

CHAPTER 13

ALIENS (LAND-HOLDING REGULATION) ACT

As amended by

Act No. 29 of 1968

Act No. 6 of 1972

Act No. 31 of 1972

Act No. 16 of 1983

Act No. 6 of 1987

Act No. 37 of 1998

Act No. 8 of 2007

Act No. 18 of 2007

Act No. 6 of 2009

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An Act to regulate the holding of land by aliens and companies under alien control.

1. Short title

This Act may be cited as the Aliens (Land-Holding Regulation) Act.

2. Interpretation

In this Act—

“alien” means a person who is not a citizen of Grenada and includes a company which is incorporated in Grenada and is under alien control as explained in section 6;

“approved lending agency” means an alien approved by Order of the Minister for the purpose of lending money to be received by mortgage;

Minister” means the Minister for the time being responsible for matters relating to national security.

Restrictions on the Holding of Land and Mortgages by Aliens

3. Forfeiture of land and mortgages held by unlicensed aliens

(1) Subject to the provisions of this Act, neither land nor a mortgage on land shall be held by an unlicensed alien, and any land or mortgage so held shall be forfeited to the Government.

(2) Notwithstanding subsection (1)—

(a)

land may be acquired and held by an unlicensed alien on an annual tenancy or for any less interest for the purposes of his or her residence, trade, or business, but an unlicensed alien shall not so hold more than five acres of land in all;

(b)

land acquired by an unlicensed alien under a will or an intestacy shall not be forfeited if, within one year from the death of the testator or intestate or within such extended time, if any, as the Minister may decide to be reasonable, the land is sold or the alien obtains a licence to hold the land;

(c)

a mortgage acquired by an unlicensed alien under a will or on an intestacy shall not be forfeited; but the alien shall not, unless he or she obtains a licence to hold the mortgage, be entitled to foreclose or enter into possession of the mortgaged land;

(d)

nothing in this Act shall affect the interest of a judgement creditor in the land of his or her judgement debtor, but the debtor's land shall not be acquired by an unlicensed alien;

(e)

Nothing in this Act shall affect the estate or interest of an alien in any land or mortgage held by him or her at the commencement of this Act.

4. Licence for alien to hold land or mortgage

(1) The Minister may, if he or she thinks fit, from time to time, grant to any alien a licence to hold land as owner or tenant for any estate or interest either subject to any condition or not:

Provided that a licence so granted shall be operative only as to the land described and as to the estate or interest specified therein.

(2) The Minister may, if he or she thinks fit, from time to time grant to an alien a licence to hold land as mortgagee for any estate or interest therein:

Provided that a licence so granted—

(a)

to an alien other than an approved lending agency may be subject to such conditions as the Minister may think fit and shall be operative only as to the land described and as to the estate or interest specified in such licence;

(b)

to an approved lending agency shall be unconditional and shall be operative as to any estate or interest therein.

(3) A licence granted under the provisions of this section shall be of no force or effect until—

(a)

all fees and duties payable under this Act have been paid into the Treasury;

(b)

the licence has been registered in the Deeds and Land Registry.

(4) The Registrar or other officer performing his or her duties under the Deeds and Land Registry Act shall not register any licence under this section unless it is shown to his or her satisfaction that the fees and duties payable under this Act in respect of the licence have been paid.

(5) On breach of any condition in a licence to hold land as owner or tenant or mortgagee, the estate or interest of the alien in the land or mortgage shall be forfeited to the Government.

5. Effect of forfeiture

(1) Land or a mortgage forfeited under this Act shall not vest in the Government unless and until a judgement is obtained declaring the forfeiture; but on such judgement being obtained the title of the Government shall relate back to and commence at the time when the forfeiture took place.

(2) A judgement declaring a forfeiture of land shall operate to vest in the Government all the estate and interest of the alien in the forfeited land.

(3) A judgement declaring a forfeiture of a mortgage shall operate to vest in the Government all the estate and interest of the alien in the mortgaged land subject to any right of redemption

subsisting therein, and also to vest in the Government the right to recover and receive and to enforce all securities for the mortgage money.

6. Companies under alien control

(1) For the purposes of this Act, a company shall be deemed to be under alien control—

(a)

if any of its directors is an unlicensed alien;

(b)

if more than one-third of the votes exercisable at any meeting of the company or which would be exercisable if a meeting of the company was held are vested in unlicensed aliens;

(c)

in the case of a company having a share capital, if more than one-third of the nominal amount of its issued shares are held by unlicensed aliens;

(d)

in the case of a company not having a share capital, if more than one-third in number of its members are unlicensed aliens;

(e)

if the amount paid or payable in any period of twelve months as dividends to those members of the company who are unlicensed aliens exceeds one-third of the total amount paid or payable by the company as dividends in the same period;

(f)

if more than one-third of the nominal value of the outstanding debentures of the company are held by unlicensed aliens; or

(g)

if the annual interest on the debentures of the company for the time being held by unlicensed aliens exceeds one-third of the annual interest on all the debentures of the company for the time being outstanding.

(2) A company which is under alien control and is a member of another company shall, for the purpose of deciding the status of that other company, be treated as an alien.

7. Power of company to restrict the holding by aliens of its shares or debentures

Notwithstanding anything contained in any law relating to companies, or in the memorandum or articles of association of the company, or in any debenture, or in any instrument for securing any issue of debentures, a company incorporated in Grenada holding or intending to acquire more than five acres of land in Grenada may—

(a)

restrict or prohibit the issue or transfer of its shares or debentures to aliens;

(b)

restrict or prohibit the holding by aliens of share warrants and of debentures transferable by delivery;

(c)

refuse to register an alien as a member or as the holder of a debenture;

(d)

require such evidence as it may think fit as to the nationality of any person desiring to be registered as a member or as the holder of a debenture, and as to the nationality of the holder of a share warrant or debenture transferable by delivery or of a coupon or other document entitling the bearer to payment of any dividend or interest.

8. Licences for aliens to hold directorships, shares or debentures

(1) The Minister may, if he or she thinks fit, from time to time grant licences, either subject to conditions or not, for all or any of the following matters, that is to say—

(a)

for an alien to be a director of a company;

(b)

for an alien to vote at meetings of a company;

(c)

for an alien to hold shares or debentures;

(d)

for an alien to be a member of a company having no share capital:

Provided that a licence shall be operative only as to the company named therein and as to the number of votes, shares, or debentures specified therein.

(2) On breach of any condition in a licence granted under this section, the licensee shall forthwith cease to be a director of the company and to be entitled to vote at any meeting of the company, and all shares and debentures in the company held by the licensee shall be forfeited to the Government.

(2A) Notwithstanding any other provisions under this Act, where a licence has been granted by the Minister to an alien under this section, the company to which the licence refers shall be deemed to be an alien and shall be required to obtain a licence under section 4 if it desires to hold an interest in land.

(2B) The provisions of subsection (2A) shall apply from the date of commencement of the Act.

9. Effect of forfeiture of shares

(1) A judgement declaring that a share or debenture has become forfeited under this Act shall operate to vest in the Minister the right to transfer that share or debenture and to recover and receive dividends or income thereof as from the time when the forfeiture took place.

(2) A share or debenture which has been declared to be forfeited under this Act shall be sold or otherwise dealt with for the benefit of Grenada as the Minister may direct.

10. Transmission of licence to company

The Minister shall send a copy of every licence to the company concerned at its registered office.

11. Registration of licence by company

(1) A company shall cause a copy of every licence received by it to be recorded in the company's register of members or debenture holders (as the case may require) opposite the name of the licensee, and to be endorsed on every share certificate or debenture issued in respect of any share or debenture held by the licensee.

(2) If a company makes default in complying with the requirements of this section it shall be liable on summary conviction to a fine of two hundred and fifty dollars for every day during which the default continues, and every director, manager and officer of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence and liable, on summary conviction, to the same penalty.

12. Restriction on the issue of share warrants or debentures to bearer to licensed aliens

(1) A company shall not without the consent of the Minister issue a share warrant or debenture transferable by delivery in respect of any share or debenture held by an alien under a licence granted under this Act.

(2) If a company issues a share warrant or a debenture transferable by delivery in breach of the provisions of this section, it shall be guilty of an offence and liable, on summary conviction, to a fine of five thousand dollars in respect of each share specified in the warrant

and in respect of each debenture, and every director, manager, and officer of the company who knowingly and wilfully authorises or permits such issue shall be guilty of an offence and liable, on summary conviction, to the same penalty.

13. Transfer of shares or debentures held under licence

(1) A transfer without the consent of the Minister of a share or debenture held by an alien under a licence and any entry in the company's register of members or debenture holders of the transferee specified in any such transfer shall be void and of no effect.

(2) The Minister shall not refuse his or her consent to such a transfer except on the ground that the share or debenture specified in the transfer has become forfeited under this Act.

Restriction on Trusts in Favour of Aliens

14. Restrictions on trusts in favour of aliens

(1) This section applies to the following property only, namely, land situate in Grenada, mortgages of such land, and shares and debentures of any company incorporated in Grenada.

(2) With a view to preventing evasion of the foregoing provisions of this Act, no person shall without the licence of the Minister hold any property to which this section applies in trust for an alien, and any such property so held shall be forfeited to the Government.

(3) Any person who intentionally contravenes the provisions of this section shall be guilty of an offence triable summarily or on indictment:

Provided that the punishment on summary conviction shall not exceed a fine of one thousand dollars.

(4) Nothing in this Act shall apply to a trust in favour of an alien subsisting at the commencement of this Act.

(5) In this section, the expression "trust" includes any arrangement, whether written or oral, express or implied, and whether legally enforceable or not, whereby any property to which this section applies or any interest therein or any rights attached thereto is or are held for the benefit of or to the order or at the disposal of an alien, but does not include—

(a)

the duties incident to a mortgage;

(b)

the duties of a satisfied mortgagee to the mortgagor, if within three months after satisfaction of the mortgage the mortgaged property is re-vested in the mortgagor or his or her interest therein is extinguished;

(c)

the duties of a vendor to the purchaser pending payment of the purchase money, or after payment of the purchase money, if within three months after such payment the property sold is vested in the purchaser or his or her interest therein is extinguished;

(d)

the duties of a trustee in bankruptcy to the bankrupt or his or her creditors; or

(e)

the duties of a trustee for the purposes of any composition or scheme of arrangement for the payment of debts to the debtor or his or her creditors

15. Licences to hold property in trust for aliens

The provisions of this Act as to licences and the effect of breach of a condition in a licence shall apply to land, mortgages, shares, and debentures intended to be held or held in trust for an alien in like manner as it applies to land, mortgages, shares, or debentures intended to be held or held by an alien.

Procedure and Evidence

16. Procedure

For the purpose of establishing a forfeiture under this Act, the Attorney-General may apply to the High Court for a declaration that any right, title or interest sought to be affected is forfeited to the Government.

17. Discovery

(1) Without prejudice to any other right to discovery, the Attorney-General may in proceedings for establishing a forfeiture under this Act administer interrogatories to and obtain discovery of documents from a defendant as to any matter or document tending to prove his or her alienage or the alienage of any other person or to discover any land, mortgage, share or debenture held by him or her or in trust for him or her or as to any relevant matter or document.

(2) It shall not be a valid ground for refusing to answer any such interrogatory or to disclose or produce any document that the answer or document might or would expose the defendant or any other person to the risk of a prosecution under this Act:

Provided that in the prosecution of a defendant under this Act the fact that he or she has disclosed any matter in answer to an interrogatory administered under this section, and disclosed or produced any document in compliance with an order for discovery obtained under this section, shall not be admissible in evidence.

18. Stamp duty

(1) Every licence granted under this Act shall be subject to a stamp duty of twenty-five dollars which shall be paid by the licensee in accordance with the provisions of the Stamp Act, Chapter 309.

(2) Every application for a licence under section 4(1) shall be accompanied by a statutory declaration, declared by the applicant, his or her solicitor, or his or her duly authorised agent, verifying the amount of the consideration; and the amount so verified shall be certified in the licence and shall be a condition thereof with respect to which the provisions of sections 4(5), 5 and 17 (which concern forfeiture for breach of a condition, its effect, and the procedure for establishing it) shall apply.

19. Repealed.

20. Declaratory Orders

(1) The Minister may make Orders specifying persons (being persons who are citizens of or who belong to any of the Commonwealth Caribbean territories other than Grenada) and declaring them not to be aliens for the purposes of this Act.

(2) Notwithstanding the provisions of this Act, the Minister, acting on the approval of Cabinet, may wholly or partly exempt a person from the provisions of the Act.

21. Securities exempted from application of the Act

This Act shall not apply to securities issued and or traded on an exchange licensed under the Securities Act, Chapter 299A.