

**ANTIGUA AND BARBUDA**



**NON-CITIZENS LAND HOLDING REGULATION (AMENDMENT) BILL, 2020**

**No. of 2020**



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**CLAUSES**

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**AN ACT** to amend the Non-Citizens Land Holding Regulation Act Cap 293 to revise the licensing regime of non-citizens and to provide for members of companies having no share capital, and all beneficiaries of any non-citizen legal entity holding land in Antigua and Barbuda to be subject to the requirements of a licence as a condition for holding such land or interest in land.

**ENACTED** by the Parliament of Antigua and Barbuda as follows:

**1. Short Title**

This Act may be cited as the Non-Citizens Land Holding Regulation (Amendment) Act, 2020.

**2. Interpretation**

In this Act-

“principal Act” means the Non-Citizens Land Holding Regulation Act Cap 293.

**3. Amendment of section 2-Interpretation**

The principal Act is amended in section 2 as follows:

- (a) by the repeal of the definition of “non-citizen” and the substitution therefor of the following:

“non-citizen” means a person who is not a citizen and includes a company incorporated in Antigua and Barbuda which is under the control of non-citizens in accordance with the provisions of section 6 of this Act, and also every corporation incorporated outside Antigua and Barbuda:

Provided that the Governor General may, on the advice of the Cabinet, and by Order published in the *Gazette*, declare that a person who belongs to such one or more of

the Commonwealth Caribbean territories, other than Antigua and Barbuda, as shall be specified in the Order, shall not be a non-citizen for the purposes of this Act,”

(b) by the repeal of the definition of “unlicensed” and the substitution therefor of the following-

“unlicensed non-citizen” means a non-citizen who does not hold a licence granted under this Act.”

#### **4. Insertion of section 4A-Annual general licence to hold mortgage**

The principal Act is amended by the insertion immediately after section 4 of the following:

##### **“4A- Annual general licence to hold mortgage**

- (1) The Cabinet may, if it considers it necessary, advise the Governor General to grant to a non-citizen an annual general licence to hold as mortgagee, in accordance with the law relating to mortgage land that is held as security for funds that the non-citizen may, from time to time, invest on loan in Antigua and Barbuda.
- (2) Where a non-citizen to whom an annual general licence has been granted under section 4A (1) acquires land as a result of the exercise of his power of sale or foreclosure-
  - (a) section 4(1) shall not apply to the land so acquired.
  - (b) the land shall be sold or otherwise disposed of absolutely, within a period of two years, or within such extended time as the Cabinet may consider reasonable, after it is so acquired, so that the non-citizen no longer has directly or indirectly, any interest or control in respect thereof except by way of security.
- (3) An annual general licence granted under subsection (1) has effect only when the licence is registered in the Record Office of Antigua and Barbuda.
- (4) The following conditions shall apply to an annual general licence granted under subsection (1)—
  - (a) the funds loaned by such non-citizen upon the security of mortgages upon lands in Antigua and Barbuda shall be loaned to residents of Antigua and Barbuda;
  - (b) such non-citizen shall, if required to do so by the Minister at the end of every year, submit to the Minister a statement containing the particulars specified below, and certified as correct and signed by the non-citizen or, when the non-citizen is a company, by a director and the secretary-
    - (i) the number of mortgage loans taken by residents of Antigua and Barbuda;
    - (ii) the names of the mortgagors;
    - (iii) the amount loaned;

- (iv) the rates of interest charged; and
  - (v) the number of mortgaged properties which have become vested in such non citizen as owner by virtue of the exercise of his powers as mortgagee, the respective dates on which such properties became so vested, the sum due thereon and the description of the properties so vested.
- (5) Where a non-citizen to whom an annual general licence has been granted under this section fails to comply with the conditions specified in subsection (4), or fraudulently submits information required by the Minister, the Cabinet may advise the Governor General, to revoke his annual general licence under the provisions of subsection (1), but such revocation shall not affect anything lawfully done under that licence.”

#### **5. Amendment of section 6-Restriction on Companies under control of Non-Citizens**

The principal Act is amended by renumbering section 6 as subsection (1) and by adding after the renumbered subsection (1), the following new subsection:

“(2) The provisions of this Act, the Non-citizens Undeveloped Land Tax Act, Cap 294 and any condition contained in a licence granted under this Act shall continue to apply to a licensed, non-citizen despite a later acquisition of citizenship by the licensed non-citizen, until all the obligations under this Act the Non-Citizen Undeveloped Land Tax Act and the conditions contained in a licence have been complied with and a certificate of compliance to that effect is issued by the Minister.

#### **6. Amendment of section 8- Licences for non-citizens to hold directorships, shares debenturers, or to be a member of a company having no share capital, or a beneficiary of a trust**

Section 8 of the principal Act is amended by the repeal of subsection (1) and the substitution therefor of the following-

“(1) The Governor-General may, on the advice of the Cabinet, and subject to such conditions as the Cabinet considers necessary, grant a licence to a non-citizen for all or any of the following matters, namely—

- (a) to be a director of a company;
- (b) to vote at meetings of a company or other legal entity;
- (c) to hold shares or debentures by way of transfer on purchase, gift or otherwise of a company;
- (d) to be a member of a company having no share capital;

- (e) to be a trustee of a trust, or entity, corporate or unincorporate holding land in Antigua and Barbuda;
- (f) to be a beneficiary of a trust or entity, corporate or unincorporate, holding land in Antigua and Barbuda; and
- (g) any other matter that the Cabinet may consider appropriate:

(2) No licence shall be granted to a non-citizen company, trust or entity under this section, unless the company, trust or entity in respect of which the application relates is a company, trust or entity licensed to hold land in Antigua and Barbuda under this Act.

(3) A licence granted under this section shall be operative only as to the land described, the company, the trust the entity or the estate specified therein, and the licence shall be of no force or effect until registered in the Record Office of Antigua and Barbuda.

(4) On breach of a condition in a licence granted under this section, the licensee shall pay to the Commissioner of Inland Revenue the annual tax imposed by section 7 of the Undeveloped Land Tax Act, Cap. 294, notwithstanding the acquisition of citizenship by the licensee, and the provisions of the Non-Citizens land Holding Regulation Act, Cap.293 and any conditions and obligations contained in the licence shall continue to apply to the licensee and the parcel of land specified in the licence until the land is developed and a certificate of compliance is issued by the Minister.

(5) Where the licensee fails to pay the tax imposed under section 7 of the Undeveloped Land Tax Act within sixty days of the declaration of the land as undeveloped, or such further time as the Cabinet may determine, the licensee shall forthwith cease to be a director of the company or entity, and all the shares or debentures or any interest in the company held by the directors, shareholders, beneficiaries or members of the company shall be forfeited to the Crown.”

## **7. Amedment of section 18-Stamp Duty**

Section 18 of the principal Act is amended as follows—

- (a) by the repeal of subsection (1) and the substitution therefor of the following—

“(1) A non-citizen licence granted under this Act is subject to payment of stamp duty at the rates set out in the Schedule”.

- (b) by the repeal of subsection (3) and the substitution therefor of the following-

“(3) Where the stamp duty is determined in accordance with land held as freehold, the amount or value of the consideration and the area of land shall be stated on the licence, and the licence shall not be rigestered in the Record Office of Antigua and Barbuda until the Registrar is satisfied that the correct stamp duty has been paid.”

- (c) by the insertion after subsection (4) thereof of the following—

“(5) Any application for a licence under this Act is subject to an application fee of one hundred (\$100.00) dollars payable to the Commissioner of Inland Revenue.

(6) A Spouse of a citizen of Antigua and Barbuda shall upon application to the Minister, be exempted from the payment of stamp duty payable under this Act.”

## **8. Amendment of section 23-Power of the Cabinet**

Section 23 of the principal Act is repealed and substituted by the following:

“(1) The Governor General may, upon the advice of the Cabinet, and upon application in the prescribed form –

- (a) defer the payment of the stamp duty payable under section 18 to a date, not exceeding three years, commencing on the date specified in the license for completion of the proposed development described in the licence.
- (b) exempt any non-citizen or class of non-citizens from any provisions of this Act, subject to such conditions as may be specified in the Order.

(2) Where a licensee fails to pay the stamp duty on the date on which the period of deferment referred to in subsection (1) (a) expires, he shall pay to the Commissioner of Inland Revenue the principal amount owed plus interest of two (2%) percent compounded as penalty for non-compliance.”

## **SCHEDULE OF STAMP DUTIES FOR LICENCES GRANTED UNDER THIS ACT**

### **LAND HELD AS FREEHOLD**

Where the licence is granted to hold land as freehold, the stamp duty shall be at the rate of seven (7%) percent of the market value of the land.

### **LAND HELD UNDER A LEASE**

- (i) where the licence is granted to hold a lease for a term exceeding ninety-nine (99) years, the stamp duty shall be at the rate of seven (7%) percent of the market value of the land;



- (ii) where the licence is granted to hold a lease for any term of years from ten years up to fifty years the stamp duty shall be at the rate of five (5%) percent of the market value of the land;
- (iii) where the licence is granted to hold a lease for a term of years up to ninety nine (99) years, the stamp duty shall be six (6%) per cent of the value of the land;
- (iv) where the licence is granted to hold land under a lease and the term is less than ten years or a tenancy from year to year, the stamp duty shall be at the rate of three (3%) percent of the value of the land.

### **LAND HELD ON MORTGAGE**

Where the licence is granted to enable the licensee to hold a mortgage on land or debenture or a charge or any form of security on land, the stamp duty shall be two thousand dollars.

### **LICENCES FOR DIRECTORSHIPS, SHAREHOLDERS ETC**

- (i) where the licence is granted to be a director of a company, the stamp duty shall be six thousand dollars;
- (ii) where the license is granted to enable the licensee to hold shares by way of transfer on purchase, gift or otherwise of a company, the stamp duty shall be seven (7%) percent of the market value of the shares held by the licensee;
- (iii) where the licence is granted to enable the licensee to hold shares transferred by purchase, the stamp duty shall be at the rate of seven (7%) percent of the value of the shares held by the licensee or the market value of the shareholders interest in the land, whichever is greater.
- (iv) where the licence is granted to a non-citizen to vote at meetings of a company or other legal entity, the stamp duty shall be two thousand dollar.

### **LAND HELD IN TRUST**

Where the licence is granted to enable the licensee to hold land as trustee for a non-citizen, the stamp duty shall be seven (7%) percent of the value of the land held in trust.

**BENEFICIARY OF A TRUST**

Where the licence is granted to a beneficiary of a trust, who is a non-citizen, the stamp duty shall be five percent (5%) of the market value of the beneficiary’s interest in the land held in trust.

**MORTGAGE**

Where the licence is granted to enable the licensee to hold mortgage or debenture or a charge or any form of security on land, the stamp duty shall be two thousand dollars.

**A LICENCE TO BE A MEMBER OF A COMPANY HAVING NO SHARE CAPITAL**

- (i) where the license is granted to enable the licensee to be a member of a company having no share capital, the stamp duty shall be two thousand dollars; and
- (ii) for any other licenses, the stamp duty shall be two thousand dollars.

**GIFT**

Where land is transfer to a non-citizen as a gift the stamp duty shall be five percent (5%) of the market value of the land.

Passed the House of Representatives on  
the          day of          , 2020.

Passed the Senate on the          day of  
, 2020.

.....

*Speaker.*

.....

*President.*

.....

*Clerk to the House of Representatives.*

.....

*Clerk to the Senate.*

## **EXPLANATORY MEMORANDUM**

This Bill seeks to amend the Non-Citizens Land Holding Regulation Act, Cap. 293, with a view to clarify certain doubts appearing in sections 8 and 18; and for greater certainty, prescribe for certain matters not specifically mentioned, but classified in section 18 under the general term of “any other licence.”

**1.** Clause 4 of the Bill introduces a new provision for the grant of a licence to a non-citizen to hold land as mortgagee in accordance with the law relating to mortgage, land that is held as security for funds that the non-citizen may, from time to time, invest on loans on projects situated in Antigua and Barbuda. For this purpose, the Bill would require such mortgagees to apply for a licence annually to enable the Minister to determine whether the non-citizen residents who receive loans on pledge of lands situated in Antigua and Barbuda apply the loans for the purpose of executing the intended projects.

**2.** For the avoidance of doubt, section 6 is amended by deleting the word “unlicensed” wherever it occurs in the section. The application of the word “unlicensed” in section 6 of the Act is not intended to confer, for the purposes of the Act, citizenship on a non-citizen, nor exempt such non-citizen companies or entities from the requirements of obtaining a licence under the Act. In order to clarify this misconception, the definition of the word “unlicensed” is deleted and substituted by the definition of the words ‘unlicensed non-citizen’. Clause 6 is further amended by inserting a new subclause which would not permit the grant of a licence to a director or shareholder of a corporate entity unless that corporate entity of which the applicant is a director or a shareholder is licensed to hold land under the Act.

**3.** Section 8 of the principal Act, as first enacted, made provision for the grant of licences to non-citizen companies or entities to hold land or interest in land or any estate, and also for non-citizens to hold directorships, to vote at meetings of a company, or to be members of companies having no share capital. The stamp duties payable for licences granted under sections 4 and 8 of the Act are prescribed in section 18 of the Act, and includes all other stamp duties not specifically prescribed by section 18 of the Act, but payable under a prescribed amount in section 18(1) (c), which applies to all other licenses not specifically mentioned.

4. The amendment of section 8 seeks to expand the licensing regime to cover as many of the unprescribed matters as are practicable and to make specific provision for the grant of licences for non-citizens to hold land or interest in such land or estate. The effect of the amendment is to reduce the matters for which a licence is required, but not specifically provided for in the section to a minimum. Examples of matters requiring licences, but not prescribed in the section are: licences for members of a company having no share capital, and beneficiaries of a trust. A member of a company having no share capital have the same status as shareholder of a company, both derive benefit from the investment made in the company or other corporate entity

5. Clause 6 of the Bill seeks to repeal section 8(1) and to substitute therefor a new subsection, which provides for a number of matters not specifically prescribed for in section 8 of the principal Act. The unspecified matters are considered to be matters for which specific provisions should be made in order to identify for the purpose of certainty, as many of those unprescribed matters in respect of which a non-citizen requires a license to hold.

6. Clause 7 of the Bill, would provide for a comprehensive list of licenses and the stamp duties payable by persons to whom such licences are granted. Two other amendments were introduced. The first made provision for applicants to pay a fee of \$100 for every application submitted for a licence. The second amendment proposed that a non-citizen spouse of a citizen of Antigua and Barbuda be exempted from the payment of stamp duties under the Act.

7. The amendment to section 23 is intended to clarify a situation where a non-citizen, who holds land under a licence, with conditions attached, subsequently acquires citizenship without having complied with the conditions of the licence or the obligations of a licensee under the Act or any other law. The amendment seeks to clarify the view that an acquisition of citizenship extinguishes the obligation of the licensee from compliance with the conditions contained in a licence or other obligations under any other law. Clause 6 of the Bill makes it clear that the acquisition of citizenship subsequent to the grant of a licence does not terminate the obligations and the conditions of the licensee under the Act. The obligations of a licensee under the Act, and the conditions of the licence continue to apply to the licensee as well as the parcels specified in the licence until the obligations and the conditions are complied with and a certificate of compliance is issued by the Minister of Legal Affairs.

Hon. Gaston Browne  
Prime Minister  
and Minister of Finance