

(S. B. 4)

(No. 17-2017)

(Approved March 30, 2017)

AN ACT

To adopt an “Act to Promote Puerto Rico as a Destination”; authorize the creation and development of a destination marketing organization for Puerto Rico to be known as the “Corporation for the Promotion of Puerto Rico as a Destination, Inc.”; amend Sections 2 and 31 of Act No. 272-2003, as amended, known as the “Commonwealth of Puerto Rico Room Occupancy Rate Tax Act”; repeal Act No. 70-2013, as amended, known as an “Act for the Development of a Country Brand”; and for other related purposes.

STATEMENT OF MOTIVES

According to data provided by the United States Department of the Treasury, Puerto Rico is suffering a 14.6% economic contraction in the Gross State Product (actual GSP) with a forecast of an additional 3% contraction in the next two years. For years, the Government of Puerto Rico (hereinafter, the “Government”) has operated with a structural deficit that has been financed with bond issues and loans from the Government Development Bank (hereinafter, the “Bank”). The Government has been lacking liquidity for over a year, and the tax refunds, the payments owed to the Government’s contractors and suppliers, the money of public pensioners, and intra-governmental loans have been used as a substitute for sources to create liquidity.

Access to the Government’s financial information as well as the making of adequate economic predictions have been affected, among other factors, by a divided government structure and obsolete government systems. Government revenues are constantly overestimated and continue to decrease despite the imposition of many

new taxes. The Bank has failed to meet its obligations to bondholders since May 1, 2016, and is no longer fulfilling its duty to provide liquidity. Puerto Rico's obligations portfolio amounts to approximately \$66 billion and includes 18 different issuers whose financial situation is precarious. Debt servicing amounts to an average \$3.5 billion and uses more than one-fourth of the recurring sources of income of the Government. Retirement systems are practically insolvent with a \$50 billion debt. The foregoing figures worsen by a decrease in population caused by the emigration wave that began in 2006 and that is becoming one of the challenges to overcome on our path to full recovery.

Taking into account this dismal state of affairs, it is time to leave behind the philosophy of "*me vale*," [I couldn't care less] roll up our sleeves and work hard for the wellbeing of Puerto Rico. It is our duty to build a new Puerto Rico and to set in motion an administration that does not improvise on the implementation of public policy nor manages the Island's finances on a year-to-year basis, but that rather addresses the Government's financial imbalance. Our commitment under the Plan for Puerto Rico is to address these situations responsibly and restore the Island's credibility. We must look into the future and anticipate the challenges ahead, rather than simply survive the next crisis. The heads and officials of the government bodies of Puerto Rico must concentrate on balancing income and expenditures, reducing the level of government intervention in Puerto Rico's economy, and creating a competitive business environment governed by good faith, so that investors as well as local and foreign business people may lead the way towards an economic recovery.

The policies of the past led the United States Congress to adopt the Puerto Rico Oversight, Management, and Economic Stability Act, (hereinafter, "PROMESA"), delegating to a Financial Oversight Board (hereinafter, the "FOB") the power to work with the Government of Puerto Rico to help Puerto Rico

overcome the crisis it is currently facing. Our commitment is to work hand in hand with the FOB to push Puerto Rico forward. Thus, on December 20th, 2016, the FOB requested the Government to include among its priorities, a plan and a commitment to implement significant changes directed to:

- Restoring economic growth and creating a more competitive economy. In the short-term, the labor market and social programs should be liberalized, energy costs should be lowered, taxation should be rationalized and optimized, and the permit process should be improved to promote investment.
- Restructuring the Government to achieve balanced budgets, while preserving essential services for the People of Puerto Rico.
- Restructuring the pension systems in accordance with PROMESA and reestablishing access to capital markets.

Tourism is an important and essential tool to address the economic crisis that Puerto Rico is undergoing and it is one of the factors that shall help us to tackle the Government's fiscal problems. It is one of the most important sectors of the world's economy accounting for more than 9% of the Global Gross Domestic Product and creating one out of eleven jobs in the world. According to the Organization for Economic Co-operation and Development, tourism goes beyond the service industry to constitute an economy based on the export of goods and services to the visitors of a destination. The economic potential of the visitor economy has been shown by a marked increase in investment in said sector in countries and cities around the world.

Furthermore, data from the Planning Board shows that tourism accounts for approximately 7.2% of Puerto Rico's GDP, which is below the 9.8% global average. Even worse, Puerto Rico is far below the 17.8% Caribbean's average. Basically, our tourist industry is far from achieving its potential and our visitors are not taking full advantage of their visit to Puerto Rico. In view of the Island's economic challenges,

Puerto Rico needs to enter the world's market, benefit from its competitive advantages, and achieve the greatest performance of the Tourism Industry as the driving force of Economic Development. This requires making unprecedented changes to render the government more efficient and fiscally responsible. In fact, the Plan for Puerto Rico endorsed by the People on November 8, 2016, includes measures to achieve fiscal responsibility and develop the Island's economy.

The process of defining a product and conducting the necessary promotional campaigns to sell it requires an effective and efficient conveyance of messages in order to obtain results. Likewise, an essential element for the development of the visitor economy is the strategic and consistent promotion and marketing of the destination. Many administrations acknowledged said issue but never did anything about it. The Plan for Puerto Rico, pp. 57 and 58, proposes to create "a nonprofit private corporation to act as our Destination Marketing Organization ("DMO"). This proposal has been supported by the tourist industry. The Puerto Rico Hotels and Tourism Association pioneered in furthering the creation of an entity for such purposes.

Puerto Rico's DMO shall serve as the official point of reference for planners, tourist guides, and visitors, and shall encourage both business and leisure travelers to visit historic, cultural, and recreational places. This organization shall have broad participation and representation of public and private community sectors, the local industry, and other interested parties, in order to yield benefits by attracting visitors and investors alike. In addition, the DMO shall professionalize and provide consistency to our destination branding to make Puerto Rico the top tourist destination of the Caribbean and be recognized as a world-class destination. This Act honors the government's programmatic commitment and furthers an important cause to lead Puerto Rico towards economic development.

In the Island, the Puerto Rico Tourism Company has been the entity charged with promoting and marketing Puerto Rico as a destination since its creation in 1970. Due to its nature as a public corporation, the marketing strategy of Puerto Rico as a destination has changed according to the particular vision of each administration. Such instability and inconsistency have prevented some of these brands from being well defined, developed, and established in the Global economy. This has resulted in promotional inconsistencies and unsuccessful investment of public funds. In fact, according to reports of the Office of Management and Budget, from 2001 to the present, the Government of Puerto Rico has budgeted nearly \$900 million for Tourist Promotion and Marketing. Said monumental investment did not yield the expected outcome.

This Administration proposes the establishment of a Destination Marketing Organization (DMO) as a solution to this problem. This type of organization exists in various regions around the world and its role consists of developing tourism in the long-term through marketing strategies that are not subject to changes in government administrations. It is a point of contact with the world that develops the visitor economy and that, through long-term marketing strategies, attracts new visitors, keeps potential visitors informed, and provides visitors with the tools they need to take full advantage of their visit. DMOs have proven to be one of the best practices in the United States and internationally to effectively promote a destination. Through this measure, we keep up with mainstream trends to make Puerto Rico the principal destination in the Caribbean. It is about the completion of a study of the visitor economy in which the private sector has been involved and the so-called Third Sector has contributed. A key to this process has been the collaboration of nonprofit entities such as the Foundation for Puerto Rico Inc., which has served as facilitator

along the way and has shown a true commitment to Puerto Rico's transformation into a world destination, furthering sustainable economic and social development strategies.

The goal and purpose of the DMO created under this Act shall be to take the reins of the promotion of Puerto Rico and the development of a world-class destination branding for all sectors. Thus, this organization shall have broad participation and representation of public and private sectors from the community, local industry, and other interested parties, in order to yield benefits and attract visitors, investors, employers, and new residents. In addition, the DMO shall professionalize and provide consistency to our destination branding to turn Puerto Rico into the principal tourist destination of the Caribbean and be recognized as a world-class destination.

This Legislative Assembly is committed to strengthening the promotion and marketing of Puerto Rico as the cornerstone of our economic development. Through this measure, we honor the commitment made in our Plan for Puerto Rico and, working together with the private and the Third sectors, we shall establish a consistent branding to strengthen Puerto Rico's tourist market and expand our visitor economy to the greatest extent possible. This initiative shall include recreational tourism, medical tourism, and professional tourism, and shall attract new investors and employers, as well as new residents willing to partake in the task of creating a better and thriving Puerto Rico. Furthermore, the development of a visitor economy shall provide individuals, family groups, small business, and the rest of the community with an important platform to start up different business ventures such as gastronomy, technology, and lodging throughout Puerto Rico focused on an economic development strategy that would create and constitute a broad system for the visitor economy. Advertising to the world the wide variety of experiences, attractions, and points of interest across the Island, could increase not only the

number of visitors, but also significantly extend their stay. This would bring about significant economic opportunities within and without the tourist sector, for individuals, family groups, small business, and communities in all regions of the Island as a startup tool for different business ventures such as gastronomy, technology, and lodging, among others. The participatory dimension and broad scope of the visitor economy is essential to generate economic activity across Puerto Rico.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- This Act shall be known and may be cited as the “Act to Promote Puerto Rico as a Destination.”

Section 2.- **Creation of the Corporation for the Promotion of Puerto Rico as a Destination**

The Executive Director of the Puerto Rico Tourism Company (hereinafter, the “Company”) is hereby directed to organize a nonprofit corporation named “Corporation for the Promotion of Puerto Rico as a Destination, Inc.” (hereinafter, the “Corporation”) by filing with the Department of State a certificate of incorporation, which shall be executed, acknowledged, filed, and recorded in accordance with the provisions of Act No. 164-2009, as amended, known as the “General Corporations Act.” The Executive Director of the Company (hereinafter, the “Incorporator”) shall be the official charged with taking all the necessary actions to organize and incorporate the Corporation, which shall not be considered for any purpose whatsoever as a department, agency, public corporation, instrumentality, entity or subdivision of the Government of Puerto Rico. The Corporation shall have all the general powers of a nonprofit, private corporation in accordance with the provisions of the General Corporations Act, or any successor Act thereto.

Section 3.- **Objective and Purpose of the Corporation**

The Tourism Company shall remain in charge of promoting internal tourism to further economic development.

The objective of the Corporation shall be to develop Puerto Rico's tourism branding and promote the Island to attract visitors and increase Puerto Rico's international exposure as a tourist destination.

The Incorporator shall state in the certificate of incorporation that the objective and purpose of the Corporation is the development of a tourist brand and the promotion of Puerto Rico as a world-class destination. In addition, the Incorporator shall state in the certificate of incorporation that, in attaining its objective and purposes, the Corporation shall have, without limitation to its general corporate powers, the following duties, powers, and functions:

(a) To prepare a Strategic Plan for the promotion and marketing of Puerto Rico as a destination with medium- and long-term goals, indicators, tactics, and strategies (hereinafter, the "Strategic Plan"). The Strategic Plan shall properly divide the target audience of its campaigns and promotions according to reasonable return on investment expectations and priorities. In addition, it shall work with the Company to devise a Destination Development Plan.

(b) To study, develop, and implement a destination branding strategy for Puerto Rico as a tourist destination.

(c) To conduct research and contribute with pertinent government bodies to develop and gather statistics that would allow it to meet its responsibilities and objectives, and attain its purposes efficiently and effectively. To such effects, the Corporation shall share with the Tourism Company, the Governor and the Legislative Assembly any tourism statistics it obtains or generates as well as the results of any investigation that it conducts or commissions.

(d) To develop and manage the webpage, social media accounts, and any other official electronic platform used to market and promote Puerto Rico as a tourist destination. The foregoing notwithstanding, the Tourism Company shall maintain an official webpage to carry out those functions not delegated to the Corporation.

(e) To develop and manage the official webpage of the Corporation. Any other corporate information such as annual reports and audited financial statements of the Corporation shall be available on its webpage.

(f) To develop and carry out media campaigns to promote tourism as well as Puerto Rico as a destination using any appropriate advertising and promotional method to attain the goals set forth in the Strategic Plan.

(g) To receive donations, fix and collect reasonable fees for its services, and develop a sponsorship program that allows the Corporation to obtain private funding.

(h) Notwithstanding the prohibition established in Section 4 of this Act, to create subscription or membership programs that allow for the involvement of the citizenry as well as entities concerned with the promotion of Puerto Rico as a destination, and to fix and collect reasonable subscription fees.

(i) To enter into collaboration agreements with governmental entities and non-governmental organizations.

(j) To draw up an annual budget for the Corporation and submit a copy thereof to the Governor of Puerto Rico, and the Legislative Assembly, through the office of the Secretary of the Senate and the office of the Clerk of the House, within sixty (60) days prior to the beginning of its fiscal year.

(k) To prepare an annual report on the activities of the Corporation and file it with the Governor of Puerto Rico, the Legislative Assembly— through the Office of the Clerk of the House and of the Secretary of the Senate— the Company, and the

Secretary of the Department of Economic Development and Commerce (hereinafter the “Secretary”) within one hundred and twenty (120) days after the close of the fiscal year of the Corporation. Said annual report shall include:

(1) A comprehensive and detailed account of the operations, activities, financial situation, and achievements of the Corporation;

(2) A comprehensive and detailed inventory of encumbered or expended funds of the Corporation;

(3) An objective and quantifiable account of the metrics used to track the progress of the goals set by the Corporation in its Strategic Plan;

(4) If applicable, a statement of the reasons for the Corporation’s inability to attain any of the goals set in Strategic Plan and any revision or tactical or strategic alteration needed; and

(5) The Corporation’s budget and work plan for the following fiscal year.

(l) To hire an external audit firm independent from the Corporation and duly authorized to practice accounting in Puerto Rico, to issue audited financial statements, which shall be submitted to the Governor of Puerto Rico, the Legislative Assembly— through the Office of the Clerk of the House and of the Secretary of the Senate— the Company, and the Secretary within a term not greater than thirty (30) days after the auditors complete and deliver the audited financial statement to the Corporation.

(m) To draft and adopt policies and regulations to establish a competitive bid process for the acquisition of goods, works, and nonprofessional services.

(n) To prepare and adopt a Code of Business Ethics for the Corporation and designate an independent ethics committee.

(o) To designate an Advisory Committee whose members have expertise in branding, tourist destination marketing, destination marketing organizations' operations, visitor economy, and any other knowledge deemed necessary.

(p) To designate any other advisory committee as deemed necessary by the Board of Directors of the Corporation to provide advice on any matter referred to each committee, respectively.

(q) To develop and execute an action plan to achieve the Corporation's accreditation as a Destination Marketing Organization by the Destination Marketing Organization International or similar body.

Section 4.- **Prohibitions**

The Incorporator shall state in the certificate of incorporation of the Corporation the following prohibitions:

(a) The Corporation shall have no authority to issue capital stocks or to declare or pay dividends.

(b) No person participating in the subscription or membership programs developed and promoted by the Corporation shall be considered a "member" or "shareholder" of the Corporation nor shall have the rights of a "member" or "shareholder" for purposes of the General Corporations Act. The Corporation shall be considered a Corporation without members or shareholders for purposes of the General Corporations Act.

(c) No director, officer, employee, or person whatsoever may benefit from the income and assets of the Corporation, except for wages and reasonable compensation for his services.

(d) The Corporation shall neither participate, directly or indirectly, in electoral processes inside or outside of Puerto Rico nor support or make donations, directly or indirectly, inside or outside of Puerto Rico to political parties, hopefuls,

candidates, campaign committees, or to agents, representatives, or authorized committees thereof, or to political action committees that make donations or coordinate expenditures between them or to committees or segregated funds.

(e) The Corporation shall not carry out, either directly or indirectly, lobbying activities. This prohibition shall not prevent the Corporation from conducting studies and responding any request for its opinion regarding projects and programs directly related to the promotion of Puerto Rico as a destination and other purposes set forth herein.

(f) The Corporation shall not incur expenses or commit to spend more than one million dollars (\$1,000,000) in advertising or promotional campaigns or related efforts before conducting a competitive process for requesting and evaluating proposals for such purposes and obtaining the approval and affirmative vote of an absolute majority of the total number of members of the Board of Directors.

(g) The Corporation shall not incur expenses for purposes that are inconsistent with the purposes and objectives of the Corporation or in contravention of its budget or Strategic Plan.

(h) The Corporation shall not incur expenses or encumber funds in excess of the total reasonably anticipated revenues during a fiscal year.

(i) Administrative and payroll expenses and those related to the compensation and benefits of officers and other employees and contractors of the Corporation, once the same is fully operational, shall not exceed the amounts or percentage of the Corporation's budget agreed upon in the Destination Marketing Service Agreement provided in Section 8 of this Act.

(j) The certificate of incorporation and the bylaws of the Corporation may be amended only if such amendments are not inconsistent with this Act and have the affirmative vote of two thirds of the members of the Board of Directors of the Corporation.

Section 5.- Composition of the Board of Directors of the Corporation

The Incorporator shall state in the certificate of incorporation that the affairs of the Corporation shall be managed by a Board of Directors composed of thirteen (13) members who shall represent the Government of Puerto Rico, the Puerto Rican community, and the segments of the visitor economy in Puerto Rico. The Incorporator shall state in the certificate of incorporation of the Corporation the following conditions for the composition of the Board of Directors of the Corporation:

(a) The Board shall include three (3) *ex officio* member representing government entities, to wit:

(1) The Secretary of the Department of Economic Development and Commerce;

(2) The Executive Director of the Tourism Company;

(3) The Executive Director of the Puerto Rico Convention Center District Authority;

The *ex officio* members may designate one representative to substitute them at one or more meetings, however, said representative must be authorized by the Board of Directors.

(b) The Board shall include two (2) members representing the Legislative Assembly, to wit:

(1) One (1) member appointed by the President of the Senate of Puerto Rico; and

(2) One (1) member appointed by the Speaker of the House of Representatives.

(c) The Board shall include four (4) members who shall be selected as follows:

(1) One member of the Board of Directors or a chief executive of the Puerto Rico Hotel and Tourism Association, Inc., as determined by the governing body of said organization;

(2) One chief or executive or a member of the governing body of the Puerto Rico Convention Bureau, Inc., as determined by the governing body of said organization;

(3) One chief executive or member of the Board of Directors of the contractor hired by the Public-Private Partnership for the administration and operation of the Luis Muñoz-Marín International Airport, as determined by said Contractor; and

(4) One member of the *Paradores de Puerto Rico* Owners' Association, as determined by the governing body of said organization.

(d) The Board shall include three (3) members representing some of the areas within those provided in this subsection to be appointed by the Governor of Puerto Rico with the advice and consent of the Senate and the House of Representatives of Puerto Rico, from a list of candidates to be submitted by a Committee on Appointments created and constituted by members of the Board of Directors of the Corporation who are not representatives of government entities. The first Committee on Appointments shall be composed of the members of the Board of Directors who hold office in accordance with subsections (c) and (e) of this Section. The Committee on Appointments shall submit at least five (5) candidates of each of the sectors mentioned in this subsection, and the Governor may request additional candidates if none of those submitted is chosen. Submitted candidates shall represent the following areas or sectors:

(1) persons with executive and managerial knowledge and experience in the construction industry or in the development of tourist projects or an association representing said sector;

(2) persons with executive and managerial knowledge and experience in the food or culinary arts industry or who belong to an association representing said sector;

(3) persons with executive and managerial knowledge and experience in events, attractions, recreation, arts and Puerto Rican culture industries;

(4) persons with executive and managerial knowledge and experience in the casino industry in Puerto Rico;

(5) persons with executive experience in any of the principal airlines that serve Puerto Rico and destinations outside of Puerto Rico or who belong to an association representing said sector;

(6) persons with executive experience in any of the principal cruise lines that consistently use the ports of Puerto Rico or who are members of an association representing said sector; and

(7) persons who are executives or employees of any national or international company engaged in the development, promotion, and sale of timeshare or vacation ownership, vacation homes, or vacation club projects, or members of an association representing said sector.

(e) The Board shall include a member appointed by the Governor who is member, director, or chief executive of a nonprofit organization committed to the visitor economy and to the transformation of Puerto Rico into a world destination as an economic and social development strategy.

(f) None of the members of the Board of Directors who hold a position in accordance with subsections (b), (c), (d), and (e) of this Section should have held, or have run for an elective office in the Government of Puerto Rico, unless at least two

(2) years have elapsed from the time said person ceased to hold office or from the time said person ran for elective office.

(g) Only those members of the Board of Directors who hold an office in accordance with subsection (a) of this Section may be employees or officials of the Government of Puerto Rico.

(h) No person who has been convicted in any jurisdiction of a felony or a misdemeanor involving moral depravity or actions constituting dishonesty, fraud, embezzlement or misappropriation of funds may be a member of the Board of Directors.

(i) Members of the Board of Directors who hold a position in accordance with subsections (c), (d), and (e) of this Section shall be selected for a three (3)-year term. However, of those members of the Board of Directors who hold a position in accordance with subsection (d) of this Section, two (2) shall be selected for an initial term of two (2) years. Furthermore, members who hold a position in accordance with subsection (b) of this Section, shall serve at the will of the Presiding Officer of the Legislative House who appointed them.

(j) None of the members of the Board of Directors who hold office in accordance with subsections (c), (d), and (e) of this Section shall continue to be members of the Board of Directors if they are no longer part of the governing bodies of the organization or industry they represent.

(k) If any of the organizations with representation in the Board of Directors of the Corporation under subsection (c) of this Section ceases to exist without a successor entity, or merges with the Corporation, there may be designated a new organization that appoints a representative to the Board of Directors with the approval of an absolute majority of members of the Board of Directors, including the affirmative vote of at least one (1) *ex officio* member. Nevertheless, any member

originally appointed shall complete his term on the Board of Directors in accordance with subsection (i) of this Section.

Section 6.- The Incorporator shall state in the certificate of incorporation the following additional provisions regarding the Board of Directors of the Corporation:

(a) The Board of Directors shall select from among its members one Chairman and one Vice Chairman of the Board. However, no person may hold the office of Chairman of the Board of Directors for more than four (4) consecutive years. Moreover, none of the *ex officio* members of the Board of Directors may be selected as Chairman or Vice Chairman of the Board of Directors.

(b) Members of the Board of Directors shall perform their duties without compensation or per diem for carrying out the same.

(c) Meetings of the Board of Directors of the Corporation shall be held in Puerto Rico and, except for *ex officio* members, none of the members may delegate their participation.

(d) A majority of members of the Board of Directors shall constitute a quorum to hold meetings.

(e) The Board of Directors of the Corporation shall appoint an Executive Director, a Treasurer, a Secretary and those other officers it may deem necessary to carry out the operations of the Corporation. The Executive Director shall be appointed on a full-time basis. No person who has held or has run for an elective office in the Government of Puerto Rico may be appointed as Executive Director, unless at least two (2) years have elapsed from the time said person ceased to hold office or from the time said person ran for elective office. The positions of Executive Director, Treasurer, and Secretary shall not be held by the same person simultaneously. The Officers of the Corporation shall have the duties set forth in the bylaws or resolutions of the Board of Directors and shall serve as such while they enjoy the trust of the Board of Directors.

Section 7.- The Incorporator shall state in the certificate of incorporation additional provisions as are necessary for the administration or management of the Corporation, and shall carry out such other tasks required by the General Corporations Act that are needed to complete the organization of the Corporation including, but not limited to, holding the first meeting of incorporators, electing the members of the first Board of Directors, and adopting the bylaws of the Corporation and a corporate seal. Notwithstanding any provision of law to the contrary, this seal shall not be required to include the words “nonprofit corporation.”

Section 8.- Destination Marketing Organization Service Agreement

After the effective date of this Act, there shall be established a transition period during which the Company shall continue to direct the efforts to market and promote Puerto Rico as a tourist destination. During said period, the Corporation shall be organized and all the necessary administrative actions shall be taken so that it may be fully operational and capable of effectively fulfilling the objectives, purpose, duties, and functions set forth in its certificate of incorporation.

The Company is hereby authorized to enter into and execute a Destination Marketing Organization Service Agreement (hereinafter the “DMO Agreement”) with the Corporation.

Through the DMO Agreement, after an adequate transition in accordance with the provisions of this Act, the Corporation shall assume the principal duties of marketing and promoting Puerto Rico as a destination, which duties are currently carried out by the Company pursuant to Act No. 10 of June 18, 1970, as amended, known as the “Puerto Rico Tourism Company Act,” and other special laws.

In relation to the DMO Agreement, the Company and the Corporation shall be exempt from complying with the provisions of Act No. 237-2004, as amended, or any other provisions relative to contracting and bidding contained in the Puerto Rico Tourism Company Act or any pertinent special laws or regulations. It is the

legislative intent that only the provisions of this Act apply in relation to the DMO Agreement.

A DMO Agreement executed under this Act shall provide such terms and conditions as the Company and the Corporation deem appropriate, including, but not limited to, (a) the definition and description of functions to be delegated, and (b) the term of the DMO Agreement. However, it is hereby provided that the original term of the DMO Agreement shall not exceed twenty (20) years, and may be subject to subsequent extensions each of which shall not exceed ten (10) years.

All the terms and conditions that govern the DMO Agreement shall be binding and enforceable to all of the parties thereto from the execution to the expiration thereof. The Corporation shall not assume nor be held liable for the existing obligations or debts of the Company, unless the DMO Agreement expressly provides so.

Once the DMO Agreement has been executed and the Board of Directors determines that the Corporation is ready to begin to carry out its functions under the DMO Agreement and implement the marketing strategies it deems to be in the best interest of Puerto Rico, the Board of Directors of the Corporation shall issue and deliver a certification to the Executive Director of the Company. Once said certification is received, within a term of four (4) months, the Company shall cease to carry out the delegated functions and the process agreed upon in the DMO Agreement shall be followed. The Company shall certify the date of transfer of delegated functions. Upon the issuance of said certification by the Company, any promotional effort not delegated under the DMO Agreement shall use the brands and logos created by the Corporation.

Section 9.- Use of the Brand

The brand and the logo to be developed may not be modified without the express written consent of the Corporation. However, the Government of Puerto Rico, its municipalities, instrumentalities, corporations, and agencies may and shall use the brand and developed logo freely for any purpose that is consistent with this Act and the DMO Agreement.

Section 10.- Fund to Promote Puerto Rico as a Destination

Once the Corporation is incorporated and organized, the Board of Directors shall authorize and direct the opening of an account in the name of the Corporation in a commercial bank or trust company duly authorized to do business in Puerto Rico as selected by the Board of Directors. Said account shall constitute the Fund to Promote Puerto Rico as a Destination (hereinafter the "Fund"). Of the revenues received pursuant to Act No. 272-2003, as amended, known as the "Commonwealth of Puerto Rico Room Occupancy Rate Tax Act," and Act No. 221 of May 15, 1948, as amended, the Company shall deposit in the Fund the appropriations itemized below:

(a) Appropriations to Begin Operations. Once the Corporation and its Board of Directors are constituted, and after an account is opened in its name as provided in the preceding paragraph, during Fiscal Year 2017-2018, the Company shall appropriate to the Corporation for a maximum term of six (6) months, the amount of four hundred thousand dollars (\$400,000) monthly to defray the initial expenses and activities of the Corporation. Appropriations shall be deposited in the Fund on a monthly basis. If during any month the amount deposited in the Fund is less than four hundred thousand dollars (\$400,000), the Company shall cover any deficiency, depositing the funds that are available in subsequent months. Any amount appropriated that is not used during a specific month shall remain available for future use.

(b) Recurring Appropriations. Beginning in Fiscal Year 2018-2019, if an approved DMO exists, and upon completion of the transition provided for in Section 8, the Company shall appropriate to the Corporation the funds set forth in subsection (B)(v) of Section 31 of Act No. 272-2003, as amended, known as “Commonwealth of Puerto Rico Room Occupancy Rate Tax Act.” Appropriations shall be deposited in the Fund on a monthly basis. Any appropriated amount that is not used during a specific month or fiscal year shall remain available for future use.

(c) Matching Fund Program. As an additional source of the recurring appropriations provided for in subsection (b) of this Section, insofar as the Company assures that its operating costs as well as the expenditures of its public employees are defrayed, and as it may annually certify a surplus due to a revenue increase, a matching fund program is hereby established to be nourished by private and public resources. Beginning in Fiscal Year 2019-2020, the Company shall deposit, if it has additional resources due to a revenue increase, a continuing and consecutive appropriation of up to five million dollars (\$5,000,000) per fiscal year, to match in an equal amount the funds collected or generated by the Corporation from nongovernmental sources whether in cash or in kind. Matching Fund Program appropriations shall be deposited in the Fund on a quarterly basis in amounts equal to the sum of all funds collected or generated by the Corporation from nongovernmental sources at the close of the preceding quarter. If during any quarter the amount deposited in the Fund is less than the corresponding matching appropriation, the Company shall cover any deficiency, depositing the funds that are available in subsequent quarters. Any amount appropriated that is not used during a specific fiscal year shall remain available for future use.

Appropriations provided for in subsections (b) and (c) of this Section shall be specifically stated in the terms and conditions of the DMO Agreement as compensation and payment to the Corporation for its services in promoting and marketing Puerto Rico as a destination.

Section 11.- The Employees of the Company who carry out marketing and promotion duties but who are not hired by the Corporation shall keep their jobs in the Company and may be relocated to carry out other functions in the Government of Puerto Rico, as provided in Act No. 8-2017. No employee of the Company shall be dismissed for refusing a job offer in the Corporation.

Section 12.- Promotion and Marketing Consistency throughout all Sectors

It is the intent of this legislation that the promotion and marketing of Puerto Rico as a destination be consistent and uniform throughout all sectors including, but not limited to, vacation, business, conventions, and group visits. Thus, it is necessary that promotion and marketing efforts be carried out by a single destination marketing organization.

To achieve this purpose, during the transition period established in Section 8 of this Act, the Corporation and the Company are hereby directed to take any necessary steps so that the Corporation and the Puerto Rico Convention Bureau (hereinafter, the “Bureau”), agree to integrate their operations through (a) the merger or consolidation of the Corporation and the Puerto Rico Convention Bureau, or (b) the acquisition by the Corporation of all assets of the Bureau and the subsequent dissolution thereof.

Section 13.- A subsection 15 is hereby added to Section 2 of Act No. 272-2003, as amended, known as the “Commonwealth of Puerto Rico Room Occupancy Rate Tax Act,” and subsequent subsections are hereby renumbered accordingly to read as follows:

“Section 2.- Definitions.-

For purposes of this Act, the following terms shall have the meaning stated below:

(1) ...

...

(15) Corporation.- Means the Corporation for the Promotion of Puerto Rico as a Destination, Inc. or any other nonprofit corporation hired by the Company by virtue of the ‘Act to Promote Puerto Rico as a Destination,’ and therefore, is principally and officially engaged in the promotion of Puerto Rico as a destination.

...”

Section 14.- Subsection B of Section 31 of Act No. 272-2003, as amended, known as the “Commonwealth of Puerto Rico Room Occupancy Rate Tax Act,” is hereby amended to read as follows:

“Section 31.- Disposition of Funds.-

The Company shall distribute all funds collected from the tax imposed under Section 24 of this Act, as follows:

A. ...

B. ...

(i) ...

(ii) ...

(iii) two million five hundred thousand dollars (\$2,500,000) shall be transferred from the Company to the Convention Center District Authority in quarterly allocations in the amount of six hundred twenty-five thousand dollars (\$625,000.00) to defray exclusively the operating costs of the Convention Center District. Provided, however, that for each fiscal year and/or each time that a modified budget is to be presented, the budget of the Convention Center District Authority shall be presented to the Board of Directors of the Authority and to the Board of

Directors of the Puerto Rico Tourism Company, at a meeting held specifically for such purposes. This amount shall be transferred as provided in this paragraph beginning Fiscal Year 2015-2016, and for a period of five (5) years.

(iv) Up to four million dollars (\$4,000,000) shall be kept available during each fiscal year in a special reserve account to be maintained by the Company for operating expenditures and/or the oversight and implementation of the Destination Marketing Service Agreement set forth in Section 8 of the ‘Act to Promote Puerto Rico as a Destination.’

(v) Any balance remaining after the allocations and reserves provided in subsections (B)(i), (B)(ii), (B)(iii), and (B)(iv) are made, up to a twenty-five million (25,000,000)-dollar ceiling, shall be allocated to the Corporation. The funds allocated to the Corporation shall be used by the Corporation to promote, market, develop, and strengthen Puerto Rico’s tourist industry. If the balance exceeds twenty-five million dollars (\$25,000,000), such excess shall be used by the Company to carry out its duties.

The Company shall submit a monthly breakdown of the revenues collected from the tax to the Authority and the Corporation.

...”

Section 15.- For being the Corporation a nonprofit private corporation created in accordance with the General Corporations Act, it is hereby expressly provided that the prohibition and procedure set forth in Section 12.001 of Act No. 78-2011, as amended, known as the “Commonwealth of Puerto Rico Election Act,” shall not apply to the campaigns conducted by the Corporation to promote Puerto Rico as a Destination.

Section 16.- Debt Liability.-

Debts and other obligations of the Corporation shall not constitute debts or obligations of the Company, the Government of Puerto Rico, or any of the municipalities or other political subdivisions thereof, and none of the latter shall be held liable with respect thereto; be it understood that such debt and other obligations shall not be payable from funds other than the Corporation's.

Section 17.- Act No. 70-2013, as amended, known as the "Act for the Development of a Country Brand," is hereby repealed and all the personnel, equipment, material, records, duties, property, obligations, and budget of the Standing Committee on the Creation, Development, Implementation, and Maintenance of a Country Brand are hereby transferred to the Department of Economic Development and Commerce.

Section 18.- Within ninety (90) days after the effective date of this Act, every department, agency, public corporation and instrumentality of the Government of Puerto Rico and the political subdivisions thereof shall revise, amend or repeal their administrative regulations, administrative orders, or memoranda, as are necessary to conform them to the provisions of this Act.

Section 19.- No injunction shall be issued to prevent the application of this Act or any part thereof.

Section 20.- If the provisions of this Act are in conflict with the provisions of any other law, the provisions of this Act shall prevail.

Section 21.- Severability Clause.-

If any clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act were held to be null or unconstitutional, the holding, ruling or judgment to such effect shall not affect, impair, or invalidate the remainder of this Act. The effect of such holding shall be limited to the clause, paragraph, subparagraph, sentence, word,

letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act thus held to be null or unconstitutional. If the application of any clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act to any person or circumstance were held to be null or unconstitutional, the holding, ruling or judgment to such effect shall not affect nor invalidate the application of the remainder of this Act to such persons or circumstances where it may be validly applied. It is the express and unequivocal will of this Legislative Assembly that the courts enforce the provisions and application thereof to the greatest extent possible, even if it renders ineffective, nullifies, invalidates, impairs, or holds to be unconstitutional any part thereof, or even if it renders ineffective, nullifies, invalidates, impairs, or holds to be unconstitutional the application thereof to any person or circumstance. This Legislative Assembly would have approved this Act regardless of any determination of severability that the Court may make.

Section 22.-This Act shall take effect immediately after its approval, except for Sections 13 and 14, which shall take effect upon the transfer of functions set forth in Section 8 of this Act.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 17-2017 (S. B. 4)** of the **1st Regular Session** of the **18st Legislative Assembly of Puerto Rico**:

AN ACT to adopt an “Act to Promote Puerto Rico as a Destination”; authorize the creation and development of a destination marketing organization for Puerto Rico to be known as the “Corporation for the Promotion of Puerto Rico as a Destination, Inc.”; amend Sections 2 and 31 of Act No. 272-2003, as amended, known as the “Commonwealth of Puerto Rico Room Occupancy Rate Tax Act”; repeal Act No. 70-2013, as amended, known as an “Act for the Development of a Country Brand”; and for other related purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 28th day of November, 2017.

Orlando Pagán-Ramírez
Acting Director