MONTSERRAT

CHAPTER 8.02

LANDHOLDING CONTROL ACT
and Subsidiary Legislation

Revised Edition
showing the law as at 1 January 2019

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

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CHAPTER 8.02

LANDHOLDING CONTROL ACT

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CHAPTER 8.02

LANDHOLDING CONTROL ACT

(Act 2 of 2015)

AN ACT TO RESTRICT AND CONTROL THE HOLDING OF LAND BY NON-MONTSERRATIANS.

Commencement

[1 April 2015]

Short title

1. This Act may be cited as the Landholding Control Act.

Interpretation

2. In this Act—

"person belonging to Montserrat" means a person who is deemed to belong to Montserrat under section 2(2)*(b)* of the Immigration Act;

"person not belonging to Montserrat" means a person other than a person belonging to Montserrat, and includes a corporation incorporated in Montserrat if it is under the control of a person or persons not belonging to Montserrat as defined in, and also every corporation incorporated in any other country; but shall not include any of the subjects or citizens of a foreign state upon whom there has been conferred by treaty the right to hold land in Montserrat;

"**Caribbean Community**" means the Community of States established by the signing of the Treaty of Chaguaramas at Port of Spain, Trinidad on the 4 July 1973;

"land" means any estate or interest in land and includes a lease;

"National of **a member state"** means any person who—

(a) is a citizen of a member state of the Caribbean Community; or

(b) has a connection with a member state of the Caribbean Community which entitles that person to be regarded as belonging to it or, if it be so expressed, as being a native of or belonger to that member state for the purposes of its laws relating to immigration as are for the time being in force;

"person" includes any corporation, either aggregate or sole, or any club, society, association or other body;

"unlicensed person" means a person not belonging to Montserrat who does not hold a licence granted under this Act.

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Forfeiture of land and mortgages held by persons not belonging to Montserrat

3. (1) Subject to this Act, neither land in Montserrat nor a mortgage on land in Montserrat shall, after the commencement of this Act, be held by a person not belonging to Montserrat, and any land or mortgage so held shall be forfeited to Her Majesty:

Provided that, land may be acquired and held by a person not belonging to Montserrat under a lease for a term of five years or an annual tenancy or for any less interest for the purposes of residence, trade, or business, but such person shall not so hold more than five acres of land in all.

(2) Save as otherwise provided in section 6, land acquired by a person not belonging to Montserrat under a will or on an intestacy shall not be forfeited if, within one year from the death of the testator or intestate or within such extended time (if any) as the Governor acting on the advice of Cabinet may allow, the land is sold or such person obtains a licence to hold the land.

(3) Save as otherwise provided in section 6, a mortgage acquired by a person not belonging to Montserrat under a will or on intestacy shall not be forfeited: but such person shall not unless he obtains a licence to hold the mortgage, be entitled to foreclose or enter into possession of the mortgaged land.

(4) Nothing in this Act shall affect the estate or interest of a judgment creditor in the land of the judgment debtor, but the debtor's land shall not be acquired by a person not belonging to Montserrat unless he holds a licence granted under this Act.

(5) Nothing in this Act shall affect the estate or interest of a person not belonging to Montserrat in any land or mortgage held by him at the commencement of this Act.

Licences to hold land or mortgages

4. (1) The Governor acting on the advice of Cabinet may grant to any person not belonging to Montserrat a licence in Form A of the Schedule to hold land as owner or tenant or mortgagee of any estate or interest therein subject to any conditions that the Governor acting on the advice of Cabinet may impose:

Provided that, a licence shall be operative only as to the land described and as to the estate or interest specified therein.

(2) On breach of any condition in a licence granted under this Act, the estate and interest of the person not belonging to Montserrat in the land or mortgage held under the authority thereof shall be forfeited to Her Majesty.

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(3) Where application is made to the Registrar of Lands by or on behalf of any person for the registration of any transfer, mortgage or lease of land under the Registered Land Act, the Registrar of Lands shall not register such transfer, mortgage or lease unless and until he is satisfied that the person in whose name such transfer, mortgage or lease is to be registered either—

(a) is a person belonging to Montserrat, within the meaning of this Act; or

(b) has been granted a licence under this Act to hold such land as owner, mortgagee or tenant (in which case the licence and a copy thereof shall be attached to the instrument submitted for registration) and has complied with any conditions precedent to the grant of such licence.

(4) After registering any transaction under this section the Registrar of Land shall return to the applicant the original licence submitted with the application and shall keep a copy thereof with the documents relating to that transaction.

General licence in respect of mortgages

5. (1) Notwithstanding anything contained in this Act, the Governor acting on the advice of Cabinet may, subject to this section, grant to any person not belonging to Montserrat a general licence to hold any land as mortgagee, and any mortgage held by a person under a general licence shall not be subject to forfeiture save for the breach of any condition of the licence.

(2) A general licence granted under subsection (1) shall be subject to the following conditions—

(a) land acquired by the holder of a general licence as a result of the exercise of his power of sale or foreclosure shall be sold or otherwise disposed of absolutely within a period of five years after it is so acquired, or within such longer period as the Governor acting on the advice of Cabinet considers reasonable, such that the holder of the licence no longer has, directly or indirectly, any interest or control in respect of the land except by way of security;

(b) the holder of a general licence shall if so required by the Governor acting on the advice of Cabinet submit to him at the end of every calendar year a statement containing the following particulars for the calendar year—

(i) the total number of mortgage loans made and the number of mortgage loans made to persons not belonging to Montserrat;

(ii) the total amount advanced and the amount advanced to persons not belonging to Montserrat;

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(iii) the average of the rates of interest charged on mortgage loans made during the calendar year;

(iv) the number of mortgaged properties that have become vested in the holder of the licence by virtue of the exercise of his powers as mortgagee, the dates on which the properties became vested in the holder, the sums due on the properties and a description of the properties; and

(c) such other conditions as the Governor acting on the advice of Cabinet may at the time of the grant or renewal of the licence impose.

(3) A general licence granted under subsection (1) shall be valid for a period of one year from the date on which it is granted and shall be renewable annually on the anniversary of the date on which it was first granted.

(4) The Governor acting on the advice of Cabinet may at any time revoke a general licence without assigning any reason therefor but such revocation shall be without prejudice to anything lawfully done pursuant to that licence.

Rights of next-of-kin

6. Where any right, title or interest in any land or in any mortgage or other interest in land devolves under a will or other testamentary disposition or on an intestacy upon a person not belonging to Montserrat who is the next-of-kin of the testator or intestate as the case may be, the next-of-kin shall hold the land or mortgage or other interest in land without having to obtain a licence under this Act in the same manner as if the next-of-kin was a person belonging to Montserrat.

Effect of forfeiture

7. (1) Land or mortgage forfeited under this Act shall not vest in Her Majesty unless and until a judgment is obtained declaring the forfeiture; but on such judgment being obtained the title of Her Majesty shall relate back to and commence at the time when the forfeiture took place.

(2) A judgment declaring a forfeiture of land shall operate to vest in Her Majesty all the estate and interest of the person not belonging to Montserrat in the land.

(3) A judgment declaring a forfeiture of a mortgage shall operate to vest in Her Majesty—

(a) all the estate and interest of the person not belonging to Montserrat in the mortgaged land, subject to any right of redemption in the mortgage; and

(b) the right to recover and receive, and enforce all securities for, the money secured by the mortgage.

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Restriction on trust in favour of persons not belonging to Montserrat

8. (1) With a view to preventing evasion of the foregoing provisions of this Act, no person shall without the licence of the Governor acting on the advice of Cabinet, hold any land in trust for a person not belonging to Montserrat and any such property shall be forfeited to Her Majesty.

(2) Any person who contravenes this section shall be guilty of an offence punishable summarily by a fine of $500 or on indictment by a fine of $5,000.

(3) In this section the expression **"trust"** includes any arrangement whether written or oral, expressed or implied, and whether legally enforceable or not, whereby any land or mortgage of land or any rights attached thereto is or are held for the benefit of or to the order or at the disposal of a person not belonging to Montserrat; but does not include—

(a) the duties incident to a mortgage;

(b) the duties of a satisfied mortgagee to the mortgager, if within three months after satisfaction of the mortgage the mortgaged property is revested in the mortgagor or his interest therein is extinguished;

(c) 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 such payment the property sold is vested in the purchaser or his interest therein extinguished;

(d) the duties of a trustee in bankruptcy to the bankrupt for his creditors; or

(e) the duties of a trustee for the purpose of any composition or scheme of arrangement for the payment of debts to the debtor or his creditors.

Licences to hold property in trust for persons not belonging to Montserrat

9. The provisions of this Act, as to licences and the effect of breach of a condition in a licence, shall apply to land and mortgages on land to be held in trust for a person not belonging to Montserrat in like manner as it applies to land and mortgages intended to be held or held by a person not belonging to Montserrat.

Procedure

10. For the purpose of establishing forfeiture under this Act the Attorney General may, in accordance with the procedure provided by the Crown Proceedings Act, apply to the High Court for a declaration that any right, title or interest sought to be affected is forfeited to the Crown.

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Discovery

11. (1) 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 his or any other person's qualification as a person belonging to Montserrat or to discover any land or mortgage held by him or in trust for him or as to any relevant matter or document.

(2) 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:

Provided that, 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 and disclosed or produced any document in compliance with an order for discovery obtained under this section shall not be admissible in evidence.

Certificate granted by the Governor acting on the advice of Cabinet

12. (1) For the purposes of this Act any person who considers that he is a person belonging to Montserrat may apply in writing to the Governor acting on the advice of Cabinet for a certificate to such effect and shall submit with or after his application such documentary evidence as the Governor acting on the advice of Cabinet may require proving that he is a person belonging to Montserrat.

(2) If the Governor acting on the advice of Cabinet is satisfied with the documentary evidence tendered, he may grant such certificate in Form B in the Schedule, and such certificate shall be conclusive evidence that the applicant is a person belonging to Montserrat.

Licence fees

13. (1) There shall be charged, levied and collected in respect of every licence granted under this Act a licence fee which shall be paid at the time of the grant of the licence by the person to whom the licence is so granted in the manner prescribed for the payment of stamp duty under the Stamp Act.

(2) The licence fees payable under this section shall be—

(a) in respect of a general licence—

(i) on the first grant thereof, $2,500;

(ii) on every renewal thereof, $1,000;

(b) in respect of any other licence—

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(i) where the licence is granted to own land, a sum equal to 5% of the consideration paid for the land or $2,500 whichever shall be the greater;

(ii) where the licence is granted to lease land, a sum equal to 15% of the annual rental value as determined by the valuation officer in accordance with section 22(2) of the Property Tax Act, or $1,500, whichever is greater.

(3) Any person who knowingly gives or joins in giving false information as to the consideration paid for any land or as to the annual rental value of any property for the purpose of subsection (2)(*b*) shall be liable on summary conviction to a fine of $1,000 or to imprisonment for a term of six months.

(4) The Governor acting on the advice of Cabinet may by order vary the licence fees levied under this section and the fine imposed under subsection (3) hereof.

(5) An order made under subsection (4) shall be placed before the Legislative Assembly and shall be subject to a negative resolution of the Council passed within ninety days of signature.

Power of Governor acting on the advice of Cabinet to remit licence fees

14. The Governor acting on the advice of Cabinet may in appropriate cases remit in part or in whole the licence fees payable by any person under section 13.

Corporations under the control of persons not belonging to Montserrat

15. For the purposes of this Act, a corporation is deemed to be under the control of persons not belonging to Montserrat—

(a) if any of its directors is an unlicensed person;

(b) if more than one-third of the votes exercisable at any meeting of the corporation or which would be exercisable if a meeting of the corporation was held are vested in unlicensed persons;

(c) in the case of a corporation having a share capital, if more than one-third of the nominal amount of its issued shares are held by unlicensed persons;

(d) in the case of a corporation not having a share capital, if more than one-third in number of its members are unlicensed persons;

(e) if the amount paid or payable in any period of twelve months as dividends to those members of the corporation who are unlicensed persons exceeds ⅓ of the total amount paid or payable by the corporation as dividends in the same period;

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(f) if more than one-third of the nominal value of the outstanding debentures of the corporation are held by unlicensed persons; or

(g) if the annual interest on the debentures of the corporation for the time being held by unlicensed persons exceeds one-third of the annual interest on all debentures of the corporation for the time being outstanding.

Licences for persons to hold directorships, shares or debentures

16. (1) The Governor acting on the advice of Cabinet may, from time to time grant licences, either subject to conditions or not, for all or any of the following matters, that is to say—

(a) for a person not belonging to Montserrat to be a director of a corporation;

(b) for a person not belonging to Montserrat to vote at meetings of a corporation;

(c) for a person not belonging to Montserrat to hold shares or debentures; and

(d) for a person not belonging to Montserrat to be a member of a corporation having no share capital:

Provided that, a licence shall be operative only as to the corporation named therein and as to the number of votes, shares or debentures specified therein.

(2) On breach of any condition in a licence granted under this section, the licensee shall forthwith cease to be a director of the corporation and to be entitled to vote at any meeting of the corporation, and all shares and debentures in the corporation held by the licensee shall be forfeited to Her Majesty.

Effect of forfeiture of shares

17. (1) A judgment declaring that a share or debenture has become forfeited under this Act shall operate to vest in the Governor acting on the advice of Cabinet the right to transfer that share or debenture and to recover and receive dividends or income thereof as from the time when the forfeiture took place.

(2) A share or debenture which has been declared to be forfeited under this Act shall be sold or otherwise dealt with for the benefit of Montserrat as the Governor acting on the advice of Cabinet may direct.

Transmission of licence to company

18. The Governor acting on the advice of Cabinet shall send a copy of every licence to the corporation concerned at its registered office.

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Registration of licence by corporation

19. (1) A corporation shall cause a copy of every licence received by it to be recorded in the corporation's register of members or debenture holders opposite the name of the licensee, and to be endorsed on every share certificate or debenture issued in respect of any share or debenture held by the licensee.

(2) If a corporation makes default in complying with the requirements of this section it shall be liable on summary conviction to a fine of $50 for every day during which the default continues and every director, manager and officer of the corporation who knowingly and wilfully authorises or permits the default shall be liable on summary conviction to a like penalty.

Restriction on the issue of share warrants or debentures

20. (1) A corporation shall not without the consent of the Governor acting on the advice of Cabinet issue a share warrant or debenture transferrable by delivery in respect of any share or debenture held by a person not belonging to Montserrat under a licence granted under this Act.

(2) If a corporation issues a share warrant or a debenture transferrable by delivery in breach of this section it shall be liable on summary conviction to a fine of $500 in respect of each share specified in the warrant and in respect of each debenture; and every director, manager, and officer of the corporation who knowingly and wilfully authorises or permits such issue shall be liable on summary conviction to a like penalty.

Transfers of shares or debentures held under licence

21. (1) A transfer without the consent of the Governor acting on the advice of Cabinet of a share or debenture held by a person not belonging to Montserrat under a licence and any entry in the corporation's register of members or debenture holders of the transferee specified in any such transfer shall be void and of no effect.

(2) The Governor acting on the advice of Cabinet shall not refuse his consent to such a transfer except on the ground that the share or debenture specified in the transfer has become forfeited under this Act.

Special provisions for Organisation of Eastern Caribbean States and Caribbean Community nationals

22. (1) Despite sections 3 and 16(1)*(c)*, if the Governor acting on the advice of Cabinet is satisfied that reciprocal provisions have been made by the legislature of any member state of the Caribbean Community or the Organisation of Eastern Caribbean States to permit Montserratians to acquire shares or debentures in companies registered in that state or to hold land in that state without obtaining a licence, the Governor acting on the advice of Cabinet may, by order, declare that the nationals of that member state may—

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(a) acquire shares or debentures in companies registered in Montserrat; or

(b) hold land in Montserrat,

without obtaining a licence.

(2) A national of the Organisation of Eastern Caribbean States or the Caribbean Community who is waived from the requirement for a licence under subsection (1) shall pay a fee of $500 in respect of each—

(a) parcel of land he intends to hold as owner;

(b) mortgage he intends to hold as mortgagee; and

(c) lease he intends to hold as tenant.

Power of companies to control transfer of share

23. Notwithstanding anything contained in any order made under section 22, or in any law relating to companies, or in the Memorandum or Articles of Association of a company or in any debentures or in any instrument for securing any issue of debentures, a company incorporated in Montserrat holding or intending to acquire any land or an interest therein may—

(a) restrict or prohibit the issue or transfer of its shares or debentures to a non-Montserratian;

(b) restrict or prohibit the holding by non-Montserratians of share warrants and of debentures transferable on delivery;

(c) refuse to register a non-Montserratian, a member or the holder of a debenture; or

(d) require any evidence it may think fit as to the nationality of any person desiring to be registered as a member or as the holder of a debenture and as to the nationality of the holder of a share warrant or debenture transferable by delivery or a coupon or other document entitling the bearer to payment of any dividend or interest.

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SCHEDULE

(Sections 4 and 12)

FORMS

FORM A
LANDHOLDING CONTROL ACT

LANDHOLDING LICENCE

REGISTRATION SECTION	BLOCK	PARCEL
.....…….	.....……	…….....

Upon payment of the fee of ..…….....……..……... dollars ($.....) Licence is hereby granted to ……..... of ……..... to own/mortgage/lease for ……..... years the above land.

Conditions (if any):

Given under my hand this .....……... day of ……..…..... 20..... .

……

GOVERNOR ACTING ON THE ADVICE OF CABINET

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FORM B
LANDHOLDING CONTROL ACT

CERTIFICATE

I hereby certify that ……..…….
is a person belonging to Montserrat for the purposes of the Landholding Control Act.

GIVEN this …… day of ……, 20……..…

……
GOVERNOR ACTING ON THE ADVICE OF CABINET

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LANDHOLDING CONTROL (EXEMPTION) ORDER – SECTION 22

(S.R.O. 41/2005)

Commencement

[22 July 2005]

Short title

1. This Order may be cited as the Landholding Control (Exemption) Order.

Exemption

2. For the purpose of trading securities under the Securities Act, any person trading securities on an exchange licensed by the Eastern Caribbean Securities Regulatory Commission is hereby declared to be a person belonging to Montserrat for the purposes of the Act.

Definition

3. For the purposes of this Order **"trading securities"**, in relation to any securities, means the buying, selling and/or transferring of securities.

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