

CHAPTER 39A

CARIBBEAN COMMUNITY (MOVEMENT OF FACTORS) ACT

• Act • Subsidiary Legislation •

ACT

Act No. 17 of 2006

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CHAPTER 39A
CARIBBEAN COMMUNITY (MOVEMENT OF FACTORS) ACT

An Act to give effect to certain provisions of the CARICOM Treaty and to facilitate the development of the CARICOM Single Market and Economy.

[Act No. 17 of 2006.]

[20th September, 2006.]

PART I

Preliminary

1. Short title

This Act may be cited as the Caribbean Community (Movement of Factors) Act.

2. Interpretation

In this Act—

“CARICOM Treaty” or “the Treaty” means the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy signed at Nassau, the Bahamas, on 5th July, 2001;

“Central Bank” means the Eastern Caribbean Central Bank established under article 3 of the Eastern Caribbean Central Bank Agreement;

“Community” means the Caribbean Community including the CARICOM Single Market and Economy established by the CARICOM Treaty;

“Conference” means the organ of the Community “the Heads of Government” so named in Article 10(1)(a) of the CARICOM Treaty;

“Council for Finance and Planning” means the organ of the Community so named in Article 10(2)(a) of the CARICOM Treaty;

“economic enterprise” includes—

- (a) any type of organisation for the production of, or the trade in, goods or the provision of services, other than a non-profit organisation, owned or controlled by a national of a Member State;
- (b) an agency, branch or a subsidiary of such enterprise of a national of a Member State;

“Member State” means a Member State of the Community listed in the First Schedule;

“Minister” means the Minister assigned responsibility for CARICOM Affairs;

“national” 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 that Member State for the purpose of the laws of that Member State relating to immigration; or
- (c) which is a company or other legal entity constituted in a Member State in accordance with its laws and which that Member State regards as belonging to it—
 - (i) where that company or other legal entity has been formed for gainful purposes,

- (ii) has its registered office and central administration, and carries on substantial activity within the Community, and
- (iii) is substantially owned and effectively controlled by persons mentioned in paragraph (a) or (b).

For the purposes of this definition, a company or other legal entity is—

- (i) substantially owned if more than fifty per cent of the equity interest in the company or entity is beneficially owned by a person mentioned in paragraph (a) or (b),
- (ii) effectively controlled if the persons mentioned in paragraph (a) or (b) have the power to name a majority of its directors or otherwise legally to direct its actions;

“right of establishment” includes the right to—

- (a) engage in self-employment; or
- (b) create and manage an economic enterprise.

3. Application

This Act shall not apply to—

- (a) activities involving the exercise of governmental authority in Grenada that are not conducted on a commercial basis and not conducted in competition with one or more economic enterprises;
- (b) activities conducted by the Central Bank pursuant to monetary or exchange rate policies;
- (c) activities forming part of a statutory system of social security or public retirement plans;
- (d) activities forming part of a system of national security or for the establishment or maintenance of public order;
- (e) other activities conducted by a public entity for the account of, or with the guarantee or using financial resources of, the Government of Grenada.

4. Necessity of obtaining permission

(1) The right of establishment, the right to provide a service or the right to move capital does not dispense with the necessity of a national of a Member State obtaining permission where that permission is required of a national of Grenada in accordance with any law in force in Grenada.

(2) For the purposes of this section, “permission” includes a licence or an approval.

PART II

Right of Establishment and to Provide Services

5. Right of establishment

Subject to this Act, a national of a Member State shall enjoy the right of establishment of economic enterprises in Grenada without discrimination on the ground of nationality.

6. Exclusion or restrictions in industry

(1) The Minister may determine that the public interest requires the exclusion or restriction of the right of establishment in an industry or a particular section of an

industry and may, by Order published in the *Gazette*, specify that exclusion or restriction.

(2) An Order made under this section may specify conditions for the operation of any Government or private sector monopoly created by the exclusion or restriction in the Order.

7. Right to provide services

Subject to this Act, a national of a Member State shall enjoy the right to provide a service in Grenada without discrimination on the ground of nationality.

8. Exclusion of certain financial services

(1) The Council for Finance and Planning in consultation with other competent organs of the Community and with the approval of the Conference, may determine that certain financial services should be excluded from the operation of the requirement to remove restrictions.

(2) The Minister, on receipt of the determination under subsection (1), may by Order published in the *Gazette*, exclude those financial services from the application of this Act.

PART III

Right to move Capital, make Payment Transactions, etc.

9. Right to move capital

(1) Subject to this Act, a national of a Member State shall, without discrimination on the ground of nationality, enjoy the right—

- (a) to move capital into and within Grenada and out of Grenada to another Member State;
- (b) to make current payments including payments for goods and services and other current transfers.

(2) For the purposes of this section, “capital and related payments and transfer” include—

- (a) the transfer of equity and portfolio investments;
- (b) short term bank and credit transactions;
- (c) payment of interest on loans and amortisations;
- (d) dividends and other income on investments and taxes;
- (e) repatriation of proceeds from the sale of assets;
- (f) other transfers and payments relating to investment flows.

Restrictions to Safeguard Balance of Payments and External Financial Difficulties

10. Minister may adopt measures to address difficulties

(1) Where the Minister is satisfied that there are serious balance of payments or external financial difficulties or threats of the same he or she may, by Order published in the *Gazette* and consistently with international obligations assumed by Grenada, adopt or maintain restrictions to address those difficulties.

(2) The restrictions that may be adopted or maintained pursuant to subsection (1) include—

- (a) quantitative restrictions on imports;
 - (b) restrictions on the right of establishment;
 - (c) restrictions on the right to provide a service; and
 - (d) restrictions on the right to move capital or on payment and transfers for transactions connected therewith.
- (3) The restrictions mentioned in subsection (2) shall—
- (a) subject to the Treaty and to this Act, not discriminate among Member States or against Member States in favour of third States;
 - (b) at all times seek to minimise damage to the commercial, economic or financial interests of a Member State;
 - (c) not exceed those necessary to deal with the circumstances mentioned in subsection (1);
 - (d) be temporary and no longer than eighteen months and must be removed progressively as the situation mentioned in subsection (1) improves.
- (4) The Minister shall—
- (a) within three working days notify to the Council for Finance and Planning and the Council for Trade and Economic Development any restrictions adopted or maintained; and
 - (b) consult with the competent organ if requested to do so.

PART IV

Removal of Restrictions

11. Enactments of discriminatory nature amended

(1) The enactments listed in the Second Schedule that are of a discriminatory nature are amended and shall come into operation on a date that the Minister appoints by Notice published in the *Gazette*.

(2) The Minister shall notify any remaining restrictions to the Council for Trade and Economic Development or the Council for Finance and Planning, as the case may require.

12. Minister may apply restrictions where exercise of rights results in economic hardships

(1) Where the exercise of rights conferred by this Act creates serious difficulties in any sector of the economy of Grenada, or results in economic hardships in any part of Grenada, the Minister, may by Order published in the *Gazette* apply restrictions on the exercise of rights as the Minister considers appropriate in order to—

- (a) resolve the difficulties in the affected sectors;
- (b) alleviate the economic hardships in a particular part of Grenada.

(2) If the Minister intends to apply restrictions pursuant to subsection (1), the Minister shall, prior to applying the restrictions, notify the competent organ of the Community of that intention and the nature of the restrictions.

(3) If the Minister is unable to notify the competent organ of the application of the restrictions, the Minister shall, on applying the restrictions, forthwith notify the competent organ of the Community of the application and the nature of the restriction.

(4) In applying the restrictions, the Minister shall—

- (a) minimise damage to the commercial or economic interests of another Member State;
- (b) prevent the unreasonable exercise of rights granted by the Treaty and this Act, the exercise of which could impair the development of the CARICOM Single Market and Economy.

13. Conditions for application of restrictions by Minister

The Minister shall, at the time of applying the restrictions mentioned in section 12, submit to the Council for Trade and Economic Development or the Council for Finance and Planning, as the case may require, measures to resolve the difficulties or alleviate the hardships.

14. Security exceptions to remove restrictions

Nothing in this Act shall be construed as preventing the Minister from taking measures to—

- (a) protect the essential security interests of Grenada—
 - (i) relating to the supply of services carried out directly or indirectly for the purpose of provisioning a military establishment,
 - (ii) in time of war or other public emergency; or
- (b) discharge the obligations of Grenada for the maintenance of international peace and security.

15. General exceptions to the obligations to remove restrictions

(1) Notwithstanding any provisions to the contrary in this Act, the Minister shall not be precluded from taking measures—

- (a) to protect public morals and plant life;
- (b) to protect human, animal and plant life;
- (c) to secure compliance with laws or regulations relating to customs enforcement, or to the classification, grading or marketing of goods, or to the operation of monopolies by state enterprises given exclusive or special privileges;
- (d) to protect intellectual property rights or to prevent deceptive practices;
- (e) relating to products of prison labour;
- (f) relating to child labour;
- (g) to protect national treasures of artistic, historic or archaeological value;
- (h) to prevent or relieve critical food shortages in another exporting Member State;
- (i) relating to the conservation of natural resources or the preservation of the environment;
- (j) to secure compliance with laws or regulations that are consistent with the provisions of the Treaty including those relating to—
 - (i) the prevention of deceptive and fraudulent practices, and the effects of default on contracts,
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

- (k) to protect existing economic activities that are based on traditional historical or customary practices;
- (l) to give effect to international obligations including treaties on the avoidance of double taxation.

(2) Nothing in subsection (1) shall be construed as permitting the Minister to take any measure that constitutes arbitrary or unjustifiable discrimination against a national of another Member State.

PART V

Miscellaneous

16. Regulations

The Minister may make Regulations generally for the purpose of giving effect to the provisions of this Act.

17. Offences

(1) A person shall not knowingly obstruct a national of a Member State in the lawful enjoyment of a right conferred pursuant to this Act.

(2) A person shall not knowingly contravene an exclusion or restrictive Order made by the Minister.

(3) A person who contravenes the provisions of subsection (1) or (2) commits an offence and upon summary conviction is liable to a fine not exceeding five thousand dollars.

First Schedule

CARIBBEAN COMMUNITY (MOVEMENT OF FACTORS) ACT

[Section 2.]

Antigua and Barbuda

Barbados

Belize

Commonwealth of Dominica

Grenada

Guyana

Jamaica

Saint Christopher and Nevis

St. Lucia

Saint Vincent and the Grenadines

Suriname

Trinidad and Tobago

Second Schedule
CARIBBEAN COMMUNITY (MOVEMENT OF FACTORS) ACT
[Section 11.]

Caribbean Community Skilled Nationals Act, No. 32 of 1995.

Civil Aviation Act, No. 12 of 2004.

Gambling, Lotteries and Betting Act, Chapter 120.

Hotels Aid Act, Chapter 138.

Licenses Act, Chapter 172.

Shipping Act, No. 47 of 1994

CHAPTER 39A
CARIBBEAN COMMUNITY (MOVEMENT OF FACTORS) ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation
