

SAINT LUCIA

No. of 2020

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SCHEDULE

No. of 2020

AN ACT to make provision for an alien to purchase, acquire or lease land in Saint Lucia and for an alien investor to enter and remain in Saint Lucia and for related matters.

[]

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:

PRELIMINARY**Short title**

1. This Act may be cited as the Alien Landholding (Licensing) Act, 2020.

Interpretation

2.—(1) In this Act —

“alien” —

(a) means —

(i) a national of a Member State, the laws of which require a citizen of Saint Lucia to obtain a licence to own, acquire or lease land in that Member State,

(ii) a firm, partnership or unincorporated body of persons with more than fifty per cent of its membership consisting of persons referred to under subparagraph (i),

(iii) a company —

(A) that is incorporated or registered under the laws of Saint Lucia or a Member State with more than fifty per cent of its beneficial owners, shareholders or directors consisting of persons referred to under subparagraphs (i) and (ii);

(B) that has more than 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, vested in persons referred to under subparagraphs (i) and (ii);

(C) not incorporated in Saint Lucia or a Member State; or

(iv) a trustee, who is a person referred to under subparagraph (i), (ii) or (iii);

(b) does not include a citizen of Saint Lucia or a national of

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a Member State who is not a person referred to under paragraph (a);

“alien investor” means an alien issued with —

(a) a valid certificate under section 11 and a valid licence under the former Act; or

(b) a valid certificate under section 11 and a valid alien landholding licence under section 18;

“alien investor entrance permit” means a permit issued under section 45;

“alien landholding licence” means a licence issued under section 18;

“approved development” means a project or development approved under an enactment specified in the Schedule;

“attorney-at-law” has the meaning assigned to it under the Legal Profession Act, Cap. 2.04;

“beneficial owner” means a natural person —

(a) who ultimately owns or controls a company;

(b) who exercises ultimate effective control over a legal person or legal arrangement, such as a senior manager; or

(c) on whose behalf a transaction or activity is being conducted;

“beneficiary” means a person who obtains an entitlement to hold land under the succession of an alien;

“Board” means the Citizenship by Investment Board established under section 4 of the Citizenship by Investment Act, Cap. 1.20;

“business day” means a day other than Saturday, Sunday or a Bank Holiday;

“Chairperson” means the Chairperson appointed under section 26(4);

“certificate” means a Certificate of Eligibility under section 11;

“Chief Immigration Officer” means the Chief Immigration Officer under the Immigration Act, Cap. 10.01;

“debenture” includes —

- (a) a mortgage or charge by a company, whether floating or otherwise on the property of the company, its undertaking, or uncalled capital;
- (b) an obligation by a 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;

“dependant” —

- (a) in relation to an individual, means —
 - (i) a spouse of an alien investor,
 - (ii) a child of an alien investor or of his or her spouse who is twenty-one years of age or below,
 - (iii) a child of an alien investor or of his or her spouse who is no more than thirty years of age and is fully supported by the alien investor,
 - (iv) a child of an alien investor or of his or her spouse, of any age, who is physically or mentally challenged and fully supported by the alien investor,
 - (v) the parent of an alien investor or of his or her spouse above the age of fifty-five years who is fully supported by the alien investor,
 - (vi) a parent of an alien investor or of his or her spouse, of any age, who is physically or mentally challenged and is fully supported by the alien investor,
 - (vii) an unmarried sibling of the alien investor who is below the age of eighteen years old and who has received the consent of his or her parents or legal guardians;

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(b) in relation to a company, means a person referred to under paragraph (a)(i) to (iv) who is —

(i) a child of a director, beneficial owner or shareholder of the company, or

(ii) a spouse of a director, beneficial owner or shareholder of the company;

“Development Control Authority” means the body corporate preserved under section 61 of the Physical Planning and Development Act, Cap. 5.12;

“document” includes an agreement for sale, deed, vesting order or other assurance of land that purports to convey, transfer, vest or evidence title to an equitable or a legal interest in land;

“former Act” means the Aliens (Licensing) Act, Cap. 15.37 that is repealed under section 57;

“hypothec” has the meaning assigned to it under Article 1908 of the Civil Code of Saint Lucia, Cap. 4.01;

“immovable property” has the meaning assigned to it under the Civil Code of Saint Lucia, Cap. 4.01;

“interest in land” includes —

(a) ownership of land;

(b) a leasehold interest;

(c) a charge on immovable property for the fulfilment of an obligation, such as, a hypothec;

(d) holding a trust;

“international business company” has the meaning assigned to it under the International Business Companies Act, Cap. 12.14;

“land” —

(a) has the meaning assigned to it under Article 335 of the Civil Code of Saint Lucia, Cap. 4.01;

(b) includes immovable property in Saint Lucia and an interest in land in Saint Lucia;

“Land Register” has the meaning assigned to it under the Land Registration Act, Cap. 5.01;

“lease” has the meaning assigned to it under Article 1509 of the Civil Code of Saint Lucia, Cap. 4.01;

“member of a company” —

(a) means a person entitled under the by-laws or by resolution of a company to participate in its assets or in its divisible profits;

(b) does not include an employee or agent of the company by reason only that the amount of that employee’s or agent’s emoluments depends on the amount of the company’s profits;

“Member State” has the meaning assigned to it under the Caribbean Community Act, Cap. 19.21;

“Minister” means the Minister responsible for finance unless otherwise provided;

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

“national of a Member State” means a person —

(a) who is a citizen of a Member State;

(b) who has a connection with a Member State of a kind which entitles that person to be regarded as belonging to or, if it be so expressed, as being a native or resident of the Member State for the purposes of the laws of the Member State relating to immigration; or

(c) that is a company or other legal entity constituted in a Member State in conformity with the laws of the Member State and which the Member State regards as belonging to it, if the company or other legal entity has been formed for gainful purposes and has its registered office and central administration and carries on substantial activity within the Member State and

is substantially owned and effectively controlled by a person referred to under paragraphs (a) and (b);

“Physical Planning and Development Division” means the Physical Planning and Development Division under the Physical Planning and Development Act, Cap. 5.12;

“Registrar of Lands” means the Registrar of Lands appointed under section 5 of the Land Registration Act, Cap. 5.01;

“Registry” means the land registry established under section 4 of the Land Registration Act, Cap. 5.01;

“Secretary” means the Secretary appointed under section 26(5);

“share” includes —

(a) stock;

(b) in relation to a company that does not have a share capital, the interest of a member of a company in the assets of that company;

“shareholder” means a person with a minimum shareholding of twenty-five per cent in a company;

“the register” means the leaf of the Land Register kept in respect of a parcel of land or a registered lease under the Land Registration Act, Cap. 5.01;

“Tribunal” means the Tribunal established under section 26;

“trust” —

(a) includes an arrangement, whether written or oral, express or implied, legally enforceable or not, whereby land, shares or debentures, an interest or right in land, shares or debenture is held, for the benefit of, to the order, or at the disposal of, an alien;

(b) does not include —

- (i) the duties incidental to a mortgage,
- (ii) 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,
- (iii) 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 land sold is vested in the purchaser or the purchaser's interest in the land is extinguished,
- (iv) the duties of a trustee in bankruptcy to the bankrupt or the bankrupt's creditor's, or
- (v) the duties of a trustee for the purposes of a composition or scheme of arrangement for the payment of debts to the debtor or the debtor's creditors;

“trustee” —

- (a) means a person who administers a trust;
- (b) includes a personal representative;

“ultimately own or control” means direct or indirect ownership or control of twenty-five per cent or more of shares, voting rights or ownership interest in a company;

“Unit” means the Citizenship by Investment Unit established under section 25 of the Citizenship by Investment Act, Cap. 1.20;

“unlicensed alien” means an alien that does not hold a valid licence issued under the former Act or an alien landholding licence.

(2) For the purposes of the definition of “national of a Member State”, a company or other legal entity is —

- (a) substantially owned, if more than fifty per cent of the equity interest of the company is beneficially owned by nationals referred to under paragraph (a) or (b) of that definition;
- (b) effectively controlled, if the nationals referred to under paragraph (a) or (b) of that definition have the power to name a majority of its directors or are otherwise legally entitled to direct its actions.

PART I ADMINISTRATION

Functions of the Unit

3. Without prejudice to the Citizenship by Investment Act, Cap. 1.20, the Unit is responsible for —

- (a) processing an application for a certificate or an alien landholding licence;
- (b) processing an application for an amendment of a licence issued under the former Act or an alien landholding licence;
- (c) collecting —
 - (i) a non-refundable application fee for a certificate,
 - (ii) an alien landholding licence fee,
 - (iii) a subdivision fee;
- (d) conducting due diligence checks on an alien, including —
 - (i) an alien investor,
 - (ii) a beneficiary,
 - (iii) a spouse of an alien,
 - (iv) a dependant of an alien,
 - (v) an administrator or executor who administers the estate of a deceased alien,

- (vi) the director, beneficial owner or shareholder of a company,
- (vii) a receiver or liquidator on receivership or liquidation of a company;
- (e) keeping and maintaining a record of —
 - (i) certificates,
 - (ii) alien landholding licences, and
 - (iii) alien investor entrance permits;
- (f) carrying out any other function specified under this Act.

Powers of the Board

4. Without prejudice to the Citizenship by Investment Act, Cap. 1.20, the Board may —

- (a) grant or deny an application for a certificate or an alien landholding licence;
- (b) issue a certificate;
- (c) issue an alien landholding licence, subject to the conditions under this Act, including conditions as the Physical Planning and Development Division or the Development Control Authority determines;
- (d) amend a licence issued under the former Act or an alien landholding licence;
- (e) revoke a certificate;
- (f) revoke a licence issued under the former Act or an alien landholding licence;
- (g) appoint a committee;
- (h) require an alien to provide further information for considering an application for a certificate or an alien landholding licence;
- (i) give written notice to the Registrar of Lands where the name on a licence issued under the former Act or an alien landholding licence is amended under section 22.

Delegation by the Board

5. The Board may, for the purpose of carrying out its powers under this Act, delegate, in writing, to a committee appointed under section 4(g), its powers under section 4(a), (b), (c), (d), (e), (f), (h) or (i).

Committee of the Board

6.—(1) A committee appointed by the Board under section 4(g) consists of —

- (a) the Chief Executive Officer of the Unit or his or her representative;
- (b) a legal officer of the Unit; and
- (c) one member of the Board.

(2) The member of the Board appointed under subsection (1)(c) is the Chairperson of the committee.

(3) The Board may, in the absence of the Chairperson, appoint an alternate Chairperson who is a member of the Board.

(4) The Chairperson of the committee appointed under section (4)(g) shall —

- (a) sign all certificates and alien landholding licences approved by that committee;
- (b) report to the Board on every decision undertaken in exercising a power delegated to it by the Board.

(5) A committee appointed under section (4)(g) shall, subject to section 5, exercise the powers delegated to it by the Board.

(6) A committee appointed under section (4)(g), shall keep a record of a decision it makes when exercising a power delegated to it by the Board.

(7) The committee shall regulate its procedures.

PART II
CERTIFICATE OF ELIGIBILITY

Requirement for a certificate

7.—(1) An alien shall make an application to the Board for a certificate to be eligible to apply for an alien landholding licence to purchase, acquire, lease land or continue to hold land in Saint Lucia.

(2) An alien with a valid licence issued under the former Act shall make an application to the Board for a certificate, if that alien intends to obtain an alien investor entrance permit.

(3) An alien exempted from the licensing requirements under the former Act or under this Act, shall make an application to the Board for a certificate, if that alien intends to obtain an alien investor entrance permit.

(4) An alien that intends to subdivide land specified in a licence issued under the former Act or an alien landholding licence, must hold a valid certificate to be eligible to make an application for an alien landholding licence under section 15.

(5) A divorced spouse of an alien shall make an application to the Board for a certificate to be eligible to make an application for an amendment of a licence issued under the former Act or an alien landholding licence under section 22 to change the name on the licence to his or her name by the divorce.

(6) Subject to subsection (12), an alien that acquires land pursuant to his or her rights under a mortgage or debenture, shall after one year from the acquisition or entry into possession of the land, make an application to the Board for a certificate to be eligible to make an application for an amendment of a licence issued under the former Act or an alien landholding licence under section 22 to change the name on the licence to his or her name by the acquisition or entry into possession of the land.

(7) Subject to subsection (12), an alien that fails to administer the the estate of a deceased alien within two years of the grant of probate or administration, shall make an application to the Board for a certificate to be eligible to make an application for an amendment of a licence issued under the former Act or an alien landholding licence under section 22 to change the name on the licence to his or her name

by the probate or administration, until he or she administers the estate of the deceased alien.

(8) Subject to subsection (12), the beneficiary that is an alien shall, on the grant of probate or administration, make an application to the Board for a certificate to be eligible to make an application for an amendment of a licence issued under the former Act or an alien landholding licence under section 22 to change the name on the licence to his or her name by the succession of the deceased alien.

(9) Subject to subsection (12), the receiver or liquidator of an alien that is a company shall, after two years of the receivership or liquidation of the company, make an application to the Board for a certificate to be eligible to make an application for an amendment of a licence issued under the former Act or an alien landholding licence under section 22 to change the name on the licence to his or her name by the receivership or liquidation.

(10) Subject to subsection (11), where a body corporate or an unincorporated body purchases, acquires or leases or holds land in Saint Lucia without —

(a) the requirement for a licence under the former Act or any other enactment;

(b) a certificate or an alien landholding licence,

and by reason of a disposition of shares or other interest of the body corporate or unincorporated body, the directors, the beneficial owners, majority shareholders or owners of that body are aliens, that body corporate or unincorporated body shall make an application to the Board, within thirty days of the disposition of the shares or other interest, for a certificate to be eligible to make an application for an alien landholding licence to purchase, acquire, lease or continue to hold the land in Saint Lucia.

(11) Where an alien contravenes subsection (10), the land held by that body corporate or unincorporated body is liable to be forfeited to the Crown in accordance with the forfeiture proceedings set out under Part V.

(12) Where an alien contravenes subsection (6), (7) or (9) the land held by that alien is liable to be forfeited to the Crown in accordance

with the forfeiture proceedings set out under Part V.

Application for a certificate

8.—(1) An alien or an attorney-at-law on behalf of an alien may make an application to the Board for a certificate with a duration period of one year or ten years.

(2) An application under subsection (1) must —

- (a) be in the prescribed form;
- (b) provide particulars of the land that the alien owns, acquired or leases in Saint Lucia at the time of making an application by virtue of a valid licence issued under the former Act or an alien landholding licence;
- (c) be accompanied by —
 - (i) a police certificate of good character or its equivalent from his or her country of domicile and, if not the same, his or her country of nationality,
 - (ii) a certified copy of the passport bio-data page of the alien,
 - (iii) a bank reference letter,
 - (iv) a birth certificate or birth record of the alien;
 - (v) in the case of an alien that is a company —
 - (A) the incorporation or registration documents of the company;
 - (B) a Certificate of Good Standing or its equivalent from the country the company was incorporated or registered;
 - (C) the filed corporate documents of that company, including its notice of directors, beneficial owners and shareholders;
 - (D) the prescribed notice of directors, beneficial owners and shareholders;

- (E) the supporting documents specified under paragraph (c)(i), (ii), (iii), and (iv) for each director, beneficial owner or shareholder,
- (vi) the prescribed non-refundable application fee;
- (vii) any other information required by the Unit or the Board.

(3) An application made under subsection (1) must be completed in the English language and the supporting documents submitted with the application must be in the English language or an authenticated translation in the English language.

(4) The information submitted with an application under subsection (1) must be verified by a statutory declaration.

(5) If an alien is able to identify the land that he or she intends to purchase, acquire or lease at the time of applying for a certificate, that alien may, at the same time of applying for a certificate, submit an application for an alien landholding licence under section 15.

Grant of a certificate

9. The Board may grant approval of an application for a certificate if an alien satisfies the application requirements under section 8.

Denial of a certificate

10. The Board may deny an application for a certificate where an alien —

- (a) does not satisfy the application requirements under section 8;
- (b) previously obtained a licence under the former Act or an alien landholding licence by misrepresentation, fraud or wilful concealment of material facts;
- (c) made an application for a certificate by misrepresentation, fraud or wilful concealment of material facts;
- (d) has failed to pay the prescribed non-refundable non-development fee or non-operation fee;

- (e) has failed to satisfy the conditions of a previous licence issued under the former Act or an alien landholding licence;
- (f) previously held land forfeited to the Crown;
- (g) is convicted of a criminal offence, except in the case of a minor traffic offence or an offence that is spent under the Criminal Records (Rehabilitation of Offenders) Act, Cap. 3.13, irrespective of the time or location of the commission of that offence;
- (h) is involved in an activity that is likely to cause disrepute to Saint Lucia.

Issue of a certificate

11. If the Board grants approval of an application for a certificate, the Board shall issue a Certificate of Eligibility in the prescribed form to an alien.

Validity of a certificate

12.—(1) A certificate is valid for the period specified in the certificate.

(2) The holder of a certificate is eligible to make one or several applications for an alien landholding licence during the validity of the certificate.

Revocation of a certificate

13.—(1) The Board may revoke a certificate if —

- (a) a licence issued under the former Act or an alien landholding licence is revoked under section 23;
- (b) a person is no longer a trustee;
- (c) a corporate body, including an international business company —
 - (i) no longer exists in Saint Lucia or a Member State,
 - (ii) is no longer in good standing;

(d) an alien investor —

- (i) provides false information,
- (ii) is considered to be a national security risk,
- (iii) is involved in an activity that is likely to cause disrepute to Saint Lucia,
- (iv) is convicted of a criminal offence, except in the case of a minor traffic offence or an offence that is spent under the Criminal Records (Rehabilitation of Offenders) Act, Cap. 3.13, irrespective of the time or location of the commission of that offence.

(2) Where a certificate is revoked under subsection (1), the Board shall give written notice, within seven business days, to an alien of the revocation.

(3) A notice issued under subsection (2) must state the reason for revoking the certificate.

(4) The holder of a certificate that is revoked under this section shall surrender the certificate to the Board.

PART III ALIEN LANDHOLDING LICENCE

Prohibition against holding land without a valid alien landholding licence

14.—(1) An alien, except an alien granted an exemption under the former Act or under this Act, shall not purchase, acquire, lease or continue to hold land to be used for any purpose in Saint Lucia without a valid licence issued under the former Act or an alien landholding licence.

(2) Where an alien contravenes subsection (1), the land held by that alien is liable to be forfeited to the Crown in accordance with the forfeiture proceedings set out under Part V.

Application requirements for an alien landholding licence

15.—(1) An alien with a valid certificate or an attorney-at-law on behalf of an alien with a valid certificate may make an application to the Board for an alien landholding licence to purchase, acquire, lease subdivide land or to continue to hold land in Saint Lucia.

(2) An application for an alien landholding licence under subsection (1) must —

- (a) be made with respect to one parcel of land or one subdivided lot;
- (b) be in the prescribed form and contain —
 - (i) particulars of the ownership, location and cost proposed for purchasing, acquiring or leasing the land,
 - (ii) specify the purpose for which the land will be used;
 - (iii) identify any land that the alien currently owns or leases in Saint Lucia;
- (c) be accompanied by —
 - (i) a valid certificate,
 - (ii) a document that evidences title to a legal or equitable interest in land,
 - (iii) proof that the land is part of an approved development, where applicable,
 - (iv) a survey plan lodged at the Office of the Chief Surveyor by a licensed surveyor delineating —
 - (A) the land that the alien currently owns or leases;
 - (B) the land that the alien intends to purchase, acquire or lease; or
 - (C) each subdivided lot,
 - (v) the Map Sheet and the register with respect to —
 - (A) the land that the alien currently owns or leases;
 - (B) the land that the alien intends to purchase, acquire or lease; or
 - (C) each subdivided lot,
 - (vi) in the case of an application for an alien landholding licence to hold a subdivided lot, the prescribed subdivision fee,

- (vii) a statutory declaration that verifies the information provided in the application.

Grant of an alien landholding licence

16.—(1) The Board may grant approval of an application for an alien landholding licence if —

- (a) the land to be purchased comprises of one acre or less or a lease of land is for a term of not less than two years;
- (b) the land is part of an approved development; and
- (c) an alien satisfies the application requirements under section 15.

(2) If the land to be purchased or acquired comprises of more than one acre or the land to be leased is for a term of more than two years and does not form part of an approved development, the Board may, on the recommendation of the Physical Planning and Development Division and the Development Control Authority, grant approval of an application for an alien landholding licence if the alien satisfies the application requirements under section 15.

Denial of an alien landholding licence

17. The Board may deny an application for an alien landholding licence where —

- (a) an alien —
 - (i) does not meet the application requirements under section 15,
 - (ii) has failed to pay the non-refundable non-development fee or non-operation fee,
 - (iii) has failed to satisfy the conditions of a previous licence issued under the former Act or an alien landholding licence,
 - (iv) previously held land forfeited to the Crown,
 - (v) provides false information,
 - (vi) is the subject of a criminal investigation,

- (vii) is considered to be a national security risk,
 - (viii) is involved in an activity that is likely to cause disrepute to Saint Lucia,
 - (ix) is convicted of a criminal offence, except in the case of a minor traffic offence or an offence that is spent under the Criminal Records (Rehabilitation of Offenders) Act, Cap. 3.13, irrespective of the time or location of the commission of that offence;
- (b) the Physical Planning and Development Division or the Development Control Authority determines that it is in the public interest to do so.

Issue of an alien landholding licence

18. If the Board grants an application for an alien landholding licence, the Board shall issue an alien landholding licence in the prescribed form and on payment of the prescribed alien landholding licence fee.

Validity of an alien landholding licence

19. An alien landholding licence issued under section 18 —

- (a) is valid only with respect to the land specified in that alien landholding licence;
- (b) is subject to conditions, including the conditions specified under section 20 and conditions specified by the Physical Planning and Development Division and the Development Control Authority.

Conditions for an alien landholding licence

20.—(1) An alien investor shall —

- (a) subject to subsection (2), register the alien landholding licence, within ninety days of issuance of an alien landholding licence, at the office of the Registrar of Lands to vest an interest in land in the alien;
- (b) where the alien intends to construct a building or develop the land specified in the alien landholding licence,

make an application, within one year of obtaining an alien landholding licence, to the Physical Planning and Development Division and the Development Control Authority for approval prior to constructing a building or developing the land;

- (c) where an alien investor intends to build, purchase or acquire the whole or part of a commercial building, commence operations within six months of the construction, purchase or acquisition of the building;
- (d) where an alien investor commences operations of a business, that alien investor shall not cease operations for a continuous period of more than six months;
- (e) where the alien intends to trade or carry on a business, obtain a trade licence under the Trade Licences Act, Cap. 13.04 prior to trading or carrying on a business in Saint Lucia;
- (f) use the land for the purpose for which the licence issued under the former Act or an alien landholding licence was granted.

(2) Without prejudice to the Land Registration Act, Cap. 5.01, the Registrar of Lands shall not register an interest in land under subsection (1)(a) without proof of —

- (a) a valid licence issued under the former Act or an alien landholding licence;
- (b) the payment of the stamp duties payable under the Stamp Duty Act, Cap. 15.11.

Notification of a breach of a condition

21.—(1) Where the Physical Planning and Development Division and the Development Control Authority have reason to believe that an alien or alien investor has breached the conditions of a licence issued under the former Act or an alien landholding licence, the Physical Planning and Development Division and the Development Control Authority shall give written notice to the Board of a breach of a condition of that licence.

(2) The Board shall, on being notified under subsection (1), refer the matter to the Tribunal for its determination.

Amendment of an alien landholding licence

22.—(1) An alien shall make an application to the Board for an amendment of a licence issued under the former Act or an alien landholding licence —

- (a) on the divorce of an alien, to change the name on the licence to the name of the spouse of that alien;
- (b) on the death of an alien, to change the name on the licence to the name of the beneficiary of that alien;
- (c) in the case of an alien that is a company, on receivership or liquidation of the company, to change the name on the licence to the name of the receiver or liquidator of that company.

(2) An application under subsection (1), must be in the prescribed form and accompanied with —

- (a) a valid certificate belonging to the person making the application for the amendment;
- (b) a licence issued under the former Act or an alien landholding licence;
- (c) proof of entitlement, by a court order or otherwise, of the person making the application for the amendment.

(3) If an alien satisfies the requirements under subsections (1) and (2), the Board shall issue an amended alien landholding licence on payment of the prescribed fee for the amended alien landholding licence.

(4) The conditions under which a licence under the former Act or an alien landholding licence was granted under sections 19 and 20 continue to apply with respect to the amended alien landholding licence.

Revocation of an alien landholding licence

23.—(1) The Board may revoke a licence issued under the former Act or an alien landholding licence —

- (a) for breach of a condition of the licence issued under the former Act or an alien landholding licence;
- (b) for failure to pay the non-refundable non-development fee or non-operation fee;
- (c) where a licence issued under the former Act or an alien landholding licence was obtained by misrepresentation, fraud or wilful concealment of material facts;
- (d) where an alien investor —
 - (i) provides false information,
 - (ii) is considered to be a national security risk,
 - (iii) is involved in an activity that is likely to cause disrepute to Saint Lucia,
 - (iv) is convicted of a criminal offence, except in the case of a minor traffic offence or an offence that is spent under the Criminal Records (Rehabilitation of Offenders) Act, Cap. 3.13, irrespective of the time or location of the commission of that offence.

(2) Where a licence issued under the former Act or an alien landholding licence is revoked under subsection (1), the Board shall give written notice, within seven business days, to the alien investor of the revocation.

(3) A notice issued under subsection (2) must contain —

- (a) the reason for revoking the licence issued under the former Act or an alien landholding licence;
- (b) that the land, with respect to which a licence was issued under the former Act or an alien landholding licence, is liable to be forfeited to the Crown in accordance with the forfeiture proceedings set out under Part V.

(4) The holder of a licence issued under the former Act or an alien landholding licence that is revoked under subsection (1) shall surrender that licence to the Board.

Waiver of an alien landholding licence fee

24.—(1) Cabinet may, by Order published in the *Gazette*, waive the payment of the prescribed alien landholding licence fee.

(2) A waiver under subsection (1) does not remove the requirement for an alien to make an application for an alien landholding licence under section 15.

Exemption

25.—(1) Where the laws of a Member State, exempts a citizen of Saint Lucia from the requirement of obtaining an alien landholding licence to own, acquire or lease land in that Member State, a national of a Member State is exempted from the requirement of obtaining an alien landholding licence.

(2) Cabinet may, by Order published in the *Gazette*, exempt an alien from this Act —

- (a) where the alien is a party to an agreement or plan entered into with the Government for financing the holding and development of housing, industry, tourism, forestry, fisheries or agriculture;
- (b) where the alien in conjunction with the Government embarks on an undertaking that has been approved by Cabinet;
- (c) where the alien is trading on the Eastern Caribbean Securities Exchange Limited licensed under section 8 of the Securities Act, Cap. 12.18 or any other recognized securities exchange in a Member State.

(3) An order issued under subsection (2) may be issued subject to any condition that Cabinet considers necessary and shall relate to a particular alien or to a particular interest in land or to both.

PART IV
TRIBUNAL

Establishment of Tribunal

26.—(1) There is established a Tribunal to hear a matter referred to it by the Board under section 21(2).

(2) Subject to subsection (3), the Tribunal consists of three persons appointed by the Chief Justice.

(3) The Tribunal shall not consist of a person who is employed by the Unit or a member of the Board.

(4) The Chief Justice shall appoint the Chairperson of the Tribunal.

(5) The Tribunal shall appoint a Secretary from its members.

(6) The Secretary must keep a written record of all proceedings of the Tribunal.

(7) A member of the Tribunal hold office for a period of two years and are eligible for reappointment.

Functions of Tribunal

27. The Tribunal is responsible for determining whether an alien or alien investor has breached the conditions of a licence issued under the former Act or an alien landholding licence and shall —

- (a) hear the facts surrounding the matter;
- (b) determine whether an alien or alien investor has breached a condition of the licence issued under the former Act or an alien landholding licence;
- (c) determine an application for an extension of time by an alien or alien investor to make a payment of the prescribed non-refundable non-development fee or non-operation fee;
- (d) determine an application for an extension of time by an alien or alien investor to take action to rectify a breach of a condition of a licence issued under the former Act or an alien landholding licence.

Powers of the Tribunal

28. The Tribunal may, after hearing a matter referred to it under section 21(2) —

- (a) specify the action to be taken to rectify a breach of a condition of a licence issued under the former Act or an alien landholding licence;
- (b) specify the prescribed non-refundable non-development fee or non-operation fee, that is payable to the Accountant General;
- (c) grant or deny an extension of time to take action to rectify a breach of a condition of a licence issued under the former Act or an alien landholding licence;
- (d) grant or deny an extension of time to make a payment of the non-refundable non-development fee or non-operation fee;
- (e) make an order that the Board considers revocation of a certificate or a licence issued under the former Act or an alien landholding licence.

Proceedings of Tribunal

29.—(1) The Secretary shall, within five business days, before a meeting of the Tribunal, serve a notice on —

- (a) the alien or alien investor; and
- (b) the Physical Planning and Development Division and the Development Control Authority.

(2) A notice under subsection (1) must specify the time and place of the meeting.

(3) The testimony of a witness must be taken under oath, administered by the Chairperson of the Tribunal and a witness called may be cross-examined, and be called to give evidence in defence and to reply.

(4) The Tribunal may cause the evidence given before it or any part of it to be taken down in shorthand and transcribed or to be recorded electronically or by any other means.

(5) The Chairperson of the Tribunal shall, within seven business days of the completion of its proceedings, make a decision on the matter.

Notice of decision

30.—(1) The Tribunal shall, within seven business days of making a decision, give written notice to —

- (a) an alien or alien investor that is in breach of the conditions of the licence issued under the former Act or an alien landholding licence;
- (b) the Physical Planning and Development Division and the Development Control Authority;
- (c) the Board;
- (d) the Accountant General.

(2) A notice under subsection (1) must specify —

- (a) the breach of a condition of the licence issued under the former Act or an alien landholding licence;
- (b) the prescribed non-refundable non-development fee or non-operation fee to be paid within three years;
- (c) the action to be taken to rectify the breach, within three years;
- (d) that, on failure of an alien or alien investor to pay the prescribed non-refundable non-development fee or non-operation fee or failure to take action to rectify the breach, the land with respect to which the licence was issued under the former Act or alien landholding licence is liable to be forfeited to the Crown in accordance with the forfeiture proceedings set out under Part V.

(3) The prescribed non-refundable non-development fee and non-operation fee specified under subsection (2)(b) is payable to the Accountant General.

Request for an extension of time

31.—(1) Notwithstanding section 30(2)(b) or (c) and subject to this section, an alien or alien investor may make an application for an extension of the time period stated in a notice under section 30(2) (b) or (c) to the Tribunal in the prescribed form where an alien or alien investor —

- (a) has made partial payments of the prescribed non-refundable non-development fee or non-operation fee under section 30(2)(b) and has taken action to rectify the breach of a condition under section 30(2)(c);
- (b) an alien or alien investor has made full payment of the prescribed non-refundable non-development fee or non-operation fee under subsection 30(2)(b) and has not taken action to rectify the breach of a condition under section 30(2)(c).

(2) An application for an extension under subsection (1), must be submitted to the Tribunal within seven business days of service of a notice under section 30.

(3) The Tribunal may grant an extension of time, for a period not exceeding two years from the date specified in a notice for payment of the prescribed non-refundable non-development fee or non-operation fee under section 30(2)(b) or (c), to an alien or alien investor, if satisfied that it is reasonable to do so in the circumstances.

(4) If the Tribunal does not grant an extension of time, the Tribunal shall give written notice to the alien or alien investor or the reasons for its decision.

(5) Where an extension of time is granted or denied under subsection (3) or (4), the Tribunal shall give written notice of its decision to —

- (a) the alien or alien investor;
- (b) the Board;
- (c) the Physical Planning and Development Division and the Development Control Authority;
- (d) the Accountant General.

Failure to rectify breach

32.—(1) The Accountant General and the Physical Planning and Development Division and the Development Control Authority shall give written notice to the Board of the failure of an alien or alien investor to —

- (a) pay the prescribed non-refundable non-development fee or non-operation fee under section 30(2)(b);
- (b) take action to rectify a breach of the conditions of a licence issued under the former Act or an alien landholding licence under section 30(2)(c).

(2) Where the Board is given notice under subsection (1), that an alien or alien investor has failed to make any payment or has made a partial payment of the prescribed non-refundable non-development fee or non-operation fee under section 30(2)(b) and has not taken action to rectify the breach under section 30(2)(c), the Board shall give notice to that alien or alien investor that —

- (a) the licence issued under the former Act or an alien landholding licence is revoked; and
- (b) the land, with respect to which that licence was issued, is liable to be forfeited to the Crown in accordance with the forfeiture proceedings set out under Part V.

PART V
FORFEITURE

Application for forfeiture

33.—(1) Subject to this section, the Attorney General shall make an application to the High Court for a forfeiture declaration against land —

- (a) held by an unlicensed alien under section 14;
- (b) that is liable to forfeiture proceedings under section 32(2);
- (c) that is liable to forfeiture proceedings under section 7(12).

Application for an extension of time

34. The Attorney General may apply to the High Court for an extension of time to make an application under section 33.

Notice of application

35.—(1) Where the Attorney General applies for a forfeiture declaration under section 33, he or she shall give written notice, within fourteen business days of making the application, to an alien that he or she has reason to believe may have an interest in the land.

(2) An alien or a person who claims to have an interest in the land may appear and adduce evidence at the hearing of the application, and the Court may, at any time before making a declaration, direct the Attorney General —

- (a) to give notice of the application to a person who, in the opinion of the Court, appears to have an interest in the land;
- (b) to publish in the *Gazette* and in a newspaper published and in general circulation in Saint Lucia, notice of the application in the manner and containing the particulars and within the time that the Court considers appropriate.

Amendment of application

36.—(1) The Court hearing an application under section 33 may, before making a final declaration, and on the application of the Attorney General, amend the application to include any other land, as the case may be, on being satisfied that —

- (a) the land was not reasonably capable of identification when the application was originally made; or
- (b) necessary evidence became available only after the application was originally made.

(2) Where the Attorney General applies to amend an application for a forfeiture declaration and the amendment would have the effect of including additional land in the application for the forfeiture declaration he or she must give no less than fourteen days written notice of the application to amend to a person who he or she has reason to believe

may have an interest in the land to be included in the application for the forfeiture declaration.

(3) A person who claims an interest in the land to be included in the application for the forfeiture declaration may appear and adduce evidence at the hearing of the application to amend.

Procedure on application

37. Where an application is made to the High Court for a forfeiture declaration, the Court may, in determining the application, have regard to —

- (a) the decision of the Board to revoke the licence issued under the former Act or an alien landholding licence;
- (b) the decision of another court.

Forfeiture declaration

38. Where the Attorney General applies to the High Court for a forfeiture declaration against land in respect of which an alien landholding licence has been revoked, the High Court may declare that the land as specified in the declaration be forfeited to the Crown.

Effect of forfeiture declaration

39. A forfeiture declaration under section 38 —

- (a) vests a provisional title to the land in the Crown, unless the Attorney General undertakes to register the land in accordance with the registration requirements under the Land Registration Act, Cap. 5.01 to vest an absolute title to the land in the Crown;
- (b) operates to vest in the Crown —
 - (i) the interest of the alien investor or trustee in the forfeited land and the right to transfer that land as from the time when the forfeiture took place,
 - (ii) the right to sell or otherwise deal with the land for the benefit of Saint Lucia as Cabinet directs,
 - (iii) title that commences at the time when the forfeiture took place.

Discovery

40.—(1) Without prejudice to any other right to discovery, the Attorney General may, in forfeiture proceedings administer interrogatories to and obtain discovery of documents from a defendant with respect to a matter or document that may prove that a person is an alien or to discover land held by an alien.

(2) It is not a valid ground, to refuse to answer an interrogatory or to refuse to disclose or produce any document, that the answer or document may expose a person to 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 a document in compliance with an order for discovery obtained under this section is not admissible in evidence.

PART VI
ALIEN INVESTOR ENTRANCE PERMIT

Restriction to hold an alien investor entrance permit

41.—(1) An alien investor shall not hold an alien investor entrance permit without a valid licence issued under the former Act or an alien landholding licence.

(2) An alien investor who contravenes subsection (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 three years or to both.

Eligibility for alien investor entrance permit

42.—(1) An alien investor is eligible to make an application to the Chief Immigration Officer for an alien investor entrance permit under section 44 for himself or herself or on behalf of his or her dependant.

(2) Where an alien investor is a company, that company is eligible to apply to the Chief Immigration Officer, on behalf of a director, beneficial owner or a shareholder or a dependant of that director, beneficial owner or shareholder for an alien investor entrance permit.

Request for letter in support of an application for an alien investor entrance permit

43.—(1) An alien investor shall make a request to the Unit for a letter to support an application to the Chief Immigration Officer under section 44.

(2) If the Unit has no objections, the Unit shall issue a letter requested under subsection (1) to an alien investor that specifies —

- (a) the name of the alien investor;
- (b) if the person is a dependant who is sixteen years of age or older of the alien investor, the name and relation of that dependant to the alien investor;
- (c) in the case of a company, if the person is a director, beneficial owner or shareholder at the time the company obtains a certificate or where the Unit receives a notice of a change of a director, beneficial owner or shareholder under section 50, the name of each director, beneficial owner or shareholder of that company.

(3) If the Unit objects to a request made under subsection (1), the Unit shall give written notice to an alien investor of the reasons for its objection.

Application for alien investor entrance permit

44.—(1) An alien investor shall make an application to the Chief Immigration Officer for an alien investor entrance permit in the prescribed form.

(2) An application under subsection (1) must be supported by —

- (a) the letter issued by the Unit under section 43(2);
- (b) a valid certificate;
- (c) a valid licence issued under the former Act or an alien landholding licence;
- (d) a valid passport —
 - (i) of the alien investor,
 - (ii) of a dependant of an alien investor,

- (iii) in the case of an alien investor that is a company, of each director, beneficial owner or shareholder of that company.

(3) On receipt of an application for an alien investor entrance permit under subsection (1) and (2), the Chief Immigration Officer shall make a request to the Unit for the results of a due diligence check on —

- (a) a dependant who is sixteen years of age or older;
- (b) a director, beneficial owner or shareholder of the company at the time the company obtained a valid certificate or a director, beneficial owner or shareholder that has changed by a notice of a change of director, beneficial owner or shareholder under section 50.

(4) The Unit shall submit to the Chief Immigration Officer the results of a due diligence check requested under subsection (3).

Issue of an alien investor entrance permit

45.—(1) Where the Chief Immigration Officer receives an application for an alien investor entrance permit under section 44(1) and (2), he or she shall issue an alien investor entrance permit in the prescribed form to —

- (a) an alien investor without payment of an alien investor entrance permit fee;
- (b) a director, beneficial owner or shareholder of an alien investor without payment of an alien investor entrance permit fee;
- (c) a dependant of an alien investor, on payment of the prescribed alien investor entrance permit fee.

(2) The Chief Immigration Officer shall give written notice to the Unit of each issued alien investor entrance permit.

(3) The Chief Immigration Officer shall keep a list of all the issued alien investor entrance permits.

(4) Section 21(2), (3) (4) and (5) and section 22 of the Immigration Act, Cap. 10.01 applies to a permit issued under this section.

Validity of an alien investor entrance permit

46. An alien investor entrance permit is valid for the duration of a valid licence issued under the former Act or an alien landholding licence.

Entitlement under an alien investor entrance permit

47.—(1) An alien investor entrance permit entitles an alien investor to enter and remain in Saint Lucia for the duration of a valid licence issued under the former Act or an alien landholding licence.

(2) An alien investor entrance permit does not entitle the holder to work in Saint Lucia without obtaining a work permit under the Labour Act, Cap. 16.04.

Notice to the Chief Immigration Officer

48. The Board shall give written notice to the Chief Immigration Officer where —

- (a) a licence issued under the former Act or an alien landholding licence of an alien investor is revoked;
- (b) in the case of a dependant, that person is no longer a dependant of an alien investor;
- (c) in the case of a trustee, that person is no longer a trustee of an alien investor;
- (d) in the case of a director, shareholder or beneficial owner of a company, that person is no longer a director, shareholder or beneficial owner of the company.

Revocation of alien investor entrance permit

49.—(1) Where the Chief Immigration Officer is notified of a change under section 48, he or she may revoke the alien investor entrance permit of the alien investor, dependant, director, beneficial owner or shareholder of the alien investor.

(2) Where an alien investor holds land in Saint Lucia pursuant to several licences issued under the former Act or under this Act, the revocation of one licence does not cause the alien investor entrance permit of the alien investor or his or her dependant, or the director,

beneficial owner or shareholder of the alien investor or a dependant of a director, beneficial owner or shareholder of an alien investor to be revoked if that alien investor holds another valid licence issued under the former Act or under this Act.

PART VII MISCELLANEOUS

Change of a director, shareholder or beneficial owner

50.—(1) Where there is a change of a director, beneficial owner or shareholder of an alien at the time of making an application or at any other time, that alien must give written notice, within fifteen business days of that change, in the prescribed form to the Board.

(2) A notice under subsection (1) must be accompanied by —

- (a) the filed corporate documents of the company, including a notice of directors, beneficial owners and shareholders;
- (b) a police certificate of good character or its equivalent from the country of domicile and, if not the same, country of nationality of the director, beneficial owner or shareholder;
- (c) a certified copy of the passport bio-data page of the director, beneficial owner or shareholder;
- (d) a bank reference letter with regard to the director, beneficial owner or shareholder;
- (e) a birth certificate or birth record for the director, beneficial owner or shareholder.

Notice of intention to subdivide land

51.—(1) An alien shall notify the Unit of its intention to subdivide land that is held pursuant to a licence issued under the former Act or an alien landholding licence.

(2) The Unit shall, on being satisfied that an alien has a valid certificate at the time of the subdivision, issue a letter to an alien investor indicating that the Unit has received notice of the intention of an alien investor to subdivide land that is held pursuant to a licence issued under the former Act or an alien landholding licence and has no objections to the subdivision.

(3) Without prejudice to the Land Registration Act, Cap. 5.01, an alien investor shall submit the letter issued by the Unit under subsection (2) with an application for subdivision of land in accordance with the Land Registration Act, Cap. 5.01.

(4) Where an alien subdivides land held pursuant to a licence issued under the former Act or an alien landholding licence, the alien shall apply to the Board for an alien landholding licence for each subdivided lot in accordance with section 15.

Claim of interest

52. An unlicensed alien cannot claim or assert any title or interest in land, legal or equitable, without a valid licence issued under the former Act or an alien landholding licence.

Service of notice

53. The service of a notice under this Act is deemed to be effective if delivered —

- (a) in the case of an individual, at his or her last known place address;
- (b) in the case of a company —
 - (i) at the registered office of the company,
 - (ii) by personally serving a director, officer, receiver, receiver-manager or liquidator of the company.

Collection and remittance of fees

54.—(1) The Unit shall collect the prescribed non-refundable application fee for a certificate.

(2) The Unit shall collect the prescribed alien landholding licence fee and subdivision fee on behalf of the Government.

(3) The Unit shall remit, on a monthly basis, to the Accountant General the fees collected under subsection (2).

(4) The Chief Immigration Officer shall collect the prescribed alien investor entrance permit fees.

Amendment of Schedule

55. The Minister may, by Order published in the *Gazette*, amend the Schedule.

Regulations

56. The Minister may, after consultation with the Board, make Regulations for carrying into effect this Act.

Repeal

57. The Aliens (Licensing) Act, Cap. 15.37 is repealed.

Savings

58.—(1) This Act does not —

- (a) affect the interest of a judgement creditor in respect of the immovable property of the creditor's judgement debtor but the debtor's immovable property may only be acquired by an alien investor as provided for under section 7(6);
- (b) affect the estate or interest of an alien in immovable property 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 investor 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 investor at the commencement of this Act,
 - (ii) a company incorporated under the Commercial Code, Cap. 244 of the Revised Laws of Saint Lucia, 1957, and continued under the Companies Act, Cap. 13.01 and carrying on business in Saint Lucia on or before 21 March 1969, or
 - (iii) a financial institution licensed under the Banking Act, Cap. 12.01.

No.] *Alien Landholding (Licensing) Act* [2020

- (2) This Act operates without prejudice to the validity of —
- (a) a licence granted under the former Act; and
 - (b) a statutory instrument made under the former Act.

Transition

59.—(1) An application made for a licence to purchase, acquire or lease land under the former Act that has not been finally determined is deemed to have been made to the Board.

(2) A licence to purchase, acquire or lease land that was issued under the former Act continues to be valid for the duration it was approved at the commencement of this Act.

No.] *Alien Landholding (Licensing) Act* [2020

SCHEDULE

(Section 2)

ENACTMENT FOR APPROVED PROJECT OR DEVELOPMENT

1. Condominium Act, Cap. 5.05
2. Tourism Stimulus and Investment Act, Cap. 15.03
3. Tourism Incentives Act, Cap. 15.30

Passed in the House of Assembly this day of , 2020.

Speaker of the House of Assembly.

Passed in the Senate this day of , 2020.

President of the Senate.