limited secured by bonds or government guarantees whether denominated in the currency of Trinidad and Tobago or United States of America.

2. The debt due to holders of debentures dated 1991 and underwritten by Colonial Life Insurance Limited.

3. The debt due to Clico Investment Bank Limited in Barbados.

4. The debt due to Barclays Bank Plc—Miami on overdraft account.

5. The debt due to Republic Finance and Merchant Bank Limited secured by convertible redeemable bonds.

6. The debt due to Citibank (Trinidad and Tobago) Limited on account of loan advances to the Corporation.

7. The consortium loan debt due to Republic Bank Trinidad and Tobago (Caymans) Limited, Commercebank National Association of Miami and Banco Mercantil of Miami.

8. The debt due to suppliers of goods and services delivered to or performed for the Corporation more than forty-five days prior to the appointed day.

9. Actual or contingent liabilities if any, to the employees of the Corporation arising before the appointed day.

Passed in the House of Representatives this 21st day of January, 1995.

N. COX

Acting Clerk of the House

Passed in the Senate this 30th day of January, 1995.

R. CUMBERBATCH

Acting Clerk of the Senate