

CHAPTER 293

THE NON-CITIZENS LAND HOLDING REGULATION ACT

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NON-CITIZENS LAND HOLDING REGULATION

(5th September, 1968.)

PRELIMINARY

Short Title and Interpretation

1711968.

29/1969.

511971.

811977.

13/1978.

SRO 4611981.

S.I. 23/1982.

1. This Act may be cited as the Non-citizens Land **Short title.**
Holding Regulation Act.

2. In this Act, unless the context otherwise requires — **Interpretation.**

"citizen" means a person who is a citizen of Antigua and Barbuda under and by virtue of the provisions of Part VIII of the Constitution or of any other law relating to citizenship of Antigua and Barbuda;

"Commissioner" means the officer for the time being performing the duties of Commissioner of Inland Revenue under the Inland Revenue Administration Act and includes any officer duly authorised to act on his behalf; **Cap. 217.**

"debenture" includes every mortgage or charge by a company whether floating or otherwise on any of the company's property or on its undertaking or on its uncalled capital and also every obligation by the company (not being a bill of exchange or promissory note) for the payment of a debt or the repayment of money lent or to be lent;

"member of a company" includes any person entitled under the memorandum or articles or any resolution of the company to participate in its assets or in its divisible profits but a servant or agent of the company shall not be deemed to be a member by reason only that the amounts of his emoluments depends wholly or partially on the amount of the company's profits;

“mortgage” includes every instrument creating a mortgage or charge on land except a debenture;

“non-citizen” means a person who is not a citizen and includes—

(a) Any company incorporated in Antigua and Barbuda which is under the control of non-citizens in accordance with the provisions of section 6 of this Act; and

(b) any company incorporated outside of Antigua and Barbuda;

“share” includes stock and in the case of a company not having a share capital the interest of a member in the assets of the company;

“unlicensed” means not holding a licence granted under this Act.

PART I

Holding of Land by Unlicensed Non-citizens

Forfeiture of
land and
mortgages held
by unlicensed
non-citizen.

3. Subject to the provisions of this Act, neither land in Antigua and Barbuda nor a mortgage on land in Antigua and Barbuda shall, after the commencement of this Act, be held by an unlicensed non-citizen, and any land or mortgage so held shall be forfeited to Her Majesty:

Provided that—

(a) Land may be acquired and held by an unlicensed non-citizen under a lease for a term not exceeding five years or for any less interest for the purposes of his residence, trade, or business but an unlicensed non-citizen shall not so hold more than five acres of land in all.

(b) Land acquired by an unlicensed non-citizen under a will or on 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 Cabinet may decide to be reasonable, the land is sold or the non-citizen obtains a licence to hold the land.

(c) A mortgage acquired by an unlicensed non-citizen under a will or on an intestacy shall not be forfeited; but the non-citizen shall not unless he 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 judgment creditor in the land of his judgment debtor, but the debtor's land shall not be acquired by an unlicensed non-citizen.

(e) Nothing in this Act shall affect the estate or interest of a non-citizen in any land or mortgage held by him at the commencement of this Act.

4. (1) The Governor-General may, if he thinks fit, grant to any non-citizen a licence to hold land as owner or tenant or mortgagee for any estate or interest either subject to any conditions or not:

Licences for non-citizen to hold land or mortgages.

Provided that a licence shall be operative only as to the land described and as to the estate or interest specified therein, and shall be of no force or effect until registered in the Record Office of Antigua and Barbuda.

(2) On breach of any condition in a licence to hold land as owner or tenant or mortgagee, the estate and interest of the non-citizen in the land or mortgage held under the authority thereof shall be forfeited to Her Majesty.

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

Effect of forfeiture.

(2) A judgment declaring a forfeiture of land shall operate to vest in Her Majesty all the estate and interest of the non-citizen in the forfeited land.

(3) A judgment declaring a forfeiture of a mortgage shall operate to vest in Her Majesty all the estate and interest of the non-citizen in the mortgaged land subject to any right of redemption subsisting therein, and also to vest in Her Majesty the right to recover and receive and to enforce all securities for the mortgage money.

PART II

Restrictions on Companies Under Control of Non-citizens

Companies under
control of
non-citizens.

6. For the purposes of this Act a company shall be deemed to be under the control of non-citizens—

(a) if any of its directors is an unlicensed non-citizen;

(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 non-citizens; or

(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 non-citizens; or

(d) in the case of a company not having a share capital, if more than one-third in number of its members are unlicensed non-citizens; or

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

(f) if more than one-third of the nominal value of the outstanding debentures of the company are held by unlicensed non-citizens; or

(g) if the annual interest on the debentures of the company for the time being held by unlicensed non-citizens exceeds one-third of the annual interest on all the debentures of the company for the time being outstanding.

Power for a
company to
restrict the
holding by non-
citizens of its
shares and
debentures.

7. 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 Antigua and Barbuda holding or intending to acquire more than five acres of land in Antigua and Barbuda may—

(a) restrict or prohibit the issue or transfer of its shares or debentures to non-citizens;

(b) restrict or prohibit the holding by non-citizens of share warrants and of debentures transferable by delivery;

(c) refuse to register a non-citizen as a member or as the holder of a debenture;

(6) require such evidences as it may think fit as to whether any person desiring to be registered as a member or as the holder of a debenture is a non-citizen or not, and as to whether 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 is a non-citizen or not.

8. (1) The Governor-General may, if he thinks fit, grant licences, either subject to conditions or not, for all or any of the following matters, that is to say—

Licences for non-citizens to hold directorships, shares or debentures.

(a) For a non-citizen to be a director of a company.

(b) For a non-citizen to vote at meetings of a company.

(c) For a non-citizen to hold shares or debentures, and

(d) for a non-citizen 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 voters, 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 Her Majesty.

9. (1) A judgment declaring that a share or debenture has become forfeited under this Act shall operate to vest in the Governor-General 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.

Effect of forfeiture of shares.

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(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 Antigua and Barbuda as the Governor-General may direct.

Transmission of
licence to
company.

10. Where a licence has been granted to a company under this Act the Governor-General shall cause a copy of that licence to be sent to the company concerned at its registered office.

Registration of
licence by
company.

11. (1) A company shall cause a copy of every licence received by it pursuant to this Act 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 not exceeding one 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 liable on summary conviction to a like penalty.

Restriction on
the issue of share
warrants or
debentures to
bearer by licensed
non-citizens.

12. (1) A company shall not without the consent of the Governor-General issue a share warrant or debenture transferable by delivery in respect of any share or debenture held by a non-citizen 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 liable on summary conviction to a fine not exceeding two thousand dollars in respect of each share specified in the warrant and in respect of each debenture, and every director, manager, and officer of a company who knowingly and wilfully authorises or permits such issue shall be liable on summary conviction to a like penalty.

Transfer of
shares or
debentures held
under licence.

13. (1) A transfer without the consent of the Governor-General of a share or debenture held by a non-citizen 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 Governor-General shall not refuse his consent to such a transfer except on the ground that the share or debenture specified in the transfer has become forfeited under this Act.

PART III

Restriction on Trusts in Favour of Non-citizens

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

Restriction on trusts in favour of non-citizens.

(2) With a view to preventing evasion of the foregoing provisions of this Act, no person shall without the licence of the Governor-General hold any property to which this section applies in trust for a non-citizen and any such property so held shall be forfeited to Her Majesty.

(3) Any person who intentionally contravenes the provisions of this section shall be guilty of a misdemeanour punishable summarily by a Magistrate or on indictment, but the punishment on summary conviction shall not exceed a fine of five hundred dollars.

(4) Nothing in this Act shall apply to a trust in favour of a non-citizen 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 a non-citizen; 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 revested in the mortgagor or his 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 interest therein is extinguished;

(d) the duties of a trustee in bankruptcy to the bankrupt or his creditors; or

(e) the duties of a trustee for the purpose of any composition or scheme of arrangement for the payment of debts to the debtor or his creditors.

Licences to hold
property in trust
for non-citizens.

15. 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 a non-citizen in like manner as it applies to land, mortgages, shares or debentures intended to be held or held by a non-citizen.

PART IV

Procedure and Evidence

Procedure.

16. For the purposes of establishing a forfeiture under this Act the Attorney-General may, in accordance with the procedure provided by the Crown Proceedings Act, apply to the High Court for a declaration that any right title or interest sought to be affected is forfeited to the Crown.

Cap. 121.

Discovery.

17. (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 that such defendant is a non-citizen or that **any** other person is a non-citizen, or to discover any land, mortgage, share or debenture held by him or in trust for him 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; but in the prosecution of a defendant under this Act, the fact that he has disclosed any matter in

answer to any 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.

PART v

stamp Duty

18. (1) A licence granted under this Act shall be sub- Stamp Duty.
ject to stamp duty to be determined as follows—

(a) where the licence is granted to hold land in fee simple and the consideration on sale to the licensee is money or money's worth, the duty shall be at the rate of five per centum of the consideration;

(b) where the licence is granted to enable the licensee to hold a mortgage on land the duty payable thereon shall be one hundred dollars;

(c) for any other licence, the duty shall be four hundred dollars.

(2) The stamp duty imposed by this section shall be paid by the licensee in accordance with the provisions of the Stamp Act and shall be in addition to any other duty payable Cap. 410.
under any provisions of the Schedule to that Act.

(3) Where the stamp duty is determined in accordance with paragraph (a) of subsection (1) of this section, the amount or value of the consideration and the area of land shall be stated on the licence, and the licence shall not be registered in the Record Office of Antigua and Barbuda until the Registrar is satisfied that the correct stamp duty has been paid.

(4) Any person who gives or joins in giving a false valuation of property for the purpose of securing a licence under this section shall be guilty of an offence and shall be liable on summary conviction to a fine of three thousand dollars or to imprisonment for a term not exceeding six months.

PART VI

Land Value Appreciation Tax

Land value appreciation tax.

19. (1) Where any land situate in Antigua and Barbuda and held by a non-citizen, whether—

- (a) pursuant to a licence issued under section 4; or
- (b) without a licence,

is disposed of by him whether by sale, gift, exchange or otherwise he shall be liable to pay the Commissioner a land value appreciation tax equal to five percent of the difference between the value of the land at the time he became the owner thereof, together with any subsequent expenditure of a capital nature thereon and the value of the land at the time of disposal.

(2) Subject to section 22(2) no conveyance or transfer of land from a non-citizen shall be stamped by the Commissioner under the Stamp Act unless he is satisfied that any tax payable under subsection (1) has been paid.

(3) This section shall not apply to the devolution or transmission of land by operation of law nor to any assent to or conveyance by the personal representatives of a deceased person.

Powers of Commissioner to require information or make valuation.

20. Where a disposal of land is about to be made by a non-citizen, for the purpose of ascertaining the liability, if any, of such person to the tax imposed by section 19(1), the Commissioner may—

(a) require the vendor, or any agent acting on his behalf, to submit for examination any documents or information which in the opinion of the Commissioner are relevant to the determination of such liability;

(b) make *an* independent valuation of the property being disposed of as to its value at the time of acquisition or disposal or as to the value of capital expenditure thereon after acquisition.

Tax to be a charge against property.

21. (1) Notwithstanding that a transfer of land has been made by any person without disclosure to the Commissioner that the disposal was made by a non-citizen, the

tax payable under section 19(1) shall remain a charge on the land which is the subject matter of the disposal for a period of five years after the date of transfer.

(2) The charge created by subsection (1) shall take priority over any other charge or debt due by specialty or otherwise except debts and taxes due to the Crown in respect of such property.

(3) Upon payment of a fee of five dollars the Commissioner may be requested to endorse upon any conveyance or transfer—

(a) in the case of a disposal by a non-citizen, that the tax payable under section 19(1) has been paid or that no tax is payable;

(b) in the case of a disposal by a citizen, that he is satisfied that, by reason of the status as a citizen of the transferer no liability to tax arises under this Act.

(4) The charge created by subsection (1) shall not apply in respect of any transfer which bears an endorsement under subsection (3).

22. (1) Where any person is dissatisfied with a determination by the Commissioner—

Right of appeal from Commissioner's determination.

(a) as to any liability to the land value appreciation tax; or

(b) as to the amount of such liability,

he may, within thirty days after service of notice of such liability, appeal against such determination to the High Court.

(2) Where an appeal is made under subsection (1), the tax shall remain in abeyance pending decision by the High Court, except where the vendor wishes to proceed to completion of the conveyance or transfer prior to such decision in which case the full amount of the tax shall be paid or security given to the satisfaction of the Commissioner before the conveyance or transfer is stamped.

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PART VII

Exemption and Transitional

Powers of
Governor-
General.

23. The Governor-General may by Order exempt any non-citizen or class of non-citizens from all or any of the provisions of this Act subject to such conditions as may be specified in the Order.

Transitional.
Cap. 105.
1962 Revision.

24. (1) Every licence issued to a licensed alien under the Aliens Land Holding Regulation Act shall be deemed to be a licence issued to a non-citizen for the purposes of this Act.

S.R.O. 1511961.
S.R.O. 1411976.

(2) The West Indies Oil Company (Aliens Exemption) Order and the Aliens Land Holding Exemption Order 1976 (made in respect of Commonwealth Holiday Inns of Canada Limited) shall be deemed to have been made under section 23.

(3) Notwithstanding anything in this Act, a person who, on 31st October, 1981, was regarded as belonging to Antigua under and by virtue of this Act, and who is a non-citizen on the 1st November, 1981, shall, for the purposes of this Act, and only for those purposes, be deemed to be a citizen—

(a) for a period of eighteen months beginning with the 1st November, 1981; or

(b) if before the expiration of that period he applies to be registered as a citizen, until he is so registered, or his application is finally refused.
