

SAINT LUCIA

No. 20 of 2002

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No. 20]

Aliens (Licensing) Act

[2002.

I ASSENT

[L.S.]

PEARLETTELOUISY,
Governor-General.

30th September, 2002.

SAINT LUCIA

—————

No. 20 of 2002

AN ACT to regulate the holding of land by aliens and alien companies and for matters incidental thereto.

[ON ORDER]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows :

No. 20]

Aliens (Licensing) Act

[2002.

Short title and commencement

1. – (1) This Act may be cited as the Aliens (Licensing) Act, 2002.

(2) This Act shall come into force on a date to be fixed by the Minister by Order in the *Gazette*.

Interpretation

2. – In this Act –

“alien” means:

- (a) a person who is not a citizen of Saint Lucia;
- (b) a company incorporated in Saint Lucia or in a Member State if it is an alien company as provided in section 8;
- (c) a corporation incorporated in a foreign country;
- (d) a firm, partnership, or unincorporated body of persons of which more than fifty percent of its membership consists of persons to whom paragraph (a) applies.

“debenture” includes

- (a) mortgage or charge by a company, whether floating or otherwise on any, of the company’s property, its undertaking; or its uncalled capital;
- (b) an 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; and
- (c) debenture stock;

“Development Control Authority” means the Development Control Authority established under section 3 of the Land Development (Interim Control) Act 1971, or any successor in title of the Development Control Authority;

“land” includes immovable property in Saint Lucia, and an interest in land in Saint Lucia;

“member of a company” means a person entitled under the by-laws or 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 a member by reason only that the amount of that servant or agents emoluments depends on the amount of the company’s profits;

“Member State” has the same meaning assigned to it under the Treaty establishing the Organization of Eastern Caribbean States (OECS) signed at Basseterre on 18th June, 1981 or under the Treaty establishing the Caribbean Community (CARICOM) signed at Chaguaramas and which came into force on 1st August, 1973;

“Minister” means the Minister responsible for Finance unless otherwise provided in this Act;

“mortgage” includes an instrument creating a hypothec, privilege or other charge on land;

“prescribed” means prescribed by regulation;

“repealed Act” means the Aliens (Licensing) Act 1999;

“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;

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

PART II LAND UNDER ALIEN CONTROL

Licence to hold land

3. – (1) An alien may apply in the prescribed form to Cabinet for a licence to hold land.

(2) Cabinet may, if it thinks fit, grant to an alien a licence to hold land as owner, or as lessee for a term of not less than two years, whether subject to any conditions or not.

(3) Notwithstanding subsection (2) the Minister may, where the land concerned is not more than one half of an acre, grant to an alien a licence to hold land, whether subject to certain conditions or not, but a Minister shall not under this subsection grant more than one licence to the same alien.

(4) A licence granted under this section shall be operative only in respect of the land described and as to the interest specified in the licence and shall be of no effect until the lease or a notarially certified copy of the licence is registered in the office of the Registrar of Lands.

(5) Where a condition in a licence to hold land is breached, the interest of the alien in the land shall be forfeited to the Government.

Exemptions to licensing requirement

4. – Notwithstanding this Act –

- (a) an alien may hold two acres or less of land on a lease for up to two years for the purposes of the alien’s residence, trade or business in Saint Lucia;
- (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 two years from the date of the death of the person or within an extended period of time as the Minister may grant, the land is sold or the alien applies for and obtains a licence to hold the land under section 3;
- (c) an alien may acquire land in pursuance of his or her rights under a mortgage or debenture, and the land shall not be forfeited if within one year from the acquisition or entry into possession of the land or within an extended period of times as the Minister may grant, the land is sold or the alien applies for and obtains a licence to hold the land under section 3.

Forfeiture of land held by unlicenced alien

5. – (1) An unlicenced alien shall not, after the commencement of this Act unless as otherwise provided for in this Act, hold land.

(2) Where an unlicenced alien contravenes subsection (1) the land, held by that alien shall be forfeited to the Government.

Body of persons becoming an alien

6. – (1) Where a body corporate or unincorporated holds land and by reason of a disposition of the shares or other interest of the body corporate or unincorporated, the body becomes an alien company that body shall within three months of the disposition apply for and obtain a licence to hold the land in accordance with this Act.

(2) Section 5 shall apply where a body corporate or unincorporated fails to comply with subsection (1).

Agreement to hold land

7. – An agreement to hold land shall not vest an interest in the land in the purchaser, where the purchaser is an alien, unless a licence to hold the land is first obtained but nothing in this section shall prevent a person, who has paid a deposit under an agreement for sale of the land, from placing a caution against the land in accordance with the Land Registration Act No. 12 of 1984.

PART III ALIEN COMPANIES

Alien Companies

8. – (1) For the purpose of this Act, a company is an alien company

- (a) if fifty per cent or more in number of its directors are aliens; or
- (b) if fifty per cent or more of the votes exercisable at a meeting of the shareholders or which would be exercisable if a meeting of the shareholders was held, are vested in aliens; or
- (c) if the amount paid or payable in any period of twelve months as dividend to those members of the company who are aliens exceed fifty per cent or more of the total amount paid or payable by the Company as dividends in the same period.

(2) An alien company which is a member of another company shall, for the purpose of deciding the status of that other company, be treated as an alien notwithstanding that its representative, if any, appointed under the Companies Act No. 19 of 1996 may not himself or herself be an alien.

(3) A company which is a member of another company shall not, for the purpose of subsection (2), be treated as an alien by reason only that its appointed representative is an alien.

PART IV TRUST IN FAVOUR OF ALIENS

Restriction on trusts

9. – (1) In this section, “trust” includes an arrangement, whether written or oral, express or implied, legally enforceable or not, whereby land, shares or debentures, an interest or right on land, shares or debenture is held, for the benefit of, to the order, or at the disposal of, an alien; but does not include –

- (a) the duties incidental 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 mortgagor’s interest in the mortgage 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 the payment the property sold is vested in the purchaser or the purchaser’s interest in the property is extinguished;
- (d) the duties of a trustee in bankruptcy to the bankrupt or the bankrupt’s creditor’s or
- (e) the duties of a trustee for the purposes of any composition or scheme of arrangement for the payment of debts to the debtor or the debtor’s creditors.

(2) No person shall, except as otherwise provided for in this Act, hold land in trust for an alien contrary to this Act.

(3) A person may apply to Cabinet for a licence to hold land on behalf of an alien.

(4) Cabinet may if it thinks fit issue a licence applied for under subsection (3).

(5) Where land is held contrary to subsection (2), the land shall be forfeited to the Government”.

(6) A person who contravenes any provision of this section commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of one year.

Licences to hold property in trust for aliens

10. – The provisions of this Act as to licences and the effect of breach of a condition of a licence shall apply to land intended to be held or held in trust for an alien in a like manner as it applies to land intended to be held by an alien.

PART V ADMINISTRATION

Application for licence to hold land

11. – (1) An application for a licence to hold land made under section 3 shall be in the form specified in the First Schedule and shall 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 utilized;
- (c) a plan by a licensed surveyor delineating the land;
- (d) a receipt for the payment of the relevant application fees;
- (e) a police certificate of good character from the applicant’s country of domicile and, if not the same, that person’s country of nationality; and
- (f) any other information required by the Minister.

(2) Where land is to be used for a building estate or development project except agriculture, the applicant shall submit, with an application made under section 3, evidence that the Development Control Authority has confirmed that the use intended for the land is not inconsistent with environmental, zoning or planning considerations.

(3) The Minister may by Orders in the *Gazette*, amend the First Schedule.

Fees and other charges

12. – (1) An applicant for a licence under this Act shall be required to pay, in addition to other duties or charges under other enactments –

- (a) at the time of application, a non-refundable application fee as set out in Part A of the Second Schedule.
- (b) stamp duty or other duties required under the Stamp Duty Ordinance (Cap 219); and
- (c) a licence fee, which shall be paid on registration of the licence at the rate and in the manner set out in Part B on the Second Schedule.

(2) The Minister may by Order in the *Gazette* amend the Second Schedule.

Forfeiture of land

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

(2) Land forfeiture under this Act shall not vest in the Government unless a judgement is obtained declaring the forfeiture; but on the judgement being obtained, the title of the Government shall relate back to and commence at the time when the forfeiture took place.

Effect of forfeiture of land

14. – (1) A judgement declaring that land has become forfeited under this Act shall operate to vest in the Government all the interest of the alien in the forfeited land and the right to transfer that land as from the time when the forfeiture took place.

(2) Land which has been declared to be forfeited under this Act shall be sold or otherwise dealt with for the benefit of Saint Lucia as Cabinet may direct.

Discovery

15. – (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 a person is an alien or to discover any land held by a person or in trust for that person as to any relevant matter or document.

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

(3) In the prosecution of a person under this Act, the fact that the person has disclosed a 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 VI

PENALTIES

Prohibitions on omission in declarations

16. – (1) No person shall, with intent to defraud the Government -

(a) execute an 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 an instrument, omit to fully and truly declare all relevant facts and circumstances in the instruments;

(2) A person who contravenes sub-section (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

(3) A licence obtained by a person found guilty under subsection (2) shall be void and any land to which subsection (1) applies shall be forfeited to the Government.

Prohibition of publication

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

(2) A person who contravenes subsection(1) commits an offence and is liable, on summary conviction to a fine not exceeding five thousand dollars and imprisonment for. a term not exceeding one year.

Statutory declaration of good character

18. – (1) Where an applicant for a licence has not obtained the police certificate required under section 11(1)(e) the applicant may, as a provisional measure, make a statutory declaration of good character in the form provided in the Third Schedule.

(2) Where an applicant for a licence has provided a statutory declaration pursuant to subsection (1), the applicant shall provide the police certificate under section 11(1)(e) not later than six months from the date of application unless the Minister grants an extension of time to do so.

(3) Where an applicant fails to comply with the requirements of subsection (2) and not extension of time has been granted by the Minister the applicant shall be an unlicensed alien and section 3 shall apply.

(4) The Minister may by Order in the *Gazette* amend the Third Schedule.

Exempted Aliens

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

- (a) the alien is a party to an agreement or plan entered into with the Government of Saint Lucia for financing the holding and development of housing, industry, tourism, forestry, fisheries or agriculture;
- (b) the alien in conjunction with the Government or with a business venture owned or controlled by nationals of Saint Lucia embarks on an undertaking which has been declared an approved enterprise under the provisions of existing incentives legislation;
- (c) the alien is trading on the OECS Stock Exchange or dealing in the Over-the-Counter Share Market; or
- (d) it is in the public interest to do so.

(2) An Order issued under subsection (1) may be issued subject to any condition the Minister considers necessary and shall relate to a particular alien or to a particular interest in land or to both.

(3) Notwithstanding the definition of alien in subsection (2), the Minister may by Order published in the *Gazette* declare that a citizen of a Member State shall not be an alien for the purposes of this Act in the case where the laws of a Member State give reciprocal treatment to a citizen of Saint Lucia in relation to holding land as an alien in that Member State;

Penalty not provided

20. – A person who contravenes a provision of this Act for which a penalty has not already been provided, commits an offence and upon summary conviction, is liable 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.

Regulations

21. – The Minister may make regulations for the purposes of this Act.

Repeal

22. – The Alien (Licensing) Act, 1999 is repealed.

Savings

23. – (1) Nothing in this Act shall -

- (a) affect the interest of a judgement creditor in respect of the land of the creditor's judgement debtor but the debtor's land may only be acquired by an unlicensed alien as provided for under section 4 (c);
- (b) affect the estate or interest of an alien in any land held by the alien at the commencement of this Act;
- (c) apply to a trust in favour of an alien subsisting at the commencement of this Act; or
- (d) affect the existing rights of

- i. a person who becomes an alien by virtue of this Act, in any land or the holding of any share, debenture or other interests in a company held by the alien at the commencement of this Act;
- ii. a company incorporated under the Commercial Code of Saint Lucia and continued under the Companies Act No. 9 of 1996 and doing business in Saint Lucia on or before the 21st day of March 1969;
- iii. a financial institutional licensed under the Banking Act No. 7 of 1991; or
- iv. an alien approved by Cabinet at the commencement of this Act as a development alien or an approved lending agency.

(2) This Act shall operate without prejudice to the validity of -

- (a) a licence granted under the repealed Act; and
- (b) any statutory instruments made under the repealed Act.

FIRST SCHEDULE

SAINT LUCIA

ALIENS (LICENSING) ACT NO. OF 2002

(Section 11)

APPLICATION BY INVESTOR FOR LICENCE TO
HOLD LAND AS OWNER/LESSEE IN ST. LUCIA

Please complete all parts of the application and submit to the Ministry of Planning.

Please tick the type of licence applied for.

Owner of Land

Lessee of Land

Part 1-Applicant Details

Name of applicant(s)

Permanent Address of applicant(s)

1.

2.

3.

4.

Telephone #:

Fax #:

Email Address:

Part 2 – Individual Investors

Please attach the following items of information

Application fee receipt from Inland Revenue Department

Purpose for which land is required

Land details

Name of current owner of land

Land Registry Reference - attach copies of Land Register extracts

Copy of Plan of Survey showing size of parcel to which application relates

Agreed purchase price - to be supported by a Statutory Declaration sworn to by The Applicant. Government reserves the right to execute its own valuation of the property.

Profile of applicant –

Passport and Citizenship details

Profession or employment status

Bankers' reference

Police Certificate of good Character (PCGC) from country of origin or current residence. The Statutory Declaration, (see part 5 for format), may be provided as an interim measure, but PCGC must be provided within 6 months of the date of the application.

Four (4) passport sized colour photographs of the applicant.

Part 3 – Corporate Investors

Constitution documents - Certified copies of Memorandum and Articles of Association, Certificate of Incorporation or Articles of Incorporation and By-laws (if any) and copy of current certificate of standing of company.

List of Directors

| Name | Address | Other Directorships | Main Bankers | Citizenship |
|------|---------|---------------------|--------------|-------------|
|------|---------|---------------------|--------------|-------------|

Application fee receipt from Inland Revenue Department

Purpose for which land is required

Land Registry Reference - attach copies of Land Register extracts

Copy of Plan of Survey showing size of parcel to which application relates

Agreed purchase price - to be supported by a Statutory Declaration sworn to by the Applicant

Government reserves the right to execute its own evaluation of the property.

Name and address of Company's bankers

Attach Bank references for each Director

Shareholding - state how many shares are to be issued and whether the majority of such shares will be held by non-St. Lucians.

LICENCE FEES

(Section 12)

SECOND SCHEDULE

PART A

NON REFUNDABLE APPLICATION FEE EC\$200

PART B

Licence to purchase or to hold land or licence for a body corporate or unincorporated to continue to hold land where the body corporate or unincorporated becomes an alien company.

| | | |
|--------------------------------------|---|--|
| Up to 1 acre | - | \$5,000 |
| Over 1 acre and up to 10 acres | - | \$10,000 |
| Over 10 acres and up to 20 acres | - | \$20,000 |
| Over 20 acres and up to 50 acres | - | \$30,000 |
| Over 50 acres and up to 100 acres | - | \$40,000 |
| Over 100 acres | - | \$50,000 |
| Licence to lease land | | 2 % of the aggregate rental payable in respect of the full duration of the lease |
| Licence to hold land in trust | | 5% of the value of the trust property |
| Any other Licence | | \$1,500 |

**THIRD SCHEDULE
SAINT LUCIA
STATUTORY DECLARATION**

(Section 12)

I, _____ of , _____ but presently of _____ in the island of Saint Lucia, do solemnly and sincerely declare as follows –

1. That I am a citizen of _____
2. That* I have never been convicted of an offence against the laws of Saint Lucia or any other State.
3. That I am of good character.

I make this Declaration conscientiously believing the same to be true and in accordance with the Statutory Declarations Ordinance (Cap. 11*), and I am aware that if there is any statement in this Declaration which is false, or which I know or believe to be false, or do not believe to be true, I am liable to imprisonment.

DECLARED before me

at _____

Declarant

this _____ day of _____

1998.

.....
NOTARY ROYAL

*Insert where applicable : save for minor traffic offences.

Passed in the House of Assembly this 30th day of July, 2002.

MATTHEW ROBERTS,
Speaker of the House of Assembly.

Passed in the Senate this 13th day of August, 2002.

HILFORD DETERVILLE,
President of the Senate.

SAINT LUCIA

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