

**ANTIGUA AND BARBUDA**



**NON-CITIZENS LAND HOLDING REGULATIONS (AMENDMENT) ACT, 2018**

**NO. OF 2018**



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*Non-Citizens Land Holding  
Regulations(Amendment) Bill, 2018*

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**ARRANGEMENT OF CLAUSES**

**CLAUSES**

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8. Amendment of section 8- Licences for non-citizens to hold directorships, shares or debentures
9. Amendment of section 18- Stamp Duty
10. Amendment of section 23- Power of the Governor General
11. Amendment of the principal Act

**ANTIGUA AND BARBUDA**

**NON-CITIZENS LAND HOLDING REGULATIONS (AMENDMENT) BILL, 2018**

**NO. OF 2018**

**AN ACT** to amend the Non-Citizens Land Holding Regulations Act, Cap. 293 to cure certain defects and make provision to bring the Act into conformity with the development program of the Government.

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

**1. Short title**

This Act may be cited as the Non-Citizens Land Holding Regulations (Amendment) Act, 2018.

**2. Interpretation**

In this Act—

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

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

Section 2 of the principal Act is amended by the insertion after paragraph (b) of the definition of “non-citizen” of the following—

“(c) any company incorporated in Antigua and Barbuda under the International Business Corporation Act Cap. 222”

**4. Amendment of section 3- Forfeiture of land and mortgages held by unlicensed non-citizens**

Section 3 of the principal Act is amended by the repeal of paragraph (a) of the proviso thereof.

**5. Amendment of section 4- Licences for non-citizens to hold land or mortgages**

Section 4 of the principal Act is amended by the repeal of subsection (1) thereof and the substitution therefor of the following—

“(1) The Governor General may, if he thinks fit, and upon application in the prescribed form, grant a licence to a non-citizen to hold land in Antigua and Barbuda as owner, tenant or mortgagee for any estate or interest, either subject to any conditions or not:

Provided that the licence shall be operative only as to the land described and as to the estate or interest specified in the licence, and shall be of no force or effect until registered in the Record Office of Antigua and Barbuda.”

**6. Amendment of section 6- Companies under the control of non-citizens**

Section 6 of the principal Act is amended by the repeal of paragraph (a) thereof and the substitution of the following—

“(a) if any of the directors is a non-citizen;”.

**7. Amendment of section 7-Power of a company to restrict holding by non-citizens of its shares and debenture**

The chapeau to section 7 of the principal Act is repealed and replaced by the following-

“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 Antigua and Barbuda holding or intending to acquire land in Antigua and Barbuda may—”

**8. Amendment of section 8- Licences for non-citizens to hold directorships, shares or debentures**

Section 8 of the principal Act is amended as follows-

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

“(1) The Governor General may, if he thinks fit, and upon application in the prescribed form, 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;
- (c) to hold shares or debentures of a company;
- (d) to be a member of a company having no share capital:

Provided that no licence shall be granted to a non-citizen under this section, unless the company in respect of which the licence relates is a company holding land under a licence granted under section 4.

(2) A licence granted under this section shall be operative only as to the company named, and as to the land described, and as to the number of votes, shares or debentures, specified in the licence.”

(b) by the renumbering of subsection (2) as subsection (3),

### **9. Amendment of section 18- Stamp Duty**

Section 18 of the principal Act is amended as follows—

(a) by the repeal of paragraphs (a), (b) and (c) of subsection (1) and the substitution of the following—

“(a) where the licence is granted to hold land in fee simple and the consideration on sale or disposal to the licensee is money or money’s worth, the duty shall be at the rate of five per centum of the consideration or the market value of the land at the time of the sale or disposal, whichever is greater;

(b) where the licence is granted on transfer of shares, the duty shall be at the rate of five percent of the market value of the percentage of interest in land represented by the number of shares held by the licensee;

(c) where the licence is granted to enable the licensee to hold a mortgage or, debenture or a charge or debentures or any form of security on land the duty payable is two thousand dollars;”

(b) by the insertion of the following paragraph after paragraph (c) as follows—

“(d) for any other licences, the duty shall be four thousand dollars.”

### **10. Amendment of section 23- Power of the Governor General**

Section 23 of the principal Act is repealed and replaced by the following-

“(1) The Governor General may, if he thinks fit, upon application in the prescribed form, by order-

(a) defer the payment of the stamp duties payable under section 18 to a date, not exceeding three years, commencing on the date specified in the licence for completion of the proposed development;

(b) exempt any non-citizen or class of non-citizens from any of the provisions of this Act, subject to such conditions as may be specified in the Order:

Provided that paragraph (b) shall not apply to the payment of Stamp Duty imposed under section 18 and the Land value Appreciation tax under section 19, except by an order made by the Minister and approved by affirmative resolution by the House of Representative.

(2) Where the licensee fails to pay the stamp duty on the date on which the period of deferment referred to in subsection (1) (a) expires, a penalty of two percent of the stamp duty owed shall be paid to the Commissioner of Inland Revenue.

**11. Amendment of the principal Act**

The principal Act is amended by inserting the following new section after section 24—

**“25. Regulations**

The Minister may make regulations for the purpose of carrying out this Act into effect, and in particular prescribe application forms for licences to hold interest in land, shares or to be director of a corporation holding land.”

Passed by the House of Representatives  
on the day of 2018.

Passed by the Senate on the  
day of 2018.

Speaker

President

Clerk to the House of Representative

Clerk to the Senate

## **EXPLANATORY MEMORANDUM**

This Bill seeks to amend the Non-citizens Land Holding Regulations Act Cap. 293 to clarify the intention of the Legislature regarding the purpose and objective of the Act. The Bill also seeks to address any defects or perceived defects as a result of misreading of the provisions of the Act.

For effective implementation of the Act, the Governor General is authorised under the Act to exercise discretion in granting licences to non-citizens to hold land in Antigua and Barbuda. Further, the Act empowers the Governor General to grant licences, subject to conditions or not.

One of the defects which the Bill seeks to rectify is the meaning of the term citizen in relation to a director who is a non-citizen and how the change of status of a non-citizen director licensed under the Act affects the company for the purpose of the Act. Therefore if all the non-citizen directors become licensed, the company ceases to be under the control of non-citizens. The amendment seeks to rectify this defect by providing that a company is under the control of non-citizens if none of the directors is a citizen.

In section 8 of the principal Act, it is contended that the grant of licences to be a director or to hold shares or to be a member of a company having no share capital does not depend upon the company's relationship to land holding in Antigua and Barbuda. In the view of the Government, such a position is untenable because it allows the Company in whom the land is vested, as owner, to escape the payment of the stamp duty.

The amendment also focuses attention on the stamp duties payable under the Act by a non-citizen to whom a licence has been granted. It was noted that the stamp duty payable by a shareholder of a company licensed to hold land is four hundred dollars, which may entitle the shareholder to be virtually the owner of all the land vested in the company. This defect is being addressed by the amendment so that a shareholder of a company which owes land would pay the appropriate stamp duty equivalent to the market value of the land represented by the percentage of shares held by him purchased a portion of the land vested in the company, in the same way as a non-citizen purchasing a subdivision of land held by another individual pays stamp duty under the Non-citizens Land Holding Regulations Act.

Under section 23 of the Act, the Governor General is authorised to grant an exemption, to a non-citizen from all or any of the provisions of the Act, subject to conditions as may be specified in the licence. The grant of exemption is extended to the payment of the stamp duty imposed by section 18 of the Act. The amount of the stamp duty that may be



waived is, in certain circumstances, so large that it may adversely affect the revenues of the Government. Additionally, in almost all the cases where exemption from stamp duty is waived, income tax is waived as well. To address this problem, the Government has decided that no waiver of stamp duty under the Act should be granted, but instead, and where the circumstances justify, the Governor General be authorised to exercise his discretion to delay payment of the stamp duty by deferring payment to a date, not exceeding three years, commencing from the date on which the development is estimated to be completed.

To give effect to the proposed changes the following amendments are proposed:

1. The interpretation section is amended to include in the definitions of a non-citizen a company incorporated under the International Business Corporation Act, Cap.222. This is necessary because companies incorporated under International Business Cooperation Act operate, for all intents and purposes, as companies incorporated outside Antigua and Barbuda and therefore in practice fall within the definition of non-citizen.
2. Section 3 (a) of the Act excludes a non-citizen from the licensing regime, if land held by the non-citizen is under a lease for a term not exceeding five years or for any less interest for purposes of residence, trade or business, provided that the land so held by the unlicensed non-citizen is not more than five acres. This provision has not well served the needs of the economy. It is subject to abuse in several ways, either by renewing the leases after expiration for continuous periods of five years or by forming several companies to hold leases of different parcels of land for five years or less to avoid obtaining licences and payment of stamp duty. The amendment proposes to amend section 3 by repealing paragraph (a) which excludes such non-citizens from the requirement of the licencing regime.
3. The amendment proposed to section 4 is a minor insertion requiring the grant of licences upon application to a non-citizen in the prescribed form. In other words, a licence shall not be granted under section 4 without completing the prescribed form.
4. The proposed amendment to section 6 is to require a company under the control of non-citizens to obtain a licence, whether the directors of the company are licenced or not.
5. The amendment proposed to section 7 of the principal Act is to extend the application of the provisions of section 7, which requires companies incorporated in Antigua and Barbuda to restrict or prohibit the issue or transfer

of its shares or debentures to non-citizens, to all companies, regardless of the number of acres of land held by that company.

6. The Bill proposes that section 8 to authorise the Governor General to grant a licence, upon application, be amended for the matters mentioned under the section, namely for a non-citizen to be director, to hold shares or debentures, to vote at meeting or to be a member of a company having no share capital. The Bill also makes provision for a new proviso, which prohibits the grant of a licence under section 8 unless the company in relation to which the licence is granted is licensed to hold land or intends to hold land. The existing proviso is converted to a new subsection (2) and extended to include the land by the company. Adds a new subsection namely subsection (2), and renumbers the existing subsection (2) as subsection (3).
7. In clause 9, the proposed amendment makes provision to include a new paragraph for prescribing stamp duty specifically for licences granted to a non-citizen to hold shares in a company holding land in Antigua and Barbuda.
8. Clause 10 proposes to repeal section 23 in its entirety and to provide for the policy of delaying the payment of stamp duty to a later date, rather than a waiver for payment of stamp duty.