



ANGUILLA

A BILL FOR
ANGUILLA ECONOMIC RESIDENCE ACT, 2019

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ANGUILLA ECONOMIC RESIDENCE ACT, 2019

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I Assent

Timothy J. Foy, OBE
Governor

Date

ANGUILLA

No. /2019

A BILL FOR

ANGUILLA ECONOMIC RESIDENCE ACT, 2019

[Gazette Dated: , 2019] [Commencement: under section 16]

AN ACT to enable persons to acquire permanent residence by registration following a qualifying investment in Anguilla and/or acquire tax residence in Anguilla and for incidental and connected purposes.

ENACTED by the Legislature of Anguilla

PART 1

PRELIMINARY

Interpretation

1. In this Act, unless the context otherwise requires—

“Act” means the Anguilla Economic Residence Act, / 2019

“Agency” means the agency established under section 2 of the Select Anguilla Agency Act /2019;

“Agent’s Licence” means an agent’s licence granted under section 13 of this Act;

“Anguillan Legal Entity” means all legal entities registered with the Companies Registry that are permitted to own land and property;

“Annual Lump Sum Payments” means the annual tax payment made by Applicants of the RTP to the Government;

“Applicant” means a person who applies for one or both of the Programmes;

“Application” means an application for one or both of the Programmes;

“Approved Real Estate” means a real estate project or property that is approved by the Minister following review and recommendation of the Agency;

“authenticated translation” means a translation done by either a professional translator who is officially accredited to a court of law, a government agency, an international organisation or similar official institution, or if done in a country where there are no official accredited translators, a translation done by a company whose role or business is professional translation;

“Attorney-General” means the Attorney-General of Anguilla;

“Authorised Agent” means a person who has paid the prescribed fee and has been granted an Agent’s Licence pursuant to section 13 of this Act and is thereby authorised to act on behalf of the Applicant in relation to an Application;

“Board” means the Board of the Agency established under section 5(1) of the Select Anguilla Agency Act /2019;

“Capital Development Fund” has the same meaning as given in the Fiscal Responsibility Act R.S.A. c. F38;

“certified copy” means a photocopy certified to be a true copy of the original by a notary public or other person of similar stature in the country where the document originates;

“Commercial Registry” means the Anguilla Commercial Registry;

“Companies Act” means the Companies Act, R.S.A. c. C65;

“Contractor” means Anguilla Agency Consortium Ltd.

“Dependant” means—

- (a) a spouse of the Applicant;
- (b) a child of the Applicant or his or her Spouse who is less than eighteen years of age;
- (c) a child of the Applicant or his or her Spouse who is at least eighteen years of age and less than twenty-six years of age and who is in full time attendance at a recognised institution of higher learning and fully supported by the Applicant; or
- (d) a child of the Applicant or his or her Spouse, of any age, who is physically or mentally challenged and fully supported by the Applicant or his or her Spouse;

“Executive Council” means the cabinet of the Government and Governor, Deputy Governor and Attorney-General of the Government;

“Government” means the Government of Anguilla;

“House of Assembly” means the legislative Assembly of Anguilla;

“Immigration” means the Department of Immigration;

“Inland Revenue” means the Department of Inland Revenue;

“Investment” means the prescribed investment amount for the RBI or the RTP;

“Lands & Surveys” means the Department of Lands & Surveys;

“Minister” means the Minister with responsibility for the Ministry;

“Ministry” means the Ministry responsible for Finance, Economic Development and Investment;

“police certificate” means a statement on the status of the criminal records of the Applicant and Dependants from the national law enforcement authority of each country or countries where the Applicant and Dependants have resided for more than 6 or more consecutive months in the 10 year period immediately preceding the date of the Application;

“prescribed” means prescribed in the Regulations;

“Programmes” means the RBI and the RTP;

“Regulations” means the Regulations made pursuant to this Act;

“RBI” means a residence by investment programme whereby qualifying applicants may be granted permanent residence in Anguilla if they meet certain requirements as set forth in sections 3 and of this Act;

“Review Committee-RBI” means a Review Committee of the RBI established under section 9(1) of this Act;

“Review Committee-RTP” means a Review Committee of the RTP established under section 9(2) of this Act;

“RTP” means a residence for tax purposes programme whereby qualifying applicants may be granted tax residence in Anguilla if they meet certain requirements as set forth in section 4 of this Act.

“Spouse” means the spouse of the Applicant in a monogamous marriage or other relationship having the same or similar status to marriage, including civil union;

PART 2

PROGRAMMES

*Residence by Investment***Capital Development Fund**

2. Where an Applicant proposes to make a contribution to the Capital Development Fund of a prescribed amount, an Application under the RBI shall be submitted on his or her behalf through an Authorised Agent.

Real Estate Investment

3. (1) The Minister after consultation with Executive Council may from time to time declare Approved Real Estate for the purpose of investment under the RBI under this Act and such approval shall be published in the Gazette.

(2) Where an Applicant proposes to make an investment of at least the prescribed amount into Approved Real Estate and executes a binding purchase and sale agreement with a developer or owner of Approved Real Estate, conditional upon the Applicant being approved under the RBI, an Application under the RBI shall be submitted on his or her behalf through an Authorised Agent.

(3) Fractional ownership of Approved Real Estate shall be permissible, provided that the sale, purchase and ownership are in compliance with the Fractional Ownership Act /2019) and all the requirements under this Act.

(4) Sale of Approved Real Estate which is a strata lot shall be permissible, provided that the sale and purchase are in compliance with the Condominium Act R.S.A. c. C80 and all the requirements under this Act.

(5) Sale of Approved Real Estate by way of sale of shares shall be permissible provided that—

- (a) the seller of such shares is an Anguillan Legal Entity, duly incorporated with a suffix “.sas” and is in good standing under the Companies Act R.S.A. c. C65; and
- (b) the sale and purchase of shares are in compliance of all the requirements under this Act.

(6) Purchase of Approved Real Estate by a company shall be permissible only through an Anguillan Legal Entity, provided that—

- (a) the purchaser company is duly incorporated with a suffix “.sab” and is in good standing under the Companies Act R.S.A. c. C65; and
- (b) the purchaser company has issued authorised shares to the Applicant with a value not less than the prescribed amount referred to in subsection (2) and has provided satisfactory proof of such value to the Agency;

(7) Applicants under this section shall complete the sale and purchase of Approved Real Estate on or before 60 calendar days after conditional approval of the Application by the Agency under subsection 10(7) of this Act.

(8) Applicants shall pay all requisite stamp duties under the Stamp Act, R.S.A. c S55 and Aliens Land Holding Regulation Act, R.S.A. c A55 prior to final approval of the Application by the Agency.

(9) If the Approved Real Estate is vacant land (including a vacant land strata lot), construction in accordance with guidelines that may be issued from time to time by the Agency shall be completed no later than one (1) year of the final approval of the Application by the Agency.

(10) For the purpose of this section—

“Fractional ownership” has the same meaning as given in the Fractional Ownership Act /2019;

“vacant land” means land on which no building or other permanent structure has been erected.

Residence for Tax Purposes

4. (1) Where an Applicant proposes to—

- (a) pay the prescribed amount of Annual Lump Sum Tax Payments for a period of 5 years;
- (b) own and maintain Approved Real Estate in Anguilla valued at or above the prescribed amount;
- (c) establish other genuine links to Anguilla, in accordance with the guidelines published from time to time by the Agency;
- (d) be physically resident in Anguilla at least 45 days in each calendar year;
- (e) make a declaration, in writing, whereby the Applicant agrees to pay Annual Lump Sum Tax Payments for a period of 5 years;
- (f) make a declaration, in writing, annually, that the Applicant is physically residing less than 183 days in each calendar year in any other country and the centre of vital interest is in Anguilla;

an Application under the RTP shall be submitted on his or her behalf through an Authorised Agent.

(2) The Applicant shall prepay to Inland Revenue from funds held in escrow in Anguilla with the Agency or Authorised Agent, the Annual Lump Sum Tax Payments for the first year and thereafter on 31 March of each year. The Annual Lump Sum Tax Payments for the first year may be prorated, depending on the date of final approval under the RTP.

(3) The Tax Residence Certificate issued to the Applicant under section 10(8) shall be issued on an annual basis and, subsequent to the year in which the final approval under the RTP was issued by the Agency, the Applicant shall, by application to Inland Revenue, renew the Tax Residence Certificate each year for no less than 4 taxation years in accordance with requirements issued by the Agency.

Combination option

5. Applicants may elect to apply for both the RBI under section 3 of this Act and RTP under section 4 of this Act by fulfilling all the requirements of both Programmes as set forth in this Act, provided however fulfilling the requirements under paragraph subsection 4(1)(b) of this Act are waived.

PART 3

APPLICATION AND PROCEDURES

Qualifications and general requirements

6. (1) Any person who—

(a) is at least 18 years of age; and

(b) meets the Application requirements under section 2 or 3 of this Act;

may apply to become a permanent resident of Anguilla pursuant to this Act.

(2) Any person who—

(a) is at least 18 years of age; and

(b) meets the Application requirements under section 4 of this Act;

may apply to become a tax resident of Anguilla pursuant to this Act.

(3) Any person who is a Dependant may apply along with the Applicant as part of the Application.

(4) An Application shall be submitted to the Agency by an Authorised Agent on behalf of the Applicant.

(5) Applications shall—

(a) be made in the prescribed form;

(b) be accompanied by all requisite documentation and information set forth in the checklist issued by the Agency for the Programmes;

(c) be accompanied by non-refundable processing fees and non-refundable due diligence fees.

(d) be accompanied by—

(i) a health certificate in the prescribed form with respect to the Applicant and Dependents;

- (ii) police certificate(s) from the national law enforcement authority of each country or countries where the Applicant and Dependants have resided since 18 years of age; for more than 6 or more consecutive months in the 10 year period immediately preceding the date of the Application;
- (iii) a banker's reference; and
- (iv) details of the Programmes under which the Applicant is applying and evidence of the proposed qualifying Investment under the RBI and/or RTP.

(6) An application form shall be completed in English and any document submitted with the Application shall be in English, or, if the original language of the document is not in English, the document shall be accompanied by an authenticated translation.

(7) The Applicant shall provide a sworn affidavit of support of each Dependant over 18 years of age.

(8) Each application form shall be completed personally by the Applicant or the Authorised Agent and signed by the Applicant and any Dependants over 18 years of age and the following conditions shall be applicable—

- (a) Dependants who are physically or mentally challenged will not be required to sign the application form;
- (b) for a child who is below 18 years of age, both parents may be required to sign the form on behalf of the child;
- (c) in the case where one parent has sole custody of a child, or another person has legal guardianship of a child, the appropriate legal documentation shall be provided to demonstrate that sole custody or guardianship was awarded by the court of law or other relevant authority.

(9) An Application shall only be accepted and processed by the Agency, if all prescribed forms are properly completed, dated and signed and accompanied by all required documents;

(10) Every Application that is submitted shall be initially examined by the Agency and, as required, by the Review Committee-RBI and/or Review Committee-RTP.

(11) The Agency may request any further information it deems necessary to process the application.

Due diligence checks

7. The Agency may engage the services of one or more independent, professional and qualified persons or entities to conduct due diligence checks on every Applicant and Dependants over 18 years of age.

Review process

8. (1) The Agency shall, after due consideration of an Application, prepare a summary report of its findings and recommendations for approval or denial of application and reasons for

such recommendations to the Review Committee-RBI for RBI Applications and the Review Committee-RTP for RTP Applications.

(2) The Review Committee-RBI and the Review Committee-RTP shall review all reports prepared by the Agency under subsection (1) and may request examination of any Application or any part thereof and provide recommendations to the Agency.

(3) In relation to all applications and reports reviewed under subsection (2), the Review Committee-RBI and/or the Review Committee-RTP shall—

- (a) produce a report of its findings to be submitted to; and
- (b) make a recommendation to;

the Executive Council.

Constitution of Review Committees

9. (1) The Review Committee-RBI shall consist of the following members—

- (a) a person nominated by Immigration;
- (b) the Attorney General or his designate; and
- (c) a person nominated by the Ministry.

(2) The Review Committee-RTP shall consist of the following members—

- (a) a person nominated by Inland Revenue;
- (b) the Attorney General or his designate; and
- (c) a person nominated by the Ministry.

(3) The person nominated by the Ministry shall be the Chair of The Review Committee-RBI and The Review Committee-RTP.

Approval, denial or delay of Application

10. (1) The ultimate authority for making a decision on all Applications rests with the Executive Council.

(2) Upon receipt of the recommendation from the The Review Committee-RBI and The Review Committee-RTP pursuant to subsection (8)(3) of this Act, the Executive Council shall—

- (a) grant;
- (b) deny; or
- (c) delay, for cause;

an Application.

(3) The Executive Council shall advise The Review Committee-RBI and The Review Committee-RTP and the Agency of its decision under subsection (2).

(4) Upon receipt of the decision of the Executive Council under subsection (3), the Agency shall notify the Authorised Agent in writing of the decision made regarding the application.

(5) An Applicant who—

- (a) has provided false information on any part of the Application;
- (b) has been convicted of a criminal offence for which the maximum penalty for the same or similar offence in Anguilla is in excess of 6 months imprisonment;
- (c) is subject of a criminal investigation;
- (d) is considered to be a potential national security risk to Anguilla or to any other country;
- (e) is involved in any activity likely to cause disrepute to Anguilla; or
- (f) is, in the opinion of the Agency, a politically exposed person;

shall not be approved for permanent residence or tax residence in Anguilla.

(6) Where an Application is denied under paragraph 2(b)—

- (a) the Executive Council may after reviewing the application issue an Intent to Refuse/Reject and provide the Applicant an opportunity to rectify the Application by providing additional information within a specified period of time; and
- (b) the Executive Council shall consider any additional information provided by the Applicant under paragraph (a) and, if the Application is rectified to the satisfaction of the Agency within the specified period in paragraph (a), the Executive Council may, grant the Application.

(7) Where an Application is approved under paragraph (2)(a), the Agency shall notify the Applicant of the conditional approval and shall require—

- (a) payment of any other fees, including permit fees, within 60 days of such conditional approval;
- (b) if the Application is under the RBI—
 - (i) for Applications under section 2 of this Act, payment of the deposit required for the contribution to the Capital Development Fund, to be held in such Fund until the registration of permanent residence of the Applicant and Dependents has been completed; or
 - (ii) for Applications under section 3 of this Act, proof of completion of the purchase and sale of Approved Real Estate in accordance with subsection

3(7) and payment by the Applicant of all requisite stamp duties in accordance with subsection 3(8);

(c) if the Application is under the RTP—

(i) prepayment of the Annual Lump Sum Tax Payments for the first year in accordance with subsection 4(2).

(8) Upon fulfilment of the requirements in paragraph (7)(b), the conditional approval will become a final approval and a Permit of Permanent Residence or Permanent Residence Card will be issued by Immigration to the Applicant and Dependants to evidence permanent residence status in Anguilla.

(9) Upon fulfilment of the requirements in paragraph 7(c), the conditional approval will become a final approval and a Tax Residence Certificate for the tax year in which the Application is made will be issued by Inland Revenue to the Applicant and Dependants to evidence tax residence status in Anguilla.

PART 4

REVOCATION OF PERMANENT RESIDENCE OR TAX RESIDENCE STATUS

Revocation of Permanent Residence Status

11. The Governor may revoke a grant of permanent residence status under this Act, on the grounds that—

- (a) such registration as a permanent residence was obtained by false representation, fraud or wilful concealment or non-disclosure of material facts;
- (b) the Applicant or a Dependant has been convicted of an offence after the date of Application;
- (c) Real Estate resold within 5 years from the date of completion of the sale and purchase; or
- (d) the Applicant or a Dependant has committed any other act after the date of Application, which, in the opinion of the Governor, has brought or has the potential to bring disrepute to Anguilla.

Revocation of Tax Residence Status

12. The Minister may revoke a grant of tax residence status under this Act, on the grounds that—

- (a) such registration as a permanent residence was obtained by false representation, fraud or wilful concealment or non-disclosure of material facts;
- (b) the Applicant or a Dependant has been convicted of an offence after the date of Application;
- (c) the Applicant has failed to renew his or her Tax Residence Certificate in accordance with section 4(3) of this Act; or

- (d) the Applicant or a Dependant has committed any other act after the date of Application, which, in the opinion of the Minister, has brought or has the potential to bring disrepute to Anguilla.

PART 4

AUTHORISED AGENTS

Authorised Agents

13. (1) An Application shall only be submitted by an Authorised Agent who is the holder of an Agent's Licence issued under this Act.

(2) An Agent's Licence may only be issued to a natural person who is ordinarily resident in Anguilla.

(3) An application for an Agent's Licence shall be submitted to the Agency for approval by the Minister after consultation.

(4) An application submitted under subsection (3) shall be made on the prescribed form and accompanied by—

- (a) a prescribed business licence in good standing issued under the Trade Businesses and Occupations and professionals Licensing Act, R.S.A. c T40
- (b) the prescribed fee for the Authorised Agents, payable to the Agency; and
- (c) such evidence of the applicant's professional qualification, ability, resources, experience and integrity, as the Agency may require pursuant to published guidelines issued from time to time.

(5) An Authorised Agent shall maintain a place of business in Anguilla and shall promptly inform the Agency of any changes in the location thereof.

(6) The Minister, after consultation with the agency, may revoke the Agent's Licence of any Authorised Agent if—

- (a) the ability, resources, experience or integrity of the Authorised Agent has fallen below the standard that, in the opinion of the Minister, might reasonably be expected;
- (b) the prescribed fee remains unpaid for 14 calendar days after it has become due;
- (c) the requirements of subsection (2) have not been complied with;
- (d) the requirements of subsection (5) have not been complied with;
- (e) the Authorised Agent wilfully misrepresents himself or herself as an agent to another person; or
- (f) the Authorised Agent has contravened any of the provisions of this Act.

(7) Prior to revoking any Agent's Licence under subsection (6), the Minister shall give the Authorised Agent concerned notice in writing, served at the place of business provided in subsection (5), of the Minister's intention to do so, specifying the grounds upon which the Minister proposes to make the revocation and shall require the Licensed Agent to submit to the Minister within a specified period, a written statement of objections to the making of the revocation and reasons why the subject licence should not be revoked and the Minister shall advise the Licensed Agent of the Minister's decision.

(8) For the purpose of this Act and for the avoidance of any doubt, a Licensed Agent shall act solely on behalf of an Applicant and not on behalf of the Government.

(9) The term of the Agent's Licence on initial issuance and any renewal thereof shall be one year:

(10) An Authorised Agent shall—

- (a) sign a written agreement with the Agency agreeing to adhere to the terms and conditions of the Programmes and this Act and Regulations;
- (b) prior to renewal of an Agent's Licence—
 - (i) satisfy the Agency as to the Authorised Agent's performance and suitability for continued involvement with the Programmes; and
 - (ii) demonstrate to the Agency that the Authorised Agent has paid the prescribed fee and has submitted the prescribed renewal form;
- (c) advise the Agency on a timely basis the identity, summary of background and reputation of each sub-agent, associate, partner or promoter with whom the Authorised Agent has entered into an agreement, whether written or otherwise, or engages or acts in conjunction with.

(11) Upon receipt of the information from the Licensed Agent in paragraph (10)(c), the Agency may, in its sole discretion, order the sub-agent, associate, partner or promoter to register under this section, including payment of the prescribed fee.

(12) An Authorised Agent shall submit to the Agency a prescribed form, signed by the Applicant, authorizing the Authorised Agent to act on the Applicant's behalf.

(13) Where an Authorised Agent is no longer authorised to act on behalf of the Applicant, the Applicant shall immediately notify the Agency and provide the Agency with the name, address and other details as required under this Act of the new Authorised Agent, who shall be licensed and subject to the provisions of this Act.

PART 8

MISCELLANEOUS

Publication of Information

14. The Minister may, from time to time, by notice in the Gazette publish information regarding—

- (a) the names of all Authorised Agents;
- (b) any revocation of any permanent residence or tax residence in Anguilla;
- (c) any other matter that the Executive Council deems appropriate to be published under this section.

Regulations

15. (1) The Minister in Council may make such regulations as the Minister deems to be necessary and expedient for the purpose of giving effect to the provisions and carrying out the intent of this Act.

(2) Without limiting the generality of subsection (1), the Minister may make regulations in respect of—

- (a) requirements of the Programmes, including the Investment amount for the RBI and Annual Lump Sum Tax Payments and value of Approved Real Estate under the RTP;
- (b) qualifications, general requirements and procedures for the Programmes;
- (c) the registration of anything required to be registered under this Act;
- (e) the giving of any notice required to be given under this Act;
- (f) providing for the issuance a Permit of Permanent Residence or Permanent Resident Card under this Act;
- (g) providing for the issuance a Tax Residence Certificate under this Act;
- (h) the cancellation of the registration of persons whose permanent residence and/or tax residence status has been revoked;
- (i) the imposition and recovery of all fees (including processing fees, diligence fees and permit fees) relating to Application for the Programmes, the registration or grant of permanent residence and/or tax residence status, the, and in respect of the supplying a certified copy of any document under this Act;
- (j) the marketing and promotion of the Programmes;
- (k) prescribing forms for the making of Applications under this Act; and

- (1) anything which may be or is to be prescribed under this Act.

Citation and commencement

16. (1) This Act may be cited as the Anguilla Economic Residence Act, 2019.

(2) This Act comes into force on a date to be appointed by the Minister by Notice published in the Gazette.

Terry T. C. Harrigan
Speaker

Passed by the House of Assembly this day of , 2019.

Lenox J. Proctor
Clerk of the House of Assembly

OBJECTS AND REASONS

(The Objects and Reasons do not form part of this Bill)