

**THE CARIBBEAN COMMUNITY (ESTABLISHMENT,
SERVICES, CAPITAL AND MOVEMENT OF COMMUNITY
NATIONALS) ACT**

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THE CARIBBEAN COMMUNITY (ESTABLISHMENT,
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NATIONALS) ACT

Act
37 of 2004.

[30th January, 2006.]

PART I. *Preliminary*

1. This Act may be cited as the Caribbean Community (Establishment, Services, Capital and Movement of Community Nationals) Act. Short title.

2.—(1) In this Act unless the context otherwise requires—

“Committee of Central Bank Governors” means the Body of the Community so named in Article 18(2) of the Treaty;

Interpre-
tation.

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

“Community Council of Ministers” or “the Community Council” means the organ of the Community so named in Article 10(1)(b) of the Treaty;

“competent Minister” in relation to any provision of this Act, means the Minister responsible for the department or subject to which the provision relates;

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

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

“Council for Human and Social Development” means the organ of the Community so named in Article 10(2)(d) of the Treaty;

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“Council for Trade and Economic Development” means the organ of the Community so named in Article 10(2)(b) of the Treaty;

“economic enterprise” includes any type of organization for the production of, or the trade in, goods or the provision of services (other than a non-profit organization) owned or controlled by a national of a Member State;

“Member State” means a Member State of the Community excluding an Associate Member within the meaning of Article 231 of the Treaty;

“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; or
- (c) is a company or other legal entity constituted in a Member State in accordance with the laws thereof and which that Member State regards as belonging to it, provided that such 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 Community and is substantially owned and effectively controlled by persons mentioned in paragraphs (a) and (b);

“non-wage-earning activity” means an activity undertaken by a self-employed person;

“right of establishment” includes the right to—

- (a) engage in any non-wage-earning activity of a commercial, industrial, agricultural, professional or artisanal nature;
- (b) create and manage an economic enterprise;

“service” means a service provided against remuneration other than wages in any sector and “the provision of service” means the supply of a service—

- (a) from the territory of a Member State into the territory of another Member State;
- (b) in the territory of one Member State to a service consumer of another Member State;
- (c) by a service supplier of one Member State through commercial presence in the territory of another Member State;
- (d) by a service supplier of one Member State through the presence of a natural person of a Member State in the territory of another Member State.

“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.

(2) For the purposes of this Act, a company or other legal entity is—

- (a) substantially owned if more than fifty per cent of the equity interest therein is beneficially owned by persons mentioned in paragraphs (a) and (b) of the definition of “national”;
- (b) effectively controlled if such persons have the power to name a majority of its directors or otherwise legally to direct its actions.

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Application of
Act.

3.—(1) Save as otherwise provided in this section and in sections 7 and 9, the provisions of this Act shall apply to—

- (a) the right of establishment and the right to provide a service in Jamaica by a national of another Member State; and
- (b) the right of a national of a Member State to move capital into and within Jamaica and out of Jamaica to another Member State.

(2) This Act shall not apply to an activity in Jamaica involving the exercise of governmental authority by a duly authorized person.

(3) For the purposes of subsection (2) “an activity in Jamaica involving the exercise of governmental authority” means an activity conducted in Jamaica neither on a commercial basis nor in competition with one or more economic enterprises including—

- (a) an activity conducted by—
 - (i) the Bank of Jamaica or a monetary authority or any other public entity in pursuance of monetary or exchange rate policies;
 - (ii) an activity conducted by the Bank of Jamaica on the Financial Services Commission, as the case may be, in pursuance of the prudential regulation of financial institutions;
- (b) an activity forming part of a statutory system of social security or public retirement plans;
- (c) an activity forming part of a system of national security or for the establishment or maintenance of public order;
- (d) any other activity conducted by a public body for the account of, or with the guarantee or using the financial resources of, the Government of Jamaica; and

- (e) such other activity as may be excluded by regulations made under section 30.

4. Subject to the provisions of this Act, a national of a Member State shall enjoy—

Rights of
nationals of
a Member
State in
respect of
establish-
ment,
services
and capital.

(a) in Jamaica—

(i) the right of establishment;

(ii) the right to provide a service; and

(b) the right to move capital into and within Jamaica and out of Jamaica to other Member States,

without discrimination on the ground of nationality.

5. Subject to the provisions of this Act, the competent Minister shall not introduce new restrictions on a national of another Member State entitled to the rights specified in section 4(a).

Prohibition
of new
restrictions.

PART II. *The Right of Establishment*

6.—(1) Notwithstanding any provision to the contrary in this Act, the competent Minister may determine that the public interest requires the exclusion or restriction of the right of establishment in any industry or in a particular section of an industry.

Treatment
of mono-
polies, etc.

(2) Where a determination by the Minister has been made pursuant to subsection (1) and results in the continuation or establishment of—

(a) a government monopoly, the competent Minister shall adopt appropriate measures to ensure that the monopoly—

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- (i) does not discriminate among nationals of other Member States, save as otherwise provided in this Act; and
- (ii) is subject to the agreed rules of competition established for an economic enterprise of the Community; or

(b) a private sector monopoly, the competent Minister shall, subject to the provisions of this Act, adopt appropriate measures to ensure that nationals of other Member States are accorded treatment similar to that of Jamaican nationals in terms of participation in its operations.

Programme to
remove re-
strictions on
establishment.

7. Restrictions on the right of establishment in Jamaica by a national of another Member State shall be removed in accordance with the programme approved by the Conference in accordance with paragraph 3 of Article 33 of the Treaty.

Minister to
adopt
measures
against
manipulation.

8. The competent Minister shall, by regulations subject to affirmative resolution, adopt measures based on criteria established by the competent Organ of the Community to safeguard against manipulation or abuse of the right of establishment, to gain an unfair advantage against a national of another Member State.

Management
of removal of
restrictions on
the rights of
establishment.

9.—(1) In exercise of his functions under this Part, the competent Minister shall ensure that a national of another Member State who is desirous of engaging in an economic activity in Jamaica is not impeded in the effective exercise of his rights of establishment.

(2) Without prejudice to the generality of subsection (1), the competent Minister shall—

- (a) abolish administrative practices and procedures which impede the exercise of the right of establishment by a national of another Member State;

- (b) remove all restrictions on the movement of managerial, technical and supervisory staff of an economic enterprise established in Jamaica by a national of another Member State;
- (c) remove all restrictions on entering and residing in Jamaica by spouses and immediate dependent family members of managerial, technical and supervisory staff of an economic enterprise of a national of another Member State;
- (d) ensure that a national of another Member State exercising his right of establishment has the right to acquire or otherwise possess or control land, buildings and other property adequate for the purpose.

PART III. *The Right to Provide Services*

10.—(1) Subject to the provisions of this Act, restrictions on the right to provide a service in Jamaica by a national of another Member State shall be removed in accordance with the programme approved by Conference pursuant to paragraph 2 of Article 37 of the Treaty.

Programme to remove restrictions.

(2) Notwithstanding subsection (1), the competent Minister may, in accordance with a decision of the Council for Finance and Planning, exclude certain financial services from the application of this Act in accordance with paragraph 2 of Article 37 of the Treaty.

11. Without prejudice to the provisions relating to the right of establishment, a national exercising the right to provide a service in Jamaica may, in order to provide the service, temporarily engage in an approved activity in Jamaica under conditions no less favourable than those enjoyed by nationals of Jamaica.

Collateral activities by service providers.

Management
of removal of
restrictions on
right to
provide
services.

12.—(1) The competent Minister shall take such measures as may be necessary to ensure that a national of another Member State is not impeded in the exercise of his rights to provide a service in Jamaica.

(2) Without prejudice to the generality of subsection (1), the competent Minister shall—

- (a) remove administrative practices and procedures in Jamaica which impede the exercise of the right to provide a service by a national of another Member State;
- (b) remove all restrictions on the entry and residence in Jamaica by spouses and immediate dependent family members of a national of another Member State providing a service and of the managerial, technical and supervisory staff of such a national; and
- (c) ensure that a national of another Member State exercising the right to provide a service in Jamaica has the right to acquire or otherwise possess or control land, buildings and other property on a non-discriminatory basis for purposes directly related to the provision of the service.

PART IV. *The Right to Move Capital*

Prohibition
of new
restrictions
on movement
of capital.

13. Subject to this Act, the competent Minister shall not—

- (a) introduce new restrictions on—
 - (i) the movement of capital;
 - (ii) payments connected with the movement of capital; and
 - (iii) current payments and transfers;
- (b) render more restrictive the operation of existing regulations governing the movement of capital, except as authorized by the Treaty.

14.—(1) Subject to the provisions of this Act, restrictions on the movement of all capital payments and on all current payments, including payments for goods and services and other current transfers to other Member States shall be removed.

Removal of restrictions on capital payments.

(2) For the purposes of this Part, capital and current payments and transfers include—

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

15. The competent Minister shall, where necessary, grant the authorizations required for the movement of capital mentioned in section 14 on a non-discriminatory basis.

Authorization to facilitate movement of capital.

16. The competent Minister shall take such measures as may be required to coordinate the foreign exchange policies of Jamaica with those of other Member States in respect of the movement of capital among them and with third States.

Coordination of foreign exchange.

PART V. *Safeguard Measures*

17.—(1) Subject to subsection (3), where the competent Minister is satisfied that there are serious balance-of-payments and external financial difficulties or the threat thereof, the Minister may, consistently with Jamaica's international obligations, adopt or maintain restrictions to address the difficulties.

Restrictions to safeguard balance of payments.

(2) The restrictions which 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 payments and transfers for transactions connected therewith.

(3) The restrictions mentioned in subsection (2) shall—

- (a) subject to the provisions of this Act and any relevant determinations of Conference, the Council for Planning and Finance and the Council for Trade and Economic Development, as the case may require, not discriminate among Member States or against Member States in favour of third States;
- (b) at all times seek to minimize damage to the commercial, economic or financial interests of other Member States;
- (c) not exceed those necessary to deal with the circumstances mentioned in subsection (1);
- (d) be temporary in nature and may be imposed for not more than eighteen months; and
- (e) be removed progressively as the situation mentioned in subsection (1) improves.

Incidence and
notification of
restrictions.

18.—(1) In determining the incidence of restrictions mentioned in section 17, the competent Minister may accord priority to activities which are essential to the economic stability of Jamaica but such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector, due regard being paid to any special factors which may be affecting Jamaica's reserves or its need for reserves.

(2) Restrictions adopted or maintained pursuant to subsection (1) or any changes therein shall be notified within three working days to the Council for Finance and Planning and the Council for Trade and Economic Development.

(3) The competent Minister shall, if requested to do so, forthwith consult with the competent organ of the Community.

19.—(1) Where practicable, the competent Minister shall, before the imposition of restrictions specified in section 17, consult with the Council for Finance and Planning, with the objective of being informed of any recommendations for the removal of the restrictions.

Consultations for the removal of restrictions.

(2) The consultations mentioned in subsection (1) shall—

- (a) be designed to assist Jamaica to overcome its balance of payments and external financial difficulties;
- (b) assess the balance of payments situation of Jamaica and the restrictions adopted or maintained under section 17 taking into account such matters as—
 - (i) the nature and extent of the balance of payments and external financial difficulties;
 - (ii) the external economic and trading environment of Jamaica; and
 - (iii) alternative corrective measures which may be available.

(3) The consultations shall address the compliance of any restrictions with subsection (3) of section 17 and, in particular, the progressive removal of restrictions in accordance with paragraph (e) of that subsection.

20.—(1) Where the exercise of rights conferred by this Act—

- (a) creates serious difficulties in any sector of the economy of Jamaica; or
- (b) results in economic hardships in any part thereof,

Restrictions resolve difficulties arising from the exercise of rights.

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the competent Minister may, subject to the provisions of this section, apply such restrictions on the exercise of rights as the Minister considers appropriate in order to resolve the difficulties or alleviate the hardships.

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

(3) Where the competent Minister is unable to comply with subsection (2), the Minister shall, upon applying the restrictions, forthwith notify the competent organ of the Community of the application and the nature of the restrictions.

Conditions for
the application
of restrictions.

21. The competent Minister shall, at the time of applying the restrictions referred to in section 20, submit to the Council for Trade and Economic Development or the Council for Finance and Planning, as the case may require, a programme setting out the measures to be taken to resolve the difficulties or alleviate the hardships referred to in that section.

Permissible
restrictions.

22. Restrictions applied by the competent Minister pursuant to section 20 shall be confined to those necessary to—

- (a) resolve the difficulties in the affected sectors;
- (b) alleviate economic hardships in a particular part of Jamaica;
- (c) minimize damage to the commercial or economic interests of other Member States;
- (d) prevent the unreasonable exercise of rights granted by this Act, being an exercise which could impair the development of the CARICOM Single Market and Economy.

23. In applying the restrictions pursuant to section 20, the competent Minister shall not discriminate on the ground of nationality and—

Non-discrimination.

- (a) shall progressively relax them as relevant conditions improve;
- (b) may maintain them only to the extent that conditions mentioned in section 20 continue to justify their application.

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

General exceptions to the obligation to remove restrictions.

- (a) to protect public morals or maintain public order and safety;
- (b) to protect human, animal and plant life;
- (c) to secure compliance with enactments relating to customs enforcement, the classification, grading or marketing of goods or the operation of monopolies by state enterprises or other enterprises which enjoy exclusive or special privileges;
- (d) to protect intellectual property rights or to prevent deceptive practices;
- (e) relating to gold or silver;
- (f) relating to products of labour by inmates of correctional institutions;
- (g) relating to child labour;
- (h) to protect national treasures of artistic, historic or archaeological value;
- (i) to prevent or relieve critical food shortages;
- (j) relating to the conservation of natural resources or the preservation of the environment;

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(k) to secure compliance with laws or regulations which 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; or

(l) to give effect to international obligations, including treaties for the avoidance of double taxation.

(2) Nothing in subsection (1) shall be construed as permitting the competent Minister, where like conditions prevail, to take any measure which constitutes arbitrary or unjustifiable discrimination against a national of another Member State.

Security exceptions to the obligation to remove restrictions.

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

(a) protect the essential security interests of Jamaica—

(i) relating to the supply of services carried out directly or indirectly for the purposes of provisioning a military establishment;

(ii) in time of war or other public emergency; or

(b) discharge the obligations of Jamaica in relation to the maintenance of international peace and security.

PART VI. General

Determinations of organs of bodies of the community to be carried out.

26. Where an organ or body of the Community has been authorized to make any determination in respect of any of the rights referred to in section 4, the competent Minister shall carry out any determination so made.

27. Where a decision of an official purports to restrict another person in the exercise of a right under section 4, the person aggrieved may, without prejudice to any other remedy, appeal to the competent Minister for a review of that decision. Appeals.

28.—(1) The competent Minister may make regulations generally for giving effect to the provisions of this Act. Regulations.

(2) Without prejudice to the generality of subsection (1) regulations made thereunder may provide for—

- (a)** the identification of those activities in respect of which the right of establishment shall not apply;
- (b)** the conditions under which the right of establishment is to be exercised;
- (c)** the removal of restrictions on the entry of—
 - (i)** managerial, technical and supervisory staff to be employed in an economic enterprise and their spouses and immediate dependent family members;
 - (ii)** spouses and immediate dependent family members of nationals exercising the right to provide services;
- (d)** the temporary imposition of restrictions under section 20 and the nature of such restrictions.