ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER A55

ALIENS LAND HOLDING REGULATION ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition consolidates—

Act 2/2006, in force 27 March 2006
Act 6/2010, in force 1 November 2010
U.K. S.I. 2019 No. 852, in force 14 May 2019

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ALIENS LAND HOLDING REGULATION ACT

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ALIENS LAND HOLDING REGULATION ACT

Interpretation

1. In this Act—

"alien" includes—

(a) a person not regarded as an Anguillian within the provisions of the Constitution of Anguilla;

(U.K. S.I. 2019 No. 852, s. 13(c))

(b) a company incorporated in Anguilla or in any other part of the British Commonwealth if it is under alien control as hereinafter explained; and

(c) a corporation incorporated in a foreign country;

"Anguillian" means a person who is regarded as an Anguillian under section 80(2) of the Constitution of Anguilla;

(U.K. S.I. 2019 No. 852, s. 13(c))

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

Application

2. This Act does not apply to—

(a) a financial institution licensed under the Banking Act[*]; or

(b) the Anguilla National Trust.

Forfeiture of land held by unlicensed alien

3. Subject to this Act, no land in Anguilla shall be held by an unlicensed alien, and any land so held shall be liable to be forfeited to the Crown, but—

(a) land not exceeding 3 acres in all may be acquired and held by an unlicensed alien on an annual tenancy or for any lesser interest for the purposes of his residence, trade or business;

(Act 2/2006, s. 1)

(b) land acquired by an unlicensed alien under a will or an intestacy shall not be forfeited if, within 1 year from the death of the testator or intestate or within such extended time as the Governor may allow, the land is sold or the alien obtains a licence to hold the land.

[*] Banking Act, 2015 (Act 6/2015) *repealed* the Banking Act, R.S.A. c. B11.

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Licences for aliens to hold land

4. (1) Subject to subsection (2), the Governor in Council may—

(a) grant to an alien a licence to hold any estate or interest in land described in the licence; and

(b) make the licence subject to conditions.

(2) No licence shall be granted unless a certificate of good standing issued in relation to the alien applicant for the licence pursuant to the regulations under the Inland Revenue Department Act is produced to the person issuing the licence on behalf of the Governor in Council and the certificate has not expired or been cancelled.

(3) A licence may stipulate that a penalty or a series of penalties are payable in the event that any condition is breached.

(4) On breach of any condition in a licence to hold land, the estate and interest of the alien in the land held under the authority of the licence shall be liable to be forfeited to the Crown.

(Act 6/2010, s. 41)

Effect of forfeiture

5. (1) Land forfeited under this Act shall not vest in the Crown unless and until a judgment is obtained declaring the forfeiture, but on that judgment being obtained the title of the Crown shall relate back to and commence at the time when the liability to forfeiture arose.

(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) Any penalty or part of a penalty for breach of a condition in a licence that remains unpaid when the land vests in the Crown ceases to be payable.

Companies under alien control

6. For the purposes of this Act, a company is deemed to be under alien control—

(a) if any of its directors is an alien;

(b) if more than one-third of the votes exercisable at any meeting of the company, or that would be exercisable if a meeting of the company were held, are vested in 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 aliens;

(d) in the case of a company not having a share capital, if more than one-third in number of its members are aliens;

(e) if the amount paid or payable in any period of 12 months as dividends to those members of the company who are aliens exceeds one-third of the total amount paid or payable by the company as dividends in the same period;

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(f) if more than one-third of the nominal value of the outstanding debentures of the company are held by aliens; or

(g) if the annual interest on the debentures of the company for the time being held by aliens exceeds one-third of the annual interest on all the debentures of the company for the time being outstanding.

Company becoming an alien company

7. (1) Where a company, not being an alien company, holds land in Anguilla and by reason of—

(a) any of the conditions specified in section 6 being met; or

(b) a sale, issue or other disposition of its shares or other interest;

the company becomes an alien company, it shall within 30 daysof becoming an alien company apply for and obtain a licence to hold the land in accordance with the provisions of this Act:

Provided that such alien company may, without a licence, hold land not exceeding 3 acres in all on an annual tenancy or for any lesser interest for the purposes of its trade or business.

(2) Notwithstanding anything contained in any law to the contrary, where at any time a change occurs in the persons—

(a) who are directors of an alien company licensed to hold land under this Act; or

(b) in accordance with whose directions or instructions the directors of an alien company referred to in paragraph (a) are accustomed to act;

the alien company shall, as soon as reasonably practicable after the occurrence of the change referred to in paragraph (a) or (b), serve a notice in writing on the Director of Lands giving particulars of the change.

(3) Where a company to which this section applies fails to comply with subsection (1) or (2), any land held by that company contrary to the provisions of this Act shall be liable to be forfeited to the Crown.

(4) A company which contravenes subsection (1) or (2) is guilty of an offence and on summary conviction is liable to a fine of $10,000.

(Act 2/2006, s. 2)

Power for a company to restrict the holding by aliens of its shares and debentures, etc.

8. Notwithstanding anything contained in any law relating to companies, or in the articles of incorporation or by-laws of the company or in any debenture, or in any instrument for securing any issue of debentures, a company incorporated or continued in Anguilla holding or intending to acquire land in Anguilla 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;

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(c) refuse to register an alien as a member or as the holder of a debenture; or

(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.

Restriction on transfers and issues of shares

9. (1) Whenever a licence to hold land has been granted to an alien company, any attempted transfer or issue to an alien of any share in that company shall be void and of no effect without the prior consent of the Governor.

(2) Notwithstanding anything contained in any law to the contrary, the instrument of transfer relating to a transfer, issue, sale or other disposition to an alien of shares or other interest in—

(a) an alien company licensed to hold land under this Act; or

(b) a company which becomes an alien company in the circumstances referred to in subsection 7(1);

shall attract stamp duties as prescribed in section 14 in like manner as such stamp duties apply to land held or intended to be held by an alien:

Provided that where such transfer, issue, sale or other disposition is less than the total number of shares or other interest in a company referred to in this subsection, the stamp duties which the instrument of transfer relating to the transfer, issue, sale or other disposition attracts shall be calculated on the fair market value of the estate or interest in the land which such transfer, issue, sale or other disposition of shares or other interest represents.

(Act 2/2006, s. 3)

(3) For the purposes of this section, the word "share" includes stock, and any debenture that confers voting rights or other controlling rights, or is a convertible debenture giving rights to convert the debenture into shares, either immediately or at some future time.

Restriction on trusts in favour of aliens

10. (1) No person shall without the licence of the Governor in Council hold any land in trust for an alien, and any land so held shall be liable to be forfeited to the Crown.

(2) Any person who contravenes this section is guilty of an offence and on summary conviction is liable to a fine of $25,000 or to imprisonment for a term of 6 months or to both.

(Act 2/2006, s. 4)

(3) In this section, "trust" includes any arrangement whether written or oral, express or implied, and whether legally enforceable or not, whereby any land to which this section applies or any interest therein or any rights attached thereto is or are held for the benefit, or to the order, or at the disposal, of an alien, but does not include—

(a) the duties incident to a mortgage;

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(b) the duties of a vendor to the purchaser pending payment of the purchase money, or after payment of the purchase money, if within 3 months after that payment, the property sold is vested in the purchaser or his interest therein is extinguished;

(c) the duties of a trustee in bankruptcy to the bankrupt or his creditors; or

(d) 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 creditors.

Licences to hold land in trust for aliens

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

Procedure

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

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 to discover any land held by him or in trust for him or as to any relevant matter or document.

(2) It is not 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 but, 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 is not admissible in evidence.

Stamp duty on licence

14. (1) Every licence granted under this Act is subject to a stamp duty as follows—

(a) in the case of land to be held by an alien in freehold, an amount equal to 12.5% of the freehold value of land;

(b) in the case of land to be held by an alien for a term of years exceeding 99 years, an amount equal to 11% of the freehold value of the land;

(c) in the case of land to be held by an alien for any term of years from 50 years up to 99 years, an amount equal to 10% of the freehold value of the land;

(d) in the case of land to be held by an alien for any term of years from 10 years up to 50 years, an amount equal to 5% of the freehold value of the land;

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(e) in the case of land to be held by an alien for any term of years less than 10 years or on a tenancy from year to year (not being exempted under sections 3(a) and 7(1)), an amount of $500;

(Act 2/2006, s. 5)

(f) in the case of an interest in land to be held by an alien other than a freehold or leasehold interest or not otherwise provided for, an amount of $500.

(2) The stamp duties set out in subsection (1) apply to land to be held or held in trust for an alien in like manner as it applies to land intended to be held or held by an alien.

(3) Notwithstanding the provisions of subsections (1) and (2), where an alien acquires land or an interest in land under a voluntary disposition *inter vivos* or under a will or an intestacy from or of a licensed alien being his lawful spouse, or father or mother, or son or daughter, whether natural or legally adopted, the amount of stamp duty payable is $200.

(4) The stamp duty payable under this section is paid by the licensee in accordance with the provisions of the Stamp Act.

Facts and circumstances affecting stamp duties to be set forth in instruments

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

(2) Any person who wilfully and with intent to evade liability to stamp duties payable under this Act executes any instrument of transfer having reason to believe the contents of such instrument to be incorrect or that all relevant facts and circumstances are not fully and truly declared in such instrument is guilty of an offence.

(3) Any person who being employed or connected in or about the preparation of any instrument of transfer, with intent to evade liability to stamp duties payable under this Act—

(a) prepares or causes to be prepared such instrument having reason to believe the contents of such instrument to be incorrect; or

(b) neglects or omits to fully and truly declare all relevant facts and circumstances in such instrument;

is guilty of an offence.

(4) Any person who is guilty of an offence under this section is liable on summary conviction to a fine in an amount equal to 25% of the stamp duty payable on the instrument of transfer or to imprisonment for a term of 6 months or to both.

(5) If in any proceedings under this section it is proved that all the relevant facts and circumstances are not fully and truly declared or any incorrect information is given in any instrument of transfer by any person, the person is presumed until the contrary is shown—

(a) to have not fully and truly declared all the relevant facts and circumstances; or

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(b) to have given, or allowed to be given, the incorrect information;

in the instrument of transfer with intent to evade liability to stamp duties payable under this Act.

(6) For the purposes of this section, "instrument of transfer" means an instrument of transfer relating to the transfer, issue, sale or other disposition of an estate or interest in land or the shares or other interest in a company to which this Act applies.

(Act 2/2006, s. 6)

Governor in Council may grant exemptions

16. (1) Subject to subsection (2), the Governor in Councilmay by regulation exempt any alien from all or any of the provisions of this Act subject to any conditions as may be specified in the regulations.

(2) No exemption shall be granted unless a certificate of good standing issued in relation to the alien applicant for the exemption pursuant to the regulations under the Inland Revenue Department Act is produced to the person issuing the exemption on behalf of the Governor in Council and the certificate has not expired or been cancelled.

(Act 6/2010, s. 41)

Power to make regulations

17. The Governor in Council may make regulations generally for giving effect to the provisions of this Act.

Citation

18. This Act may be cited as the Aliens Land Holding Regulation Act, Revised Statutes of Anguilla, Chapter A55.

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