

COMMONWEALTH OF DOMINICA

ARRANGEMENT OF REGULATION

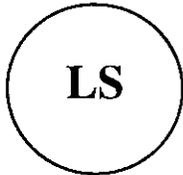
REGULATION

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COMMONWEALTH OF DOMINICA

ACT No. 17 of 1995

I assent

C.A. SORHAINDO
President

15th May , 1995.

AN ACT TO REGULATE THE HOLDING OF LAND BY
ALIENS AND FOR CONNECTED PURPOSES.

(Gazetted 25th May, 1995.)

BE IT ENACTED by the Parliament of the Commonwealth of
Dominica as follows:

1. This Act may be cited as the –
ALIENS LAND HOLDING REGULATION ACT 1995.

Short title.

2. (1) In this Act –

Interpretation.

“alien” means –

- (a) an individual who is not a citizen of one of the Member States and in the case of Montserrat an individual who does not have the status of “Belonger” under the law in force in Montserrat regulating immigration;
- (b) any firm, partnership or unincorporated body of persons of which at least one-half of its membership consists of persons to whom this paragraph or paragraph (a) or (c) applies; or
- (c) any company or corporation that is not incorporated in one of the Member States, or, if so incorporated, is under the control of a person to whom paragraph (a) or (b) applies or is deemed to be under the control of an alien in accordance with subsection (2);

“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;

“land” means immovable property in the State (both corporeal and incorporeal) and includes every interest therein;

“member of a company” includes any person entitled under the memorandum of association or articles of association 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 of a company by reason only that the amount of his emoluments depends wholly or partially on the amount of the company’s profits;

“Minister” means the Minister to whom responsibility for Agriculture is assigned except as otherwise provided in this Act;

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

“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;

“The Member States” has the meaning assigned to it by Article 2 of the Treaty;

“Treaty” means the Treaty signed on the 18th day of June, 1981 at Basseterre for the establishment of the Organisation of Eastern Caribbean States;

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

(2) For the purposes of this Act, an incorporated or unincorporated body of persons shall be deemed to be under the control of aliens if –

- (a) at least one-half of the votes exercisable at any meeting of the members of a company or unincorporated body of persons are vested in aliens;
- (b) having a share capital, at least one-half of the nominal amount of its issued shares that are voting shares are vested in aliens; or
- (c) it is in fact controlled by aliens.

3. (1) Subject to the provisions of this Act land in Dominica may not be held by an unlicensed alien. Necessity for licence.

(2) Any land held contrary to subsection (1) shall be forfeited to the State.

4. (1) Subject to subsection (2), an alien may acquire and hold not more than one acre of land for residential purposes without obtaining a licence under this Act. Land for residence only.

(2) On acquiring land under subsection (1) of section 5 the alien shall pay a fee equivalent to ten per cent of the market value of the land to the Accountant General.

(3) The Minister may by Order to be published in the Gazette prescribe areas in Dominica in which an alien may not acquire land without obtaining a licence under this Act.

(4) The Minister shall cause a copy of any Order made under subsection (2) to be delivered to the Registrar, Registrar General and Provost Marshall who shall maintain a register of such Orders.

Land for trade or
business.

5. Subject to section 4(3), an alien may acquire and hold no more than three acres of land for the purposes of trade or business without obtaining a licence under this Act.

Exemptions.

6. Notwithstanding any other provision of this Act –

- (a) an alien may acquire and hold not more than two acres of land on an annual tenancy or for a less period of time for the purposes of his residence, trade or business;
- (b) an alien may acquire land under a will or as an executor under a will or on an intestacy and the land shall not be forfeited if within one year from the date of the death of the testator or intestate or within such extended time as the Minister may grant, the land is sold or the alien applies for and obtains a licence to hold the land; or
- (c) an alien may acquire land in pursuance of his rights to foreclose or enter into possession as a mortgagee and the land shall not be forfeited if within one year from the acquisition or entry into possession of such land or within such extended time as the Minister may grant, the land is sold or the alien applies for and obtains a licence to hold the land.

Body of persons
becoming an alien.

7. (1) Where by reasons of a sale or other disposition of the shares or other interest of a body corporate or unincorporate such a body becomes an alien, that body shall within three months of the sale or other disposition apply for and obtain a licence to hold the land in accordance with this Act.

(2) Section 3(2) shall apply where a body corporate or unincorporate fails to comply with subsection (1).

8. (1) Subject to sections 4(1), 5 and 6 any agreement to hold land shall not vest any interest in the land in the purchaser, where the purchaser is an alien, unless a licence to hold the land is first obtained. ^{Agreement to hold land.}

(2) An application for a licence to hold land must contain –

- (a) particulars as to the ownership, location and consideration proposed for the acquisition of the land therein;
- (b) the purpose for which the land is to be utilised;
- (c) a plan by a licensed surveyor delineating the land;
- (d) a receipt for the payment of the relevant application fee; and
- (e) any other information required by the Minister.

(3) Where the land is to be used for any building estate or development project except agriculture the applicant shall submit, with the application, evidence that the Planning Division has confirmed that the use intended for the land is not inconsistent with environmental, zoning and planning considerations.

(4) The Minister may refuse to grant a licence or may issue a licence subject to such terms and conditions as he may consider necessary.

(5) On the breach of any term or condition in a licence to hold land, the land of the alien held under the licence shall be forfeited.

9. Notwithstanding anything contained in any law relating to companies, or in the memorandum of association or articles of association of a company, or in any debenture, or in any instrument for securing any issue of debentures, a company incorporated in Dominica holding or intended to acquire any land may – ^{Power of Company to restrict holding by aliens of shares and debentures.}

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

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- (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; or
 - (d) require any evidence 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.

Registration of
licences.

10. (1) A company shall record a copy of every licence issued in respect of land owned by it in the company's register of members or register of aliens.

(2) A licence issued in respect of land shall be endorsed by the Registrar, Registrar General and Provost Marshall on every deed or document of title relating to the land.

(3) A licence issued in respect of land shall be of no force or effect until registered in the record office.

(4) A company which fails to comply with this section commits an offence and is liable on summary conviction to a fine of one hundred dollars for every day during which the default continues, and every director, manager and officer who knowingly authorises or permits the default commits an offence and is liable on summary conviction to a similar fine.

Restrictions on trust
in favour of aliens.

11. (1) No person shall, without a licence from the Minister, hold land in Dominica on trust for an alien which causes evasion of any provision of this Act.

(2) No person shall hold shares in any company incorporated in a Member State which holds land in the State in trust for an alien and which causes an evasion of any provision of this Act.

(3) Any land or shares held in contravention of subsection (1) or (2) shall be forfeited to the State.

(4) In this section the expression “trust” includes any arrangement whether written or oral, expressed 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 revested in the mortgagor or the mortgagee’s interest is extinguished;
- (c) subject to section 8(1), the duties of a vendor to a purchaser pending payment of the purchase money, if within three months after the payment the property sold is vested in the purchaser or the vendor’s 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 creditors.

(5) Any person who intentionally contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars and to imprisonment for a term not exceeding six months.

12. The provisions of this Act in respect of licences and the effect of any condition in a licence apply to land intended to be held in trust for an alien.

Licences to hold property in trust for aliens.

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

Procedure.

Ch. 7:80.

(2) Any dealing in any land subsequent to the date of any application for a declaration of forfeiture thereof shall be null and void.

Discovery.

14. (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 he or any other person is an alien or to discover any land, or share held by him or in trust for him or as to any relevant matter or document.

(2) It is not a valid ground to refuse to answer any interrogatory or to disclose or produce any document that the answer or document might or would expose any person to the risk of a prosecution under this Act.

(3) In the prosecution of a defendant under this Act, the fact that he 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.

Ministerial power
of exemption.

15. (1) The Minister may by Order published in the *Gazette* exempt any alien from the provisions of this Act where –

(a) the alien is party to an agreement or plan entered into with the Government of the State for financing the development of housing, industry, tourism, forestry, fisheries or agriculture;

(b) the alien in conjunction with the Government or alone embarks on an undertaking which has been declared an approved enterprise under the provisions of the Fiscal Incentives Act; or

(c) it is in the public interest to do so.

Ch. 84:51.

(2) An Order issued under this Act may be issued subject to any condition the Minister considers necessary and may relate to

a particular alien or to aliens in general or to a particular interest in land or land in general.

16. A licence granted under this Act is subject to the payment of an application fee of one hundred and fifty dollars and takes effect when –

- (a) any stamp duty or other duties required under the Stamp Act; and
- (b) a licence fee equivalent to ten per cent of the market value of the subject of the licence,

Stamp duty.

Ch. 68:01.

are paid.

17. (1) All the facts and circumstances affecting the liability of any instrument to duty under this Act, or the amount of duty with which any instrument is chargeable, are to be fully and truly declared in the instrument.

Facts and circumstances affecting fees or duty to be set forth in instruments.

(2) Any person who with intent to defraud the State –

- (a) executes any instrument in which all relevant facts and circumstances are not fully and truly declared; or
- (b) being employed or concerned in or about the preparation of any instrument, neglects or omits to fully and truly declare therein all relevant facts and circumstances,

commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars and to imprisonment for a term not exceeding one year.

18. Any person who contravenes the provisions of this Act for which a penalty has not already been provided commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars and in the case of a continuing offence to a fine of two hundred and fifty dollars for each day during which the offence continues.

Offences.

Prohibition of
publication.

19. (1) No person shall, without written consent given by or on behalf of the Minister publish or disclose to any person otherwise than is necessary in the course of his duties, the contents of any document, communication or information whatsoever, which relates to, and has come to his knowledge in the course of his duties under this Act.

(2) Any person who knowingly contravenes the provisions of subsection (1) commits an offence and is liable upon summary conviction to a fine not exceeding ten thousand dollars and imprisonment for a term not exceeding two years.

Regulations.

20. The Minister may make Regulations for all matters concerning the administration of this Act.

Savings.
Act No. 9 of 1988.
Act No. 4 of 1992.

21. All subsidiary legislation made under the Aliens Land Holding Regulation Act, 1988 and the Aliens Land Holding Regulations Act, 1992 and all licences granted under the said repealed Acts and in force immediately prior to the coming into operation of this Act shall, so far as it is not inconsistent with the provisions of this Act, continue in force.

Repeal of Act No. 4
of 1992.

22. The Aliens Land Holding Regulation Act, 1992 is hereby repealed.

Passed in the House of Assembly this 12th day of April,
1995.

ALEX F. PHILLIP (MRS.)
Acting Clerk of the House of Assembly

DOMINICA

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