The Tourism Industry Support Act of 2016

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PRACTICE AREAS

- Government Affairs & Public Policy
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On August 6, 2016, the Governor of Puerto Rico signed into law the Tourism Industry Support Act of 2016, Act No. 137-2016 (“Act”). The Act, which amends certain provisions of the Puerto Rico Tourism Development Act, Act No.74 of 2010 (the “TDA”), is designed to facilitate the development and growth of Puerto Rico’s tourism industry by providing attractive financial incentives to the private sector through the creation of the Tourism Industry Investment and Recovery Program (the “Program”).

McConnell Valdés' Hospitality, Tax and Government Affairs groups worked on conceptualizing and drafting Act 137.

The following is a summary of the Act:

Eligible project costs

The Act adds costs related to mixed-use development projects in which the tourism component constitutes at least 70% of the square footage of the project, excluding common elements.

Incentives and Benefits

Up to now, eligible investors have had a right to a tourism investment tax credit (“ITC”), equal to 50% of the eligible investment, limited to the lesser of (i) 10% of the total project cost; or (ii) 50% of the eligible cash investment. The first half of the ITC is applied to the year in which the project receives the complete financing for its construction. The remaining balance is applied to the following year.

Under the Act, eligible businesses now have the option to elect one of the following alternate ITCs (“Alternate ITC”), instead of the traditional ITC for the investor:

1. ***First Alternate ITC.*** The generation of Alternate ITCs amounting to 40% of the total project cost. The first one-third (1/3) of these credits will be used in the project’s second year of operation, and the remaining two-thirds (2/3) will be used evenly in the project’s third and fourth year of operations.

2. ***Second Alternate ITC.*** The generation of Alternate ITCs amounting to 30% of the total project costs. Ten percent (10%) of these Alternate ITCs may be used upon obtaining the complete financing for the construction of the project. The remaining Alternate ITCs (20%) will be available evenly across three periods: one-third in the year in which the project receives its first paying guest, and the remainder, in equivalent portions, in the two subsequent years.

Any ITC or Alternate ITC that an investor, or eligible business in the case of the Alternate ITC, receives pursuant to any of the aforementioned alternatives (i) is totally tax exempt up to an amount equal to the total gross ITC amount awarded under any of the options; (ii) may be used against the investor's or eligible businesses' own tax liability, as applicable; and/or (iii) may be sold to a third party pursuant to the provisions of the Act. The proceeds from the sale of the Alternate ITC to a third party must be used in the following order: (i) to repay loans provided by any financial institution or government entity, including, without limitation, the Puerto Rico Tourism Company, its subsidiary, the Hotel Development Corporation, and the Economic Development Bank for Puerto Rico; and (ii) to repay any other loans, if any, provided to the exempt business to pay for project costs.