

No. 10 of 2005.

*The Caribbean Court of Justice
(Amendment) Act, 2005.*

1 ANTIGUA
AND
BARBUDA



[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

13th September, 2005.

ANTIGUA AND BARBUDA

No. 10 of 2005

AN ACT to amend the Caribbean Court of Justice Act

*[Published in the Official Gazette Vol. XXV
No. 57 dated 15th September, 2005]*

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. This Act may be cited as the Caribbean Court of Justice (Amendment) Act, 2005. Short title.

2. The Caribbean Court of Justice Act, 2004 is amended by the addition of the following section immediately after section 8: Addition of section 9 Act No. 10 of 2004.

“Notification of amendments to Treaty and related instruments.

9(1) In this section, “related instrument” includes any of the instruments set out in the Schedule and any other instrument, to which Antigua and Barbuda is a party, relating to the Caribbean Court of Justice.

(2) Where the Agreement or a related instrument is amended, the Minister shall publish the amendment by Notice in the *Gazette*.

(3) Pursuant to any amendment to the Agreement or related instrument, the Minis-

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ter may make an Order, to be published in the Gazette, containing such consequential or ancillary provisions (including provisions amending this Act) as appear to the Minister to be necessary or expedient for the purpose of giving effect to the amendment.

(4) Where the Agreement or a related instrument is amended and a notice under subsection (2) to that effect is published in the Gazette, the Agreement or related instrument and any reference thereto in this Act or in any other law or in any instrument shall, unless the context otherwise requires, be construed as a reference to the Agreement or the related instrument.

(5) This section applies to an amendment made before or after the commencement of this Act.”

Repeal and
substitution of
Fourth Schedule.

3. The Fourth Schedule to the Caribbean Court of Justice Act, 2004 is repealed and the following Schedule substituted:

FOURTH SCHEDULE

REVISED AGREEMENT ESTABLISHING THE CARIBBEAN COURT OF JUSTICE TRUST FUND

The Parties to the Agreement Establishing the Caribbean Court of Justice:

Cognisant that the Court is indispensable for the good governance of the Caribbean Community;

Recognising the critical role of the Court in the efficient administration of Justice in the territories of the Contracting Parties to the Agreement establishing the Court;

Recognising further that the Court is vital for the structured and efficient functioning of the CARICOM Single Market and Economy;

Noting the provisions of Article XXVIII of the Agreement establishing the Court which requires the expenses of the Court and the Commission to be borne by the Contracting Parties to the Agreement establishing the Court;

Conscious that the financial viability of the Court is essential for its efficiency, effectiveness and independence in the performance of its functions;

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Bearing in mind the decision of the Twenty-Third Meeting of the Conference of Heads of Government of the Caribbean Community concerning the capital and recurrent expenditures of the Court;

Determined to promote and safeguard the independence, integrity and credibility of the Court,

Have agreed as follows:

ARTICLE I

INTERPRETATION

1. In this Agreement unless the context otherwise requires:

“Board” means the Board of Trustees of the Fund;

“Commission” means the Regional Judicial and Legal Services Commission established under Article V of the Agreement Establishing the Caribbean Court of Justice;

“Court” means the Caribbean Court of Justice established under Article III of the Agreement Establishing the Caribbean Court of Justice;

“Fund” means the Caribbean Court of Justice Trust Fund established by Article II of this Agreement;

“Member” means a Contracting Party to the Agreement Establishing the Caribbean Court of Justice and in relation to which this Agreement is in force; and

“Secretary-General” means the Secretary-General of the Caribbean Community.

ARTICLE II

ESTABLISHMENT OF THE CARIBBEAN COURT OF JUSTICE TRUST FUND

The Caribbean Court of Justice Trust Fund is hereby established.

ARTICLE III

PURPOSE OF FUND

The purposes of the Fund shall be to provide the resources necessary to finance the biennial capital and operating budget of the Court and the Commission in perpetuity.

ARTICLE IV

RESOURCES OF THE FUND

1. The resources of the Fund shall consist of:

- (a) the contributions of Members;
- (b) income derived from operations of the Fund or otherwise accruing to the Fund; and
- (c) contributions of third parties being contributions which are not likely to prejudice the independence or integrity of the Court.

2. The Fund shall not solicit nor accept any grant, gift or other material benefit from any source except with the consent of all the Members.

3. A State or Territory listed in the Annex to this Agreement:

- (a) which is a Member on the date this Agreement enters into force; or
- (b) which accedes to this Agreement within such period as may be determined by the Members,

shall, contribute or cause to be contributed to the Fund the amount of the initial capital of the Fund represented by the scale of contributions set out in the Annex.

4. A State or Territory acceding to this Agreement, other than a State or Territory to which paragraph 3(b) applies, shall make contributions to the Fund in accordance with the provisions set out in its instrument of accession.

5. The Board shall review the adequacy of the resources of the Fund, not later than two years after the entry into force of this Agreement and thereafter at least once within every succeeding biennium.

6. The Board shall communicate the results of the review to the Members.

7. Where upon such a review an inadequacy in resources is found to exist, the Members shall make additional contributions in the proportions reflected in the Annex to this Agreement.

8. Contributions of Members shall be made for the purpose of the Fund without restriction as to use.

9. Financing from the Fund shall be governed by considerations of economy, efficiency and cost effectiveness and the need to safeguard the independence and sustainability of the Court and the Commission.

ARTICLE V

STRUCTURE OF THE FUND

The Fund shall have a Board of Trustees

ARTICLE VI

COMPOSITION OF THE BOARD OF TRUSTEES

1. Subject to the provisions of this Article, the Board of Trustees shall consist of the following or their nominees:

- (a) the Secretary-General;
- (b) The Vice-Chancellor of the University of the West Indies;
- (c) The President of the Insurance Association of the Caribbean;
- (d) The Chairman of the Association of Indigenous Banks of the Caribbean;
- (e) The President of the Caribbean Institute of Chartered Accountants;
- (f) The President of the Organisation of Commonwealth Caribbean Bar Associations;
- (g) The Chairman of the Conference of Heads of the Judiciary of Member States of the Caribbean Community;
- (h) The President of the Caribbean Association of Industry and Commerce;
and

(i) The President of the Caribbean Congress of Labour.

2. There shall be a Chairman and Vice-Chairman of the Board elected by the Board from among its members. The Chairman and Vice-Chairman shall hold office for a period of three years.

3. Where a trustee —

- (a) resigns or dies;
- (b) becomes bankrupt or otherwise insolvent;
- (c) becomes unwilling or refuses to serve as a trustee;
- (d) is convicted of an offence involving dishonesty; or
- (e) in the unanimous opinion of the other members of the Board, becomes unfit or incapable to act as such,

the competent institution shall nominate a person of comparable status or experience to act in place of that trustee.

4. Where an institution fails to nominate a trustee in accordance with paragraph 3 or an institution mentioned in paragraph 1 ceases to exist, the Secretary-General may designate a person or persons, as the case may require, to act as a trustee.

5. Where more than three designations by the Secretary-General are required to make up the full complement of the Board of Trustees, the Members may, by consensus, propose an amendment to the Agreement in accordance with Article XIII.

6. A trustee may resign by transmitting a written notice in that behalf to the Chairman of the Board. Where the Chairman wishes to resign from the office of Chairman or Trustee, such notice shall be transmitted to the Vice-Chairman of the Board.

ARTICLE VII

FUNCTIONS OF THE BOARD

The Board shall be responsible for directing the operations of the Fund, and, for this purpose shall, in particular, exercise the following functions:

- (a) evaluate the performance of the Fund;

- (b) establish with the approval of the Members guidelines for prudential investment of the resources of the Fund;
- (c) establish with the approval of the Members the financial regulations of the Fund;
- (d) appoint the Executive Officer of the Fund;
- (e) authorise the provision of resources required for the biennial capital and operating budget of the Court and the Commission submitted by the Executive Officer;
- (l) appoint an investment manager or managers to manage the investments of the Fund in accordance with the investment guidelines for the Fund;
- (g) approve the annual report on the performance of the Fund for transmission to the Members;
- (h) approve the capital and operating annual budget of the Fund;
- (i) appoint an external Auditor of the Fund;
- (j) submit an annual report to the Members, and
- (k) perform such other functions as may be necessary or appropriate for the operations of the Fund.

2. The Board may exercise such powers and establish such rules as may be necessary or appropriate in furtherance of its purpose and functions consistent with this Agreement.

ARTICLE VIII

PROCEDURES OF THE BOARD

1. The Board shall hold two regular meetings each year and may hold such other meetings as the Board considers necessary.

2. The Board shall elect a Chairman and one Vice-Chairman at its first regular annual meeting.

3. Each member of the Board shall have one vote.

4. A simple majority of the members of the Board shall constitute the quorum for any meeting of the Board.

5. Subject to paragraph 6 of this Article the Board shall take decisions by consensus. A proposal shall be deemed to have been adopted by consensus if no member of the Board raised a formal objection against it during the meeting.

6. Where the Chairman of the Board determines that a decision cannot be reached by consensus, the Chairman shall submit the matter to a vote. In such a case the Board shall take its decision by a majority of two-thirds of its members.

7. Subject to this Agreement, the Board may adopt its own rules of procedure.

ARTICLE IX

THE SEAL OF THE FUND

1. The Fund shall have and use as occasion may require, a Seal having a device or impression with the inscription "Caribbean Court of Justice Trust Fund."

2. The Seal of the Fund shall be kept in the custody of the Executive Officer and shall be affixed to documents pursuant to a resolution of the Board in the presence of the Chairman of the Board and the Executive Officer.

3. The Seal shall be authenticated by the signatures of the Chairman of the Board and the Executive Officer.

ARTICLE X

FUNCTIONS OF THE EXECUTIVE OFFICER

The Executive Officer shall report to the Board and shall be invited to participate in all its meetings, except where the Board considers it inexpedient, having regard to the matters on the agenda for any meeting. The Executive Officer shall:

- (a) prepare and submit to the Board the capital and operating annual budget of the Fund;
- (b) manage the day-to-day operations of the Fund;
- (c) employ staff and engage the services of consultants;
- (d) prepare and submit to the Board for submission to the Members:

- (i) a quarterly report on the performance of the Fund;
- (ii) an annual report on the operations of the Fund.
- (e) submit to the Board a statement of receipts and expenditures relating to the Fund during the preceding fiscal year as audited by the External Auditor;
- (f) represent the Fund in relation to third parties; and
- (g) perform any other functions as may be assigned by the Board from time to time.

ARTICLE XI

JURIDICAL PERSONALITY AND LEGAL CAPACITY

The Fund shall possess full juridical personality and in particular capacity to:

- (a) contract;
- (b) acquire and dispose of immovable and moveable property; and
- (c) institute legal proceedings.

2. The principal office of the Fund shall be located in Trinidad and Tobago.

3. The Fund shall conclude an agreement with the Government of Trinidad and Tobago on the status, privileges and immunities of the Fund. The agreement shall be approved by the Board, and signed by the Chairman.

ARTICLE XII

PRIVILEGES AND IMMUNITIES

1. To enable the Board and Officers of the Fund to fulfill the functions with which it is entrusted, the status, immunities and privileges provided in this Article shall be accorded to the Fund in the territories of each Member.

2. The Fund shall enjoy immunity from every form of legal process. Its property and assets, wheresoever located and by whomsoever held, shall be immuned from all forms of seizure, attachment or execution.

3. The archives of the Fund shall be inviolable.

4. To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Fund shall be free from restrictions, regulations, controls and moratoria of any nature.

5. The official communications of the Fund shall be accorded by each Member the same treatment that it accords to the official communications of other Members.

6. The Fund, its assets, property, income and its operations and transactions, shall be exempt from all taxation, all customs duties on goods imported for its official use and all other imposts.

7. Notwithstanding the provisions of paragraph 6 of this Article, the Fund will not claim exemption from imposts that are no more than charges for public utility services.

8. Where the Fund has paid any duties, taxes or other imposts, the Members shall make appropriate administrative arrangements for the remission or return of the amount of duty, tax or imposts paid.

9. Articles imported under an exemption from customs duties as provided by paragraph 6 of this Article, or in respect of which a remission or return of duty or tax has been made under paragraph 8, shall not be sold in the territory of the Member which granted the exemption, remission or return except under conditions agreed with that Member.

10. No tax shall be levied on or in respect of salaries and emoluments paid by the Fund to members of the Board or other officers, but Members reserve the right to tax their own citizens or nationals or persons permanently resident in the territories of such Members.

11. All officers of the Fund:

- (a) shall be exempt from the payment of income taxes except where that officer is a citizen, permanent resident or national of the State granting the exemption;
- (b) shall be accorded such immunities from immigration restrictions, alien registration requirements and national service obligations, and such facilities as regards exchange control restrictions, as are not less favourable than those accorded by the Member concerned to the representatives, officials and employees of comparable rank of any other Member;

- (c) shall be given such repatriation facilities in time of international crisis as are not less favourable than those accorded by the Member concerned to the representatives, officials and employees of comparable rank of any other Member.

12. The Trustees:

- (a) shall be immune from all legal process in respect of the lawful discharge of their responsibilities under this Agreement;
- (b) shall be accorded immunities from immigration restrictions and such facilities as would ensure the proper discharge of their functions.

13. The immunities, exemptions and privileges provided in this Article are granted in the interests of the Fund. The Board may waive to such extent and upon such conditions as it may determine, the immunities, exemptions and privileges provided in this Article in cases where such action would, in its opinion, be appropriate in the best interests of the Fund.

14. The Executive Officer shall have the right and the duty to waive any immunity, exemption or privilege in respect of any other officer where, in his opinion, the immunity, exemption or privilege would impede the course of justice and can be waived without prejudice to the interests of the Fund. In similar circumstances and under the same conditions, the Board shall have the right and duty to waive any immunity, exemption or privilege respecting the Executive Officer, and in the case of members of the Board, the Members shall waive such immunity.

15. The Members shall take such action as is necessary in their own territories for the purpose of making effective in terms of their law the principles set forth in this Article and shall inform the Fund of the detailed action which they have taken.

ARTICLE XIII

AMENDMENT

Any Member may submit to the Board a proposal to amend a provision of this Agreement. The Board shall promptly submit the proposal to all other Members. The amendment shall take effect on the thirtieth day following the date on which the Secretary-General (hereinafter referred to as "the Depositary") has received the approval of three-quarters of the Members.

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ARTICLE XIV

SIGNATURE

This Agreement shall be open for signature until 31st March 2004, by the States and Territories listed in the Annex hereto.

ARTICLE XV

ENTRY INTO FORCE

This Agreement shall enter into force upon signature by any ten (10) of the States or Territories listed in the Annex hereto.

ARTICLE XVI

RESERVATIONS

No reservations may be entered in respect of any provision of this Agreement.

ARTICLE XVII

ANNEX

The Annex to this Agreement shall constitute an integral part of this Agreement.

ARTICLE XVIII

ACCESSION

1. Any Member State of the Caribbean Community or any State or Territory invited by Conference to participate in the Court may become a Member by acceding to this Agreement on terms and conditions agreed between it and the Fund. Accession shall be effected by the deposit of an instrument of accession approved by the Board. This Agreement shall enter into force for the acceding State or Territory on the thirtieth day following the date on which its instrument of accession was deposited with the Depositary.

2. Where a State or Territory, other than a State or Territory to which paragraph 3(b) of Article IV applies, accedes to this Agreement and undertakes to discharge its financial obligations to the Trust Fund the Annex shall be amended accordingly.

ARTICLE XIX**WITHDRAWAL**

1. Where a Member withdraws from the Agreement Establishing the Caribbean Court of Justice, such a Member shall be deemed to have withdrawn from this Agreement with effect from the date of that Member's withdrawal from the Agreement establishing the Caribbean Court of Justice.

2. A Member withdrawing from this Agreement shall honour all obligations assumed by it before the effective date of its withdrawal.

ARTICLE XX**DEPOSITARY AND REGISTRATION**

1. This Agreement shall be deposited with the Depositary.

CONTRIBUTION OF THE MEMBERS OF THE TRUST FUND

<u>MEMBERS</u>	<u>PERCENT SHARE</u>
Antigua and Barbuda	2.11
Barbados	12.77
Belize	3.44
Dominica	2.11
Grenada	2.11
Guyana	8.33
Haiti	1.68
Jamaica	27.09
Montserrat	0.42
St. Kitts and Nevis	2.11
Saint Lucia	2.11
St. Vincent and the Grenadines	2.11
Suriname	3.92
Trinidad and Tobago	29.73
TOTAL	100.00

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Passed the House of Representatives
this 15th day of July, 2005.

Passed the Senate this 11th day of
August, 2005.

D. Giselle Isaac-Arrindell,
Speaker.

Hazlyn M. Francis,
President.

Yvonne Henry,
*Acting Clerk to the House of
Representatives.*

Yvonne Henry,
Acting Clerk to the Senate.

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