



ST. CHRISTOPHER AND NEVIS

CHAPTER 10.01

ALIENS LAND HOLDING REGULATION ACT and Subsidiary Legislation

Revised Edition

showing the law as at 31 December 2009

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act, Cap. 1.03.

This edition contains a consolidation of the following laws—

ALIENS LAND HOLDING REGULATION ACT

Act 14 of 1922 ... in force 1st February 1923

Amended by: Act 22 of 1964

Act 6 of 1970

Act 6 of 1976

Act 7 of 1976

Act 9 of 1986

Act 13 of 1986

Page

3

ALIENS LAND HOLDING (EXEMPTION) ORDERS – Section 19

S.R.O. 32/2007

S.R.O. 24/2009

11

CHAPTER 10.01
ALIENS LAND HOLDING REGULATION ACT

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

HOLDING OF LAND BY UNLICENSED ALIENS

3. Forfeiture of land and mortgages held by unlicensed aliens
4. Licences for aliens to hold land or mortgages
5. Effect of forfeiture

PART III

RESTRICTIONS ON COMPANIES UNDER ALIEN CONTROL

6. Companies under alien control
7. Power for a company to restrict the holding by aliens of its shares and debentures
8. Licences for aliens to hold directorships, shares or debentures
9. Effect of forfeiture of shares
10. Transmission of licence to company
11. Registration of licence by company
12. Restriction on the issue of share warrants or debentures to bearer to licensed aliens
13. Transfers of shares or debentures held under licence

PART IV

RESTRICTION ON TRUSTS IN FAVOUR OF ALIENS

14. Restriction on trusts in favour of aliens
15. Licences to hold property in trust for aliens

PART V

PROCEDURE AND EVIDENCE

16. Procedure
17. Discovery
18. Stamp Duty
19. Power of Cabinet to exempt Aliens and Alien Companies from provisions of Act

FIRST SCHEDULE: Aliens Land Holding (Exemption) Order

SECOND SCHEDULE: Aliens Land Holding (Exemption) Order

CHAPTER 10.01**ALIENS LAND HOLDING REGULATION ACT**

AN ACT TO MAKE PROVISION FOR ALIENS TO OBTAIN LICENCES IN ORDER TO HOLD LAND OR MORTGAGES ON LAND ETC; AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

PART I**PRELIMINARY****Short title.**

1. This Act may be cited as the Aliens Land Holding Regulation Act.

Interpretation.

2. In this Act—

“alien” includes—

- (a) a person who is not deemed to belong to Saint Christopher and Nevis under the provisions of the Immigration Act, Cap. 6.02;
- (b) a company incorporated in Saint Christopher and Nevis or in any other part of the Commonwealth if it is under alien control as hereinafter explained; and
- (c) every corporation incorporated in a foreign country,

but shall not include any of the subjects or citizens of a foreign State upon whom there has been conferred by treaty the right to hold land within Saint Christopher and Nevis:

(Inserted by Act 22 of 1964; amended by Act 13 of 1986)

Provided further that the expression “alien” shall not include any bank or financial institution whether incorporated within or outside of Saint Christopher and Nevis;

(Inserted by Act 13 of 1986)

“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 amount of his or her 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;

“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 alien” means an alien who does not hold a licence granted under this Act.

PART II

HOLDING OF LAND BY UNLICENSED ALIENS

Forfeiture of land and mortgages held by unlicensed aliens.

3. Subject to the provisions of this Act, neither land in Saint Christopher and Nevis, nor a mortgage on land in Saint Christopher and Nevis shall, after the commencement of this Act, be held by an unlicensed alien, and any land or mortgage so held shall be forfeited to the Crown:

Provided that—

- (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 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 the Governor-General 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 judgment creditor in the land of his or her judgment 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.

(Amended by Acts 6 of 1970 and 6 of 1976)

Licences for aliens to hold land or mortgages.

4. (1) The Governor-General may, from time to time, grant to any alien a licence to hold land as owner or tenant or mortgagee for any estate or interest either subject to any conditions or not:

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 the Circuit in which the land in respect of which a licence is granted is situate.

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

(Amended by Acts 6 of 1970 and 6 of 1976)

Effect of forfeiture.

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

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

(3) A judgment declaring a forfeiture of a mortgage shall operate to vest in the Crown 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 Crown the right to recover and receive and to enforce all securities for the mortgage money.

(Amended by Act 6 of 1976)

PART III

RESTRICTIONS ON COMPANIES UNDER ALIEN CONTROL

Companies under alien control.

6. 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.

Power for a company to restrict the holding by aliens 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 Saint Christopher and Nevis holding or intending to acquire more than five acres of land in the State 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.

(Amended by Act 13 of 1986)

Licences for aliens to hold directorships, shares or debentures.

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

- (a) to be a director of a company;
- (b) to vote at meetings of a company;
- (c) to hold shares or debentures; and
- (d) 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 Crown.

(Amended by Acts 6 of 1970 and 6 of 1976)

Effect of forfeiture of shares.

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.

(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 Saint Christopher and Nevis as the Governor-General may direct.

(Amended by Acts 6 of 1970 and 13 of 1986)

Transmission of licence to company.

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

(Amended by Act 6 of 1976)

Registration of licence by company.

11. (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 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.

(Amended by Acts 7 of 1976 and 9 of 1986)

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

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 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 liable on summary conviction to a fine not exceeding three 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 liable on summary conviction to a like penalty.

(Amended by Acts 7 of 1976 and 9 of 1986)

Transfers 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 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 Governor-General 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.

(Amended by Act 7 of 1976)

PART IV

RESTRICTION ON TRUSTS IN FAVOUR OF ALIENS

Restriction on trusts in favour of aliens.

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

(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 an alien, and any such property so held shall be forfeited to the Crown.

(3) Any person who intentionally contravenes the provisions of this section commits a misdemeanour punishable summarily by a Magistrate or on indictment:

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

(Amended by Acts 7 of 1976 and 9 of 1986)

(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 purpose of any composition or scheme of arrangement for the payment of debts to the debtor or his or her creditors.

Licences to hold property in trust for aliens.

15. The provision 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.

PART V

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, Cap. 5.06 apply to the High Court for a declaration that any right, title or interest sought to be affected is forfeited to the Crown.

(Amended by Act 6 of 1970)

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 his or her alienage or the alienage of any other person or to discover any land, mortgage, share or debentures 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.

Stamp Duty.

18. Every licence granted under this Act shall be subjected to a stamp duty of fifty dollars, which shall be paid by the licensee in accordance with the provisions of the Stamps Act, Cap. 20.40.

Power of Cabinet to exempt Aliens and Alien Companies from provisions of Act.

19. The Cabinet may, by Order, exempt any alien or alien company from all or any of the provisions of this Act subject to such conditions as may be specified in the Order.

(Inserted by Act 22 of 1964 and amended by Act 6 of 1970)

FIRST SCHEDULE

(Section 19)

ALIENS LAND HOLDING (EXEMPTION) ORDER

Short Title.

1. This Order may be cited as the Aliens Land Holding (Exemption) Order.

Interpretation.

2. In these Regulations the expression—

“Act” means the Aliens Land Holding Act, Cap. 10.01;

“Agreement” means the St. Kitts Development Agreement which was finalized between the Government of Saint Christopher and Nevis and the KHT Land Holding Limited on 15th June, 2007;

“Joint Venture” means the Joint Venture, all Affiliates and all purchasers of any interest in property or the Resort which have been approved by Cabinet in accordance with the terms of the Agreement.

Exemption.

3. The Joint Venture is hereby exempted from the provisions of the Act.

Conditions.

4. The exemption to the provisions of the Act is subject to the conditions specified in the Agreement.

Duration.

5. The exemption conferred by paragraph 3 shall be for the period specified in the Agreement.

SECOND SCHEDULE

(Section 19)

ALIENS LAND HOLDING (EXEMPTION) ORDER**Citation.**

1. This Order may be cited as the Aliens Land Holding (Exemption) Order.

Interpretation.

2. In these Regulations the expression—

“Act” means the Aliens Land Holding Act, Cap. 10.01;

“South East Peninsula” means all that area in the Parish of St. George, Basseterre extending from the boundary of the Frigate Bay development Area to the extremities of Nag’s Head and Scotch Bonnet.

Exemption.

3. A person who purchases property which does not exceed, in aggregate, two acres on the South – East Peninsula is hereby exempted from the provisions of the Act.

Condition.

4. The exemption given pursuant to section 3 is subject to the condition that the property is purchased for the purpose of constructing single residences or villas.
