

## Trinidad and Tobago

### Foreign Investment Act (1990)

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# Foreign Investment Act

Act No. 16 of 1990

## [Preamble]

An Act to provide for the acquisition of any interest in land or shares in local private or public companies and for the formation of companies by foreign investors and also to facilitate investment by citizens of Member States and for matters incidental thereto.

## Article 1

This Act may be cited as the Foreign Investment Act.

## Article 2

1) In this Act:

“foreign investor” means:

- a. an individual who is not a national of Trinidad and Tobago or another Member State;
- b. any firm, partnership or unincorporated body of persons of which at least one-half of its membership is held by persons who are not nationals of Trinidad and Tobago or another Member State; or
- c. any company or corporation that is not incorporated in Trinidad and Tobago or another Member State or if so incorporated is under the control of persons to whom paragraph (a) or (b) apply or is deemed to be under the control of a foreign investor in accordance with subsection (2);

“land” includes tenements and hereditaments, both corporeal and incorporeal, and every interest therein, but does not include money charged on land, mortgages, charges or debentures to secure money charged on land or any right, title or interest conferring upon the holder thereof for the time being, the right of searching or boring for, or winning oil whether any such right, title or interest is acquired or held in conjunction with or separate from any other right, title or interest in any land;

“local public company” means a public company, within the meaning of the Companies Act, that is incorporated in Trinidad and Tobago but does not include a company in which the State is the majority shareholder;

“member of a company” includes any person entitled under the Memorandum or Articles of Association or any resolution of the company to participate in its assets or in its divisible profits, but a servant or agent of the company shall not be deemed to be a member by reason only that the amount of his emoluments depends wholly or partially on the amount of the company’s profits;

“Member State” has the same meaning assigned to it under the Revised Treaty of Chaguaramas establishing the Caribbean Community (CARICOM), including the CARICOM Single Market and Economy signed at Nassau, The Bahamas, on 5th July 2001;

“Minister” means the Minister to whom responsibility for Finance is assigned except as otherwise provided in this Act;

“national” means a person who:

- a. is a citizen of a Member State; or
- b. 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 such a Member State for the purposes of the laws thereof relating to immigration;

“private company” has the meaning assigned to it by the Companies Act.

“private company” has the meaning assigned to it by the Companies Act;

“share” includes stock, and in the case of a company not having a share capital, the interest of a member in the assets of the company;

“unlicensed foreign investor” in relation to any shares or land or any right to vote arising from any shares means a foreign investor who is required by this Act to hold a licence and who does not hold a licence granted under this Act or under the Aliens (Landholding) Act repealed by this Act in respect Ch. 58:02. of such shares or land;

2) For the purposes of this Act, a company or corporation shall be deemed to be under the control of foreign investors if:

- a. at least one-half of the votes exercisable at any meeting of the company or corporation are vested in foreign investors; or
- b. having a share capital, at least one-half of the nominal amount of its issued shares that are voting shares are vested in foreign investors; or
- c. not having a share capital, at least one-half in number of its members are foreign investors; or
- d. it is in fact controlled by foreign investors.

### **Article 3**

A foreign State may acquire land in Trinidad and Tobago for consular or diplomatic purposes only.

### **Article 4**

A foreign investor who is desirous of incorporating a private company in Trinidad and Tobago or of acquiring shares in any private company incorporated in Trinidad and Tobago shall, prior to doing so, supply the Minister with such information as is prescribed in the First Schedule.

### **Article 5**

1) A foreign investor who is desirous of acquiring shares in a local public company shall, prior to doing so, supply the Minister and the Secretary of the Company with the information prescribed in the First Schedule.

2) A foreign investor may not acquire shares in a local public company without obtaining a licence where the holding of such shares by him either directly or indirectly results in thirty per cent or more of the total cumulative shareholding of the company being held by foreign investors.

3) Notwithstanding subsection (2), the President may by Order specify any regional or international organisation as exempt from the requirements of a licence in respect of shareholding in a public company, and such shareholding shall not be taken into account in determining the total shareholding referred to in subsection (2).

4) Notwithstanding the provisions of this section if such local public company is listed on the Stock Exchange, a foreign investor may not acquire such shares unless the company certifies to the stock broker acting in respect of the acquisition, and to the Stock Exchange at or before such acquisition that the total shareholding of foreign investors according to the company's share register will not, following such acquisition, exceed thirty per cent of the total issued shares of the company, or that the foreign investor holds a licence in respect of those shares to be acquired which exceed the thirty per cent limit.

5) Notwithstanding anything contained in the law relating to companies or in the Memorandum or Articles of Association of any local public company the provisions of the Second Schedule shall apply to local public companies with effect from the commencement of this Act.

### **Article 6**

1) Subject to subsection (2) a foreign investor may acquire land, the area of which does not exceed one acre for residential purposes without obtaining a licence under this Act.

2) The Minister may by Order prescribe areas in Trinidad and Tobago in which a foreign investor may not acquire land whether for residential, trade or business purposes, without obtaining a licence under this Act.

3) The Minister shall cause a copy of any Order made under subsection (2) to be delivered, as soon as possible after its publication in the Gazette, to the Registrar General who shall maintain a register of such Orders.

### **Article 7**

Subject to section 6(2) and (3), a foreign investor may acquire land the area of which does not exceed five acres for the purposes of trade or business without obtaining a licence under this Act.

### **Article 8**

1) Notwithstanding any other provision of this Act, land including land prescribed by the Minister under section 6(2) may be acquired by a foreign investor:

- a. on an annual tenancy or for any less interest for the purposes of his residence, trade or business but not exceeding five acres of land in all;
- b. under an intestacy, or as a beneficiary or as an executor under a Will, for a period of one year from the date of the death of the testator or intestate, or for such extended time as the President may grant;
- c. in pursuance of his rights to foreclose or enter into possession as a mortgagee for a period of one year from the acquisition of such land or for such extended time as the President may grant;

d. as a judgment creditor for a period of one year from the date of his acquisition of the land or for such extended time as the President may grant; or

e. jointly with his spouse, where that spouse is a citizen of a Member State who is resident in Trinidad and Tobago within the meaning of section 5 of the Immigration Act.

2) Forthwith on the vesting of land in a foreign investor who is authorised to acquire land without a licence under section 6, 7 or 8(1)(e) or any other provision of this Act the foreign investor and his Attorney-at-law acting for him in the matter shall ensure that notice of such vesting is given to the Minister in duplicate in the form of the Third Schedule, together with a true copy of the instrument securing such vesting and the Minister shall return the duplicate of such notice within seven days, acknowledging receipt thereof.

#### **Article 9**

Any person who knowingly does any act or thing causing or calculated to cause the vesting in a foreign investor of any land or share without obtaining a licence contrary to the provisions of this Act shall be guilty of an offence and liable on summary conviction to a fine of one hundred thousand dollars.

#### **Article 10**

1) The consideration for shares or for land acquired by a foreign investor or by a citizen of a Member State shall be paid in an internationally traded currency through a person authorised by law as a dealer in that foreign currency except where in the case of a company incorporated in Trinidad and Tobago such consideration is financed out of capital reserves or retained earnings generated from its operations in Trinidad and Tobago.

2) Subsection (1) does not apply to companies which at the commencement of this Act were under the control of foreign investors and incorporated in Trinidad and Tobago.

#### **Article 11**

1) A person shall not without the licence of the President hold land in Trinidad and Tobago or shares in any local public company in trust for an unlicensed foreign investor.

2) The provisions of sections 9 and 13 shall apply to land or shares held in trust for a foreign investor as they apply to land or shares held by a foreign investor.

3) This section shall not apply to land or shares held in trust for a beneficiary under the trust who, subsequent to the creation of the trust, becomes a foreign investor, where within six months of the beneficiary becoming a foreign investor a licence is obtained to hold the shares or land on trust for the beneficiary.

4) In this section, the expression "trust" includes any arrangement, whether written or oral, express or implied, and whether legally enforceable or not, whereby any land or shares to which this section applies, is or are held for the benefit of or to the order or at the disposal of a foreign investor, but does not include the duties:

a. incident to a mortgage;

b. of a satisfied mortgagee to the mortgagor, if within three months after satisfaction of the mortgage the mortgaged property is re-vested in the mortgagor or the mortgagee's interest therein is extinguished;

c. of a vendor to the purchaser pending payment of the purchase money or after payment of the purchase money, if within three months after such payment the property sold is vested in the purchaser or the vendor's interest therein is extinguished;

d. of a trustee in bankruptcy to the bankrupt or his creditors; or

e. of a trustee for the purposes of any composition or scheme of arrangement for payment of debts to the debtor or his creditor.

#### **Article 12**

1) A licence in respect of land or in respect of shares under this Act, shall be granted by the President or such other person as is delegated by him by Order to do so, and such licence shall be either subject to conditions or not.

2) A licence shall operate only as to land or shares specified therein and is of no effect unless registered in the office of the Registrar General or if a licence in respect of shares, it is entered in the share register of the company against the name of the appropriate shareholder.

#### **Article 13**

1) Save as provided in section 4, 5, 6 or 7 or as otherwise provided in this Act no land or shares may be acquired or held by a foreign investor without a licence granted under this Act.

2) Land and shares required to be held under licence and not so held shall be subject to forfeiture without prejudice to any other penalty which may be incurred by any party pursuant to this Act.

3) A declaration of a Court that shares have been forfeited under this Act shall operate to vest in the President the right to transfer them and to recover and receive dividends or income thereon from the time that the forfeiture took effect.

4) A share that has been declared to be forfeited shall be sold or otherwise dealt with for the benefit of Trinidad and Tobago as the President may direct.

- 5) For the purpose of establishing a forfeiture under this Act the Attorney General may in accordance with the procedure provided by the State Liability and Proceedings Act, apply to the High Court for a declaration that any right, title, or interest sought to be affected is forfeited to the State.
- 6) If the proceedings for forfeiture are in respect of land, the Attorney General shall file a uis pendens with the Registrar General and if in respect of shares he shall give notice for such proceedings to the Secretary of the company who shall forthwith endorse particulars of such notice and proceedings on the Register of Members against the name of the foreign investor.
- 7) Without prejudice to any other right to discovery, the Attorney General may, in proceedings for establishing a forfeiture under this Act, administer interrogatories to and obtain discovery of documents from a defendant as to any matter or document tending to prove that he or any other person is a foreign investor or to discover any land, or share held by him or in trust for him, or as to any relevant matter or document.
- 8) It shall not be a valid ground for refusing to answer any such interrogatory or to disclose or produce any document that the answer or document might or would expose the defendant or any other person to the risk of a prosecution under this Act.
- 9) In the prosecution of a defendant under this Act, the fact that he has disclosed any matter in answer to an interrogatory administered under this section or disclosed or produced any document in compliance with an order for discovery obtained under this section shall not be admissible in evidence.
- 10) On the hearing of such application, if the Court is satisfied that the circumstances giving rise to the forfeiture arose from inadvertence, or that undue hardship would be caused to any person if forfeiture were ordered, the Court may make such other order as the justice of the case requires including that the land or shares be sold and the proceeds disposed of as the Court directs.

#### **Article 14**

This Act does not apply:

- a. in respect of any land or shares or any interest therein held directly or in trust for another under a licence granted under the Aliens (Landholding) Act repealed by this Act;
- b. so as to affect the estate in land or shares held by any person on the 11th March, 1969 who became an alien by virtue of the Aliens (Landholding) (Amendment) Act, 1969;
- c. to banks or financial institutions registered under the Banking Act or the Financial Institutions (Non-Banking) Act.

#### **Article 15**

Any person who contravenes the provisions of this Act for which a penalty has not already been provided is guilty of an offence punishable on summary conviction, and is liable to a fine of twenty-five thousand dollars and in the case of a continuing offence to a fine of two hundred and fifty dollars for each day during which the offence continues.

#### **Article 16**

- 1) No person shall, without the consent in writing given by or on behalf of the Minister or the Minister to whom responsibility for Industry is assigned, publish or disclose to any person, otherwise than is necessary in the course of his duties, the contents of any document, communication or information whatsoever, which relates to, and has come to his knowledge in the course of his duties under this Act.
- 2) Any person who knowingly contravenes the provisions of subsection (1) is guilty of an offence and is liable, upon summary conviction to a fine of twenty-five thousand dollars and imprisonment for a term of two years.

#### **Article 17**

The Minister to whom responsibility for Industry is assigned may, from time to time, by Order publish lists of types of economic activities in respect of which foreign investment will be promoted or restricted.

#### **Article 18**

The Minister may by Order:

- a. after consultation with the Minister to whom responsibility for External Affairs is assigned, specify the Member States to which section 2(1) applies; and
- b. amend the Schedules.

#### **Article 19**

The Minister may make Regulations for all matters concerning the administration of this Act.

#### **Article 20**

The Aliens (Landholding) Act is repealed.

## **First schedule**

### **Particulars to be given by a foreign investor purchasing shares in a private or a public local company**

# Second schedule

## Requirements—local public companies

# Third schedule

## Form of notice to minister of finance

To: The Permanent Secretary, Ministry of Finance.

Notice is hereby given of the vesting of land in a foreign investor without a licence under the provisions of the Foreign Investment Act.

Name of the foreign investor in full.

Address (residential or registered office, if a company).

Nationality (or country of incorporation).

Any former nationality.

Date of instrument effecting the vesting.

Registered number or folio under the Real Property Ordinance.

The purpose for which the land is acquired.

Name and address of person from whom land was acquired.

A copy of the instrument is attached.

# Subsidiary legislation

## Delegation of functions (foreign investment) order

Made under section 52(1) of the Interpretation Act

1) This Order may be cited as the Delegation of Functions Citation. (Foreign Investment) Order.

2) In exercise of the powers conferred upon him by section 52(1) of the Interpretation Act, the President delegates the function he is empowered to exercise under section 12(1) of the Foreign Investment Act, to the Minister of Finance.

## Foreign investment (member states) order

Made under section 18(a)

1) This Order may be cited as the Foreign Investment Citation. (Member States) Order.

2) The following countries are hereby declared to be Member States:

a. Barbados; and

b. Jamaica.

## Foreign investment (international or regional organisations) (exemption) (shareholding in public companies) order

Made under section 5(3)

WHEREAS it is provided by subsection (3) of section 5 of the Foreign Investment Act that the President may specify any regional or international organisation as exempt from the requirements of a licence in respect of shareholding in a public company:

Now, therefore, in exercise of the powers vested in the President by subsection (2) of the said section

now, therefore, in exercise of the powers vested in the President by subsection (3) of the said section 5, the following Order is made:

1) This Order may be cited as the Foreign Investment (International or Regional Organisations) (Exemption) (Shareholding in Public Companies) Order.

2) The Commonwealth Equity Fund (CEF) is exempt from the requirements of a licence in respect of shareholding in a public company.