

CONSOLIDATED TO 30 JUNE 2014

LAWS OF SEYCHELLES

CHAPTER 95

IMMOVABLE PROPERTY (TRANSFER RESTRICTION) ACT

[24th April, 1963]

Act 5 of 1963
Act 13 of 1965
Act 4 of 1973
S.I.72 of 1973
S.I.95 of 1975
S.I.23 of 1976
S.I.72 of 1976
Act 23 of 1976
Dec.13 of 1977
Dec.16 of 1978
Act 10 of 1983
Act 8 of 1994

ARRANGEMENT OF SECTIONS

Short title

1. This Act may be cited as the Immovable Property (Transfer Restriction) Act.

Interpretation

2. In this Act, unless the context otherwise requires

"charge" includes any hypothecation, mortgage or charge, floating charge, or general floating charge, affecting any assets of a company except rents, rent charges and annuities granted or reserved out of land;

"company" includes a company formed and registered under the Companies Act, a holding company, an associated company and a subsidiary company;

"debentures" has the same meaning as in section 2 of the Companies Act, and includes debenture stock and bearer debentures;

"director" includes any person occupying the position of director by whatever name called and any person in accordance with whose directions or instructions the directors of a company are accustomed to act;

"financial institution" means a financial institution in terms of the Financial Institutions Act which is licensed to carry on banking business in terms of that Act, the Development Bank of Seychelles established under the Development Bank of Seychelles Decree, the Seychelles Savings Bank established* under the Savings Bank Act, the Seychelles Credit Union established under the Co-operatives Act, the Mortgage Finance Company Limited or any body or person which the Minister may, by notice in the Gazette, specify;

"issued share capital" includes equity capital, non participating preference shares, preference shares which do not entitle the holder to any restricted voting rights and bearer shares;

"land" includes any interest in land or immovable property including any option on the sale or lease of land, any "promesse de vente" or other right to acquire any interest in land and includes a usufruct;

"lease" includes any agreement whether or not in writing whereby a non Seychellois takes occupation or possession (other than by way of purchase or acquisition of the ownership) of any immovable property of right or interest in such property;

"non Seychellois" means -

(a) an individual who is not a citizen of Seychelles;

(b) a foreign State or the Government of a foreign State;

(c) a body corporate incorporated or established under the laws of a country or jurisdiction other than Seychelles;

(d) a body of persons unincorporated of which any of its members -

(i) is not a citizen of Seychelles; or

(ii) is a State or Government or body or company referred to in paragraph (b), paragraph (c), paragraph (e), paragraph (f), paragraph (g) or paragraph (h);

(e) in relation to a company limited by shares incorporated under the laws of Seychelles, a company of which -

(i) any of its directors is not a citizen of Seychelles, not being a company under the absolute control of the Government;

(ii) any of its shares, not being a share which entitles its holder to a right to participate in any distribution by way of dividends only, is held by or under the control, whether actual or ultimate, of a person or State or Government or body or company referred to in paragraph (a), paragraph (b), paragraph (c), paragraph (d), subparagraph (i) or subparagraph (iii) of this paragraph, paragraph (f), paragraph (g), paragraph (h) or paragraph (i);

(iii) the aggregate amount of the nominal value of the company's debentures, charges or other indebtedness held by a person or State or Government or body or company, other than a financial institution, referred to in paragraph (a) paragraph (b), paragraph (c), paragraph (d), subparagraph (i) or subparagraph (ii) of this paragraph, paragraph (f), paragraph (g), paragraph (h) or paragraph (i) exceeds an amount corresponding to 5% of the issued share capital of the company;

(f) in relation to an unlimited company incorporated under the laws of Seychelles, a company of which -

(i) any of its members is a person or State or Government or body or company referred to in paragraph (a), paragraph (b), paragraph (c), paragraph (d),

paragraph (e), subparagraph (ii) of this paragraph, paragraph (g), paragraph (h) or paragraph (i);

(ii) 5% or more of the aggregate nominal value of the company's debentures, charges or other indebtedness is held by a person or State or Government or body or company, other than a financial institution, referred to in paragraph (a), paragraph (b), paragraph (c), paragraph (d), paragraph (e) of this subparagraph (i) of this paragraph, paragraph (g), paragraph (h) or paragraph (i);

(g) a corporation established under the laws of Seychelles by a specific written law which is not under the absolute control of the Government and any shares of which is ultimate, of a person or State or Government or body or company referred to in paragraph (a), paragraph (b), paragraph (c), paragraph (d), paragraph (e) paragraph (f) paragraph (h) or paragraph (i);

(h) in relation to a trust -

(i) a trust established under the law of a country or jurisdiction other than Seychelles;

(ii) a trust established under the International Trust Act;

(iii) a trust established under the laws of Seychelles; other than the International Trust Act, and any of the beneficiaries of which is a person or State or Government or body or company referred to in paragraph (a), paragraph (b), paragraph (c), paragraph (d), paragraph (e), paragraph (f), paragraph (g), subparagraph (i) of this paragraph or paragraph (i);

(i) an International Business Company incorporated under the International Business Companies Act.

"Overseas Company" means an overseas company registered under the Companies Act;

"purchase" includes exchange or any other acquisition for valuable consideration, and includes a contract to purchase;

"Shareholder" includes a person who is a member of a company, a subscriber of the Memorandum to whom shares have been issued, the heir or other person under his will or on his intestacy and the trustee of a bankruptcy (by whatever title he may be called) of a bankrupt holder, and a person who has on his own behalf any possession of a Bearer Share Certificate, whether by himself or by an agent acting for him;

"shares" includes shares of any class in the capital of a company and stock.

Restrictions on sales and leases of immovable property to non Seychellois

3. (1) *A non-Seychellois may not -

(a) purchase or acquire by any means whatsoever and whether for valuable consideration or not, except by way of succession or under an order of the court in connection with the settlement of matrimonial property in relation to a divorce proceedings any immovable property situated in Seychelles or any right therein; or

(b) lease any such property or rights for any period; or

(c) enter into any agreement which includes an option to purchase or lease any such property or rights,

without having first obtained the sanction of the Minister.

Note: Exercise and performance of powers of the Minister delegated in part to the Chief Development Officer (S.I.18/1973 as amended by S.I.37/1977 and S.I.62/1974 as amended by S.I.36/1977). (Cap.241. Sub Leg.)

(2) For the purposes of subsection (1) it is immaterial whether the purchase takes place as the result of an agreement or of an auction or of a judicial sale or through a person who himself is not prevented from purchasing without sanction, provided that there is an ultimate transfer for valuable consideration to a person who is prevented from purchasing without sanction.

(3) A financial institution which is a non-Seychellois shall not require sanction to purchase property which is burdened by a mortgage in favour of the said financial institution and which is sold by a Judge under the Immovable Property (Judicial Sales) Act.

(4) A court shall not make an order or decision which would have the effect of contravening or circumventing subsection (1).

Matters to be considered and power of Minister to impose conditions

4. (1) In considering applications for sanction under Section 4 the Minister shall have regard to the following matters

(a) the character of the applicant or, if the applicant is a company, the character of every director of the company;

(b) whether the applicant's declared purpose in acquiring the land in question is consistent with the policies of the Government on the use and development of land in Seychelles;

(c) whether the proposed acquisition is in the interest of Seychelles.

(2) The Minister may impose any conditions or restrictions on the grant of sanction under section 3 and such conditions or restrictions shall be incorporated in, and form part of, all deeds and documents relating to the transactions to which the said sanction applies.

(3) Non compliance with any conditions or restrictions imposed by the Minister under subsection (2) shall render the transaction, in respect of which the conditions or restrictions were imposed, unlawful and void and any attorney, estate agent or notary who is party to any such non compliance and any party to any such transaction shall be guilty of an offence and liable to punishment under section 6.

(4) A decision of the Minister under this Act shall be final and shall not be subject to review in any Court.

(5) For the purposes of considering an application for sanction under section 3, the Minister may require an applicant to submit to the Minister within the time specified by the Minister such further document or information for the purpose of ascertaining who has the actual or ultimate control of shares in a body or company.

Transaction unlawful and void for lack of sanction

5. Any transaction effected in contravention of the provisions of sections 3, 4, 7(1) or (2) or 12 shall be unlawful and void, and in the case of a sale, any immovable property or rights therein purporting to have been transferred under such sale shall be forfeited to the Republic.

Penalties

6. Any person who is knowingly a party to a transaction which is unlawful by virtue of the provisions of sections 3, 4, 7(1) or (2) or 12 or any attorney, estate agent or notary who is a party to any such unlawful transaction, shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding two years or to a fine not exceeding fifty thousand rupees or to both such imprisonment and fine.

Declaration in respect of transaction to which this Act applies

7. (1) For the purpose of ensuring compliance with this Act there shall be contained in every document evidencing a purchase or acquisition of immovable property or rights therein, a lease of immovable property or rights therein, an agreement which includes an option to purchase or lease immovable property or rights therein or a purchase or acquisition by any means whatsoever in terms of section 12 of shares in a company -

(a) where the purchaser, the acquirer, the lessee or the person who has acquired or agreed to take an option to purchase or lease immovable property or rights therein under an agreement is not a non-Seychellois, a declaration to this effect;

(b) where the purchaser, the acquirer, the lessee or the person who has acquired or agreed to take an option to purchase or lease immovable property under an agreement is a non-Seychellois and has obtained sanction for the purchase, acquisition or lease, or the acquisition or taking of the option to purchase or lease, the immovable property or rights therein or the shares referred to in the document, a declaration to this effect together with any conditions or restrictions subject to which the sanction was granted;

(c) where the purchaser or acquirer who is purchasing or acquiring shares in a company which does not own immovable property or rights therein is a non-Seychellois, a declaration that the purchaser or acquirer is a non-Seychellois and the company in which shares are being purchased or acquired does not own immovable property;

(d) where the purchaser or acquirer who is purchasing or acquiring shares is a non-Seychellois and the shares are those of a company of a class or category exempted by the Minister pursuant to a notice made under section 12(2), a declaration to this effect.

(2) A declaration referred to in subsection (1) shall be made and signed -

(a) in the case of a sale, transfer or lease of, or an agreement which includes an option to purchase or lease, immovable property or rights therein, by the legal practitioner, notary or other person drawing up the sale, transfer, lease or agreement.

(b) in any other case, by the purchaser or acquirer.

(3) A person who is required under subsection (2) to make and sign a declaration and who knowingly makes or signs a false or misleading declaration is guilty of an offence and liable to imprisonment for two years and a fine of fifty thousand rupees.

(4) A person who is knowingly a party to a transaction referred to in subsection (1) where another party to the transaction has made or signed a false or misleading declaration referred to in subsection (1) is guilty of an offence and liable to imprisonment for two years and a fine of fifty thousand rupees.

(5) The Minister may, where the Minister has reasonable ground to suspect that a declaration made under this section is false or misleading in any material particular or that sanction is required for a transaction covered by this Act and the sanction in accordance with this Act has not been obtained, require the person who made the false or misleading declaration or should have obtained sanction to submit to the Minister within the time specified by the Minister such document or information for the purposes of ascertaining whether this Act has been complied with.

(6) A person who fails to comply with a request made by the Minister under subsection (5) is guilty of an offence and liable to imprisonment for two years and a fine of fifty thousand rupees.

Power of the Minister to give retrospective validity to unlawful and void transactions

8. (1) The Minister may, in his entire discretion and subject to any conditions which it may deem fit to impose, on good grounds shown, give retrospective validity to a transaction which would otherwise be unlawful and void in accordance with the provisions of section 4. Such transaction shall then have full force and effect and shall be deemed to have been valid ab initio.

(2) The same power may be exercised with respect to transactions which are void under the Immovable Property (Transfer Restriction) Ordinance, now repealed, or under other enactments in pari materia which were in force at any time after August 1939 and which have since been repealed or have lapsed.

(3) In cases where the Minister has validated a transaction under the powers conferred by section 5 of the Immovable Property (Transfer Restriction) Ordinance, now repealed, such transaction shall have effect as if it had been validated under the powers conferred by this section.

Documentary evidence of sanction or validation

9. (1) A document purporting to be signed by the Minister or the Chief Executive Officer of the Ministry or department for the time being responsible for the administration of this Act and stating either that the person named in the document has been granted sanction under this Act or that a transaction has been validated under section 8 shall, unless the contrary is shown, be prima facie evidence of the facts stated in the document.

(2) A document issued under subsection (2) of section 3 or under subsection (3) of section 5 of the Immovable Property (Transfer Restriction) Ordinance, now repealed, shall have effect as if it were a document issued under this section.

Power to make regulations

10. The Minister may make regulations to carry out the objects of this Act, and without prejudice to the generality of the foregoing power, such regulations may provide

(a) the form in which applications under this Act should be made;

- (b) the fees to be paid on applications made under this Act to hold residential property;
- (c) the fees to be paid on applications made under this Act to hold property other than for residential purposes;
- (d) for the payment of proportional duty calculated according to the price or consideration expressed or stipulated, or the value declared, or on any other basis that may be considered suitable;
- (e) for the imposition of penalties or forfeitures for breach of, or for any contraventions of, any regulations made under the provisions of this Act.

Rights of the Republic

11. Nothing in this Act shall prejudicially affect any lands, estate, right, power, privilege, or exemption of the Republic.

Restriction on the issue and transfer of shares in companies owning immovable property or rights therein

12. (1) Notwithstanding anything in the Civil Code of Seychelles or the Companies Act contained, a non Seychellois may not purchase or acquire by any means whatsoever shares in a company owning immovable property or rights therein by way of transfer, allotment, rights issued or otherwise without having first obtained the sanction of the Minister.

(2) The Minister may, by notice published in the Gazette, exempt the purchase or acquisition by a non-Seychellois of shares of a class or category of companies owning immovable property or rights therein in Seychelles from the application of subsection (1).

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