

NON-CITIZENS (PROPERTY RESTRICTION) ACT

Act 22 of 1975 – 12 July 1975

Amended 38/11; 26/12 (cio 22/12/12); 27/13 (cio 21/12/13); 9/15 (cio 14/5/15); 33/16 (cio 22/12/16); 10/17 (cio 24/7/17); 11/17 (P53/17 – cio 15/1/18); 11/18 (cio 9/8/18); 13/19 (cio 25/7/19); 7/2020 (cio 7/8/2020); 2/2021 (cio 29/4/2021)

ARRANGEMENT OF SECTIONS

1. Short title
2. Interpretation
3. Non-citizens' property rights
4. –
5. Consequence of contravention
6. Qualified corporation
7. Savings

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EDITORIAL NOTE: The words “Class B Banking Licence” have been deleted and replaced by the words “Category 2 Banking Licence” wherever they appear, by section 22 (c) of Act 20 of 2002 w.e.f. 1 September 2002; and the words “Financial Services Development Act 2001” have been deleted and replaced by the words “Financial Services Act 2007” wherever they appear, by section 97 (5) of Act 14 of 2007 w.e.f. 28 September 2007.

1. Short title

This Act may be cited as the Non-Citizens (Property Restriction) Act.

2. Interpretation

In this Act—

“acquire”, “hold” or “purchase” –

- (a) includes the distribution of property to a beneficiary under the Foundations Act; but
- (b) does not include the burdening of a property with a mortgage or charge;

“Authorised Company” has the same meaning as in the Financial Services Act;

“business certificate” means a global business licence under the Financial Services Act or a banking licence under the Banking Act, in so far as it relates to its banking transactions with non-residents and corporations holding a Global Business Licence or with an Authorised Company;

“certificate” means a certificate issued under section 3 (2);

“charge” means a fixed or floating charge;

“Commission” means the Financial Services Commission established under the Financial Services Act;

“dispose of” includes the burdening of a property with a mortgage or charge;

“Minister” means the Minister to whom responsibility for the subject of internal affairs is assigned;

“non-citizen” means—

- (a) a person who is not a citizen of Mauritius;
- (b) an association or body of persons, whether corporate or incorporate, where—
 - (i) it is not domiciled in Mauritius;
 - (ii) it is quoted on the Official List of the Stock Exchange or admitted to any Second Market established under the Securities Act and its control or management is vested in one or more persons who are not citizens of Mauritius;
 - (iii) it is not so quoted or admitted and one of its shareholders is not a citizen of Mauritius;
- (c) a trust in so far as it is involved in any transaction referred to in section 22 of the Trusts Act; or
- (d) a foundation which has a person who is not a citizen of Mauritius as –
 - (i) a founder;
 - (ii) a beneficial owner or an ultimate beneficial owner; or
 - (iii) a beneficiary,under the Foundations Act;

“property”—

- (a) means an immovable property, whether freehold or leasehold, in Mauritius; and
- (b) includes—
 - (i) in relation to a trust or otherwise, any right or interest in immovable property, whether legal or beneficial; or
 - (ii) any share;

“qualified corporation” means a corporation holding a global business licence under the Financial Services Act or a bank holding a banking licence under the Banking Act, in so far as it relates to its banking transactions with non-residents and corporations holding a Global Business Licence or with an Authorised Company, as the case may be;

“resident in Mauritius” means—

- (a) in relation to an individual, a person who has his domicile in Mauritius;
- (b) in relation to a body corporate, a body incorporated or registered under the law of Mauritius;

“share”—

- (a) means an interest, by any name called, in a company, partnership or *société* or any other body corporate which holds, disposes of, purchases or otherwise acquires an immovable property in Mauritius; and
- (b) includes—
 - (i) a share in a partnership or *société* or any body corporate which reckons amongst its assets—
 - (A) any freehold or leasehold immovable property in Mauritius; or
 - (B) any share in a company or in a company holding shares in a subsidiary or any share in a partnership or *société* or any other body corporate, which itself reckons amongst its assets, freehold or leasehold immovable property in Mauritius;
 - (ii) a share in a company which reckons amongst its assets—
 - (A) any freehold or leasehold immovable property in Mauritius; or
 - (B) any share in a company holding shares in a subsidiary or any share in a partnership or *société* or any other body corporate, which itself reckons amongst its assets, freehold or leasehold immovable property in Mauritius; or
 - (C) any share in a company holding shares in any successive subsidiary company, or any share in any successive partnership or *société* or any other successive body corporate, which itself reckons amongst its assets freehold or leasehold immovable property in Mauritius;

“shareholder” includes an association or body of persons, whether corporate or incorporate, which is a non-citizen.

3. Non-citizens’ property rights

(1) Subject to subsection (3), a non-citizen who wishes to hold, dispose of, purchase or otherwise acquire a property shall make a written application to the Minister giving, wherever applicable—

- (a) the precise location of the property;
- (b) a site plan showing its extent and precise location;
- (c) the nature of the interest intended to be held, disposed of, purchased or otherwise acquired;
- (d) the reason for which the application is made; and
- (e) such other information as the Minister may determine.

(1A) Notwithstanding subsection (1), where a non-citizen acquires property without having made a written application under subsection (1), the Minister may, where the non-citizen makes a written application after the acquisition, give his approval, subject to such terms and conditions as he may determine, with respect to the acquisition of the property where he is satisfied –

- (a) of the credentials of the non-citizen; and
- (b) that the omission to seek prior written authorisation for the acquisition of the

property was due to a mistake or oversight.

(1B) (a) Where a non-citizen makes a written application to the Minister under subsection (1A), he shall give all the particulars specified in subsection (1).

(b) Where the Minister gives his approval under subsection (1A), the non-citizen shall file the document witnessing the approval with the Conservator of Mortgages for transcription.

(2) On receipt of an application under subsection (1), the Minister may issue to the applicant a certificate authorising him to hold, dispose of, purchase or otherwise acquire the property, subject to such terms and conditions as the Minister may determine.

(3) No certificate shall be required—

(a) to enable a non-citizen to hold property in virtue of—

(i) a lease agreement for industrial or commercial purposes, other than a lease agreement or a sublease agreement in respect of a residential property, for a term not exceeding 20 years;

(ii) a deed of *concession* under the Fisheries and Marine Resources Act; or

(iii) a tenancy agreement for a term not exceeding 4 years;

(b) in the case of a non-citizen—

(i) who holds, disposes of, purchases or otherwise acquires any property in accordance with any other enactment or any convention to which Mauritius is a party;

(ii) who holds, disposes of, purchases or otherwise acquires property—

(A) while he is the spouse, married in accordance with the *régime légal de communauté*, of a citizen;

(B) by inheritance; or

(C) by the effect of marriage;

(ba) in the case of a retired non-citizen who, by agreement with the owner of a –

(i) residential care home as defined under the Residential Care Homes Act; or

(ii) residential unit in any other similar facility situated outside a smart city as referred to in the Investment Promotion (Smart City Scheme) Regulations 2015,

acquires a right to live in the residential care home or residential unit, as the case may be, for the rest of his life, free of rent, provided that –

(A) such right shall not be transferable and shall end upon the death of the retired non-citizen or when the retired non-citizen terminates the agreement; and

(B) an authorisation from the Board of Investment is produced, after

the Board of Investment has obtained the approval of the Minister;

- (c) in the case of a non-citizen or a person not resident in Mauritius who—
- (i) holds, disposes of, purchase or otherwise acquires, sells or otherwise deals with shares or other securities of a company which is desirous of being admitted for quotation on the Official List of the Stock Exchange through a public issue, offer for sale of shares and private placement of shares, or quoted on the Official List of the Stock Exchange or admitted to any Second Market which may be established under the Stock Exchange Act; or
 - (ii) invests in a unit trust scheme and any other collective investment vehicle;
 - (iii) purchases or otherwise acquires any luxury villa, apartment, penthouse or other similar properties used, or available for use, as residence with or without attending services or amenities from a company holding a certificate under the Invest Hotel Scheme, Property Development Scheme or Smart City Scheme, prescribed under the Economic Development Board Act 2017;
 - (iv) purchases or otherwise acquires an immovable property, a right to immovable property or part of a building, for business purposes, on production of an authorisation from the Economic Development Board granted after it has obtained the approval of the Minister;
 - (v) purchases or otherwise acquires an apartment used, or available for use, as residence, in a building of at least 2 floors above ground floor, provided the purchase price is not less than 6 million rupees or its equivalent in any other hard convertible foreign currency, or in such other amount as may be prescribed, on production of an authorisation from the Economic Development Board granted after it has obtained the approval of the Minister;
 - (vi) purchases or acquires a plot of service land for the construction of a residence from a company holding a certificate under the Smart City Scheme prescribed under the Economic Development Board Act 2017;
 - (vii) notwithstanding the repeal of the provisions relating to the IRS certificate or RES certificate under the Economic Development Board Act 2017, purchases or otherwise acquires a residential property from a company holding an IRS certificate or a RES certificate.

(4) For the purposes of subsection (3) (c) –

“company” includes a unit trust, a qualified corporation or any other collective investment vehicle.

5. Consequence of contravention

(1) An agreement which is in contravention of—

- (a) section 3; or
- (b) a condition imposed in a certificate,

shall be void.

(2) Where property is held, disposed of, purchased or otherwise acquired in contravention of—

- (a) section 3; or
- (b) a condition imposed in a certificate,

the Curator shall forthwith—

- (i) take possession of the property; and
- (ii) cause it to be sold in accordance with the Sale of Immovable Property Act.

(3) A person, other than a non-citizen, who acquires property pursuant to a sale under subsection (2) (b) (ii), shall acquire a good title to the property.

(4) The proceeds of a sale under subsection (2) (b) (ii) shall, after deduction of all charges, be paid over, in such manner as the Master and Registrar may determine, to the non-citizen or other person who appears to be entitled to them.

(5) A non-citizen who contravenes section 3 shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding one year.

6. Qualified corporation

(1) Subject to subsection (2), a qualified corporation or an applicant for a business certificate who wishes to hold, dispose of or purchase or otherwise acquire a property shall apply to the Commission, or in the case of a bank holding a banking licence under the Banking Act, in so far as it relates to its banking transactions with non-residents and corporations holding a Global Business Licence or being an Authorised Company, to the Bank of Mauritius.

(2) The Minister may—

- (a) make regulations to provide for the manner in which applications submitted to the Commission or the Bank of Mauritius, as the case may be, shall be processed;
- (b) delegate to the Commission or the Bank of Mauritius, subject to such directions as he may determine, his powers to issue a certificate under this Act to a qualified corporation.

(3) Any certificate issued by the Commission or the Bank of Mauritius, as the case may be, under powers delegated by the Minister, shall be deemed to be a certificate issued under section 3 (2) of this Act.

7. Savings

(1) The provisions of this Act shall continue to apply up to 30 June 2021 to the holder of a valid Category 1 Global Business Licence or Category 2 Global Business Licence, issued on or before 16 October 2017, as if the provisions of this Act have not been amended on the commencement of this section.

(2) The provisions of this Act shall continue to apply up to 31 December 2018 to the holder of a valid Category 1 Global Business Licence or Category 2 Global Business

Licence, issued after 16 October 2017, as if the provisions of this Act have not been amended on the commencement of this section.
