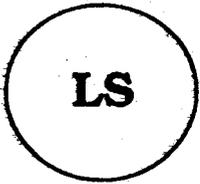


COMMONWEALTH OF DOMINICA

ACT No. 4 OF 1992



I assent

C. A. SEIGNORET
President

26th March, 1992.

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

(Gazetted 2nd April, 1992.)

BE IT ENACTED by the Parliament of the Commonwealth of
Dominica as follows –**PART I****PRELIMINARY**

1. This Act may be cited as the – Short title
ALIENS LAND HOLDING REGULATION ACT, 1992.
2. In this Act – Interpretation.

"alien" means a person who is not a citizen of the Commonwealth of Dominica, and also includes an "alien company";

"alien company" means a company incorporated inside or outside the Commonwealth of Dominica of which –

- (i) at least one-third of its membership are aliens;
- (ii) at least one-third of the votes exercisable at any meeting of the company are vested in one or more aliens;
- (iii) at least one-third of the nominal amount of its issued shares are held by one or more aliens; or
- (iv) not having a share capital, at least one-third in number of its members are aliens;

"debenture" means a charge by a company whether floating or otherwise on any of the company's property except land, 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;

"interest in land" includes debentures over land and mortgages;

"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 amount of his emoluments depends wholly or partially on the amount of the company's profits;

"person" includes both a natural person and a legal person;

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

"unlicensed alien" means an alien who does not hold a licence granted under this Act.

PART II
HOLDING BY UNLICENSED ALIENS

3. (1) Subject to the provisions of this Act, neither land nor an interest in land in the State shall be held by an unlicensed alien.

Forfeiture of land or interest in land held by an unlicensed alien.

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

(3) Notwithstanding subsection (1) –

(a) an alien may acquire and hold not more than one acre of land on an annual tenancy or for a less period of time for the purpose of residence, trade or business;

(b) an alien may acquire land or an interest in land under a will or an intestacy and the land shall not be forfeited if within one year from the death of the testator or intestate or within any extended time as the Minister decides, the land is sold or the alien applies for and obtains a licence to hold the land;

(c) an alien may acquire a mortgage under a will or on an intestacy but he shall not be entitled to foreclose or enter into possession of the mortgaged land unless he applies for and obtains a licence to hold the mortgaged land;

(d) an alien may acquire the land of a judgement debtor on applying for and obtaining a licence to hold the land; and

(e) this Act shall not affect the estate or interest of any alien in any land, interest in land or mortgage held by the alien at the commencement of this Act.

(4) Any alien applying for a licence under this Act must supply all documentation required by the Minister in support of the application.

4. (1) Where by reason of a sale or other disposition of the shares or other interest of a company it becomes an alien company, if that company would have required a licence to hold the land or

Effect of a company which holds land becoming an alien company.

other interest in land under its control if at the time of acquisition it was an alien company, the company shall within three months from the sale or other disposition apply for and obtain a licence to hold the land or interest in land in accordance with this Act.

(2) Section 3 subsection (2) shall apply if a company fails to comply with subsection (1).

Agreements to hold
land or interest in
land.

5. (1) Subject to section 3(3) any agreement to hold land or an interest in land shall not vest any interest in the land in the purchaser unless a licence to hold the land or interest is obtained.

(2) An application for a licence to hold land or an interest in land must contain –

- (a) particulars as to the ownership, location and consideration proposed for the acquisition of land or interest 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 considers necessary.

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

Effect of forfeiture.

6. Land or any interest in land forfeited under this Act shall not vest in the State unless a judgement is obtained declaring the

forfeiture, but on the judgement being obtained the State's title shall relate back and commence at the time when the forfeiture took place.

PART III

SPECIFIC PROVISIONS IN RESPECT OF ALIEN COMPANIES

7. Notwithstanding anything contained in any law relating to companies, or in the memorandum 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 intending to acquire any land or interest therein 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;
- (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.

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

Registration of licences.

(2) A licence issued in respect of land or any interest in land shall be endorsed on every deed or title relating to the land.

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

(4) A company which fails to comply with this section is liable on summary conviction to a fine of 100 dollars for every day during which the default continues, and every director, manager

and officer who knowingly authorises or permits the default is liable on summary conviction to a similar fine.

PART IV

RESTRICTIONS ON TRUST IN FAVOUR OF ALIENS

Restriction on trust
in favour of aliens.

9. (1) This section applies to land and any interest in land situate in the State and shares of any company incorporated in the State.

(2) No person shall, without a licence from the Minister, hold any property to which this section applies on trust for an alien which causes evasion of any provision of this Act.

(3) Any property held in contravention of subsection (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 re-vested in the mortgagor or the mortgagee's interest is extinguished;
- (c) subject to section 5(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 is liable on summary conviction to a fine of 1,000 dollars and six months imprisonment.

(6) This Act does not apply to any trust subsisting on its commencement date.

10. The provisions of this Act in respect of licences and the effect of any condition in a licence applies to land or any interest in land intended to be held in trust for an alien. Licences to hold property in trust for aliens.

PART V

EXEMPTIONS IN RESPECT OF ALIENS

11. (1) The Minister may by Order exempt any alien from the provisions of this Act – Exemptions from the provisions of this Act.

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

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

Act No. 42 of 1973.

(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.

PART VI

PROCEDURE AND EVIDENCE

12. (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 Procedure. Cap. 5.

a declaration that any right, title or interest sought to be affected is forfeited to the State.

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

Discovery.

13. (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 alienage or the alienage of any other person or company or to discover any document relating to land or an interest in land held by him or any alien company or in trust for him or any alien company 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.

PART VII

SUPPLEMENTAL

Stamp duty.

14. (1) A licence granted under this Act is subject to the payment of an application fee of 150 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 percent of the market value of the subject of the licence,

Cap. 277.

are paid.

(2) Subsection (1) does not apply to the spouse of a citizen of the State or to a citizen of any Member State of the O.E.C.S. that

enters into a reciprocal arrangement or treaty with the Commonwealth of Dominica, exempting Dominicans from payment of any similar fees on the acquisition of property in that State.

15. The Minister may by Order exempt any alien from the provisions of section 14(1).

Ministerial power of exemption.

16. (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,

is liable on summary conviction to a fine of 5,000 dollars and one year imprisonment.

17. All subsidiary legislation made under the Aliens Land Holding Regulation Act, 1988 (repealed by this Act) and all licences granted under the said repealed Act 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.

Savings Act No. 9 of 1988.

18. The Aliens Land Holding Regulation Act, 1988 is hereby repealed.

Repeal of Act No. 9 of 1988.

Passed in the House of Assembly this 26th day of February, 1992.

M. ALBERTHA JNO. BAPTISTE
Clerk of the House of Assembly.

DOMINICA

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