

ANTIGUA AND BARBUDA
CARIBBEAN COMMUNITY (MOVEMENT OF FACTORS) ACT, 2006

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CARIBBEAN COMMUNITY (MOVEMENT OF FACTORS) ACT

No.[] of 2006

A

BILL

ENTITLED

An Act to give effect to the provisions of the Treaty establishing the Caribbean Community, including the CARICOM Single Market and Economy, relating to the exercise by nationals of the Caribbean Community of the right of establishment, the right to provide services and the right to move capital into and within Antigua and Barbuda and out of Antigua and Barbuda to another Member State of the Caribbean Community and for connected matters.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Antigua and Barbuda, and by the authority of the same, as follows-

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Caribbean Community (Movement of Factors) Act, 2006.

Short title and commencement

(2) This Act shall come into operation on such date as Minister may appoint by Order published in the *Gazette*.

2. In this Act-

“Agreement” means the Agreement establishing the Eastern Caribbean Central Bank made on the 5th day of July, 1983; Interpretation

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

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

“Community” means the Caribbean Community including the CARICOM Single Market and 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;

“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;

“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-

- (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 trade;

“national” means a person who-

- (a) is a citizen of a Member State;
- (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 that Member State for the purposes of the laws of that Member State relating to immigration; or
- (c) is a company or other legal entity constituted in a Member State in accordance with the laws of that Member State and which that Member State regards as belonging to it, if that 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);

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

- (i) substantially owned if more than 50 percent of the equity interest in the company or entity is beneficially owned by a person mentioned in paragraphs (a) and (b);
- (ii) effectively controlled if the persons mentioned in paragraphs (a) and (b) have the power to name a majority of its directors or otherwise legally to direct its actions.

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

“right of establishment” includes the right-

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

“service” means a service provided against remuneration other than wages in any approved sector and “the provision of a 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 a Member State to a service consumer of another Member State;
- (c) by a service supplier of a Member State through commercial presence in the territory of another Member State;
- (d) by a service supplier of a 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.

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

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

(2) An activity in Antigua and Barbuda involving the exercise of governmental authority by a duly authorised person shall be excluded from the operation of this Act.

(3) For the purposes of sub-section (2) “an activity in Antigua and Barbuda involving the exercise of governmental authority” means an activity conducted in Antigua and Barbuda neither on a commercial basis nor in competition with one or more economic enterprises such as-

- (a) an activity conducted by the Central Bank in pursuance of monetary or exchange rate policies;
- (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 entity for the account of, or with the guarantee or using financial resources of, the Government of Antigua and Barbuda; and
- (e) such other activity as may be excluded by Regulations made pursuant to section 31.

4. (1) Subject to this Act, a national of a Member State shall enjoy-

(a) in Antigua and Barbuda-

- (i) the right of establishment;
- (ii) the right to provide a service; and

(b) the right to move capital into and within Antigua and Barbuda and out of Antigua and Barbuda to another Member State,

Rights of a national of a Member State in respect of establishment services and capital

without discrimination on the ground of nationality.

5. (1) For the purposes of this Act the enactments listed in column 1 of the Second Schedule are amended to the extent specified in column 2 with effect from the date of coming into force of this Act.

(2) The Minister shall notify, not later than 31 June 2006, the Council for Trade and Economic Development or the Council for Finance and Planning, as the case may require, of any remaining restrictions on-

- (a) the right of establishment and the right to provide a service in Antigua and Barbuda in respect of a national of another Member State; and
- (b) the right to move capital into and within Antigua and Barbuda and out of Antigua and Barbuda to another Member State, and to make current payments and transfers.

(3) The Minister may by Order, subject to an affirmative resolution of Parliament, amend the Schedules and may amend the Second Schedule to include any existing restriction and any restriction not notified, to the Council for Trade and Economic Development or the Council for Finance and Planning, as the case may require, in accordance with subsection (2).

Removal and notification of restrictions on establishment, services and capital – Schedule

6. Subject to this Act, the Minister shall not introduce new restrictions on a national of another Member State entitled to the rights specified in section 4. Prohibition of new restrictions

PART II

THE RIGHT OF ESTABLISHMENT

7. (1) Notwithstanding any provision to the contrary in this Act, the 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 monopolies

(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 Minister shall adopt appropriate measures to ensure that the monopoly does not discriminate among nationals of a Member State, save as otherwise provided in this Act, and is subject to the agreed rules of competition established for an economic enterprise of the Community; or
- (b) a private sector monopoly, the Minister shall, subject to this Act, adopt appropriate measures to ensure that national treatment is accorded to a national of another Member State in terms of participation in its operations.

8. Restrictions on the right of establishment in Antigua and Barbuda in respect of a national of another Member State shall be removed in accordance with the programme approved by Conference in accordance with Article 33(3) of the Treaty. Programme to remove restrictions on establishment

9. The Minister shall, by Order published in the Gazette, 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 Antigua and Barbuda or another Member State. Minister to adopt safeguard measures

10. (1) In carrying out his or her duties under this Part, the Minister shall use his or her best endeavours to ensure that a national of another Member State desirous of engaging in an approved economic activity in Antigua and Barbuda is not impeded in the exercise of his or her right of establishment. Management of removal of restrictions on the rights of establishment

- (2) Without prejudice to the generality of subsection (1) the Minister shall-
- (a) remove 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 by a national of a Member State in Antigua and Barbuda;
 - (c) remove all restrictions on entering and residing in Antigua and Barbuda by a spouse and immediate dependent family member of a national establishing an economic enterprise and 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 or her right of establishment has the right to acquire or otherwise possess or control land, buildings and other property adequate for the purpose;
 - (e) implement Community standards to ensure protection of the interests of partners, members and other persons with financial interests in companies and other entities that have rights equivalent to those of similar entities in a Member State;
 - (f) implement measures established by the Council for Human and Social Development for the coordination of legislative and administrative requirements of a Member State for the conduct of non-wage-earning activities in the Community.

PART III

THE RIGHT TO PROVIDE SERVICES

11. (1) Subject to this Act, restrictions on the right to provide a service in Antigua and Barbuda in respect of a national of another Member State shall be removed in accordance with the programme approved by the Conference pursuant to Article 37 (2) of the Treaty.

Programme to remove restrictions

(2) Notwithstanding subsection (1), the Minister may with the consent of the Council for Finance and Planning and with the approval of the Conference, exclude certain financial services from the application of this Act in accordance with Article 38 (2) of the Treaty.

12. Without prejudice to the provisions relating to the right of establishment, a national of another Member State exercising the right to provide a service in Antigua and Barbuda may, in order to provide the service, temporarily engage in an approved activity in Antigua and Barbuda under conditions no less favourable than those enjoyed by a national of Antigua and Barbuda.

Collateral activities by service providers

13. (1) The 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 or her right to provide a service in Antigua and Barbuda.

Management of removal of restriction on right to provide a service

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

- (a) remove administrative practices and procedures in Antigua and Barbuda 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 Antigua and Barbuda in respect of a spouse and an immediate dependent family member 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 Antigua and Barbuda 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

14. Subject to this Act, the Minister-

Prohibition of
new restrictions
on the movement
of capital

- (a) shall not introduce new restrictions on-
 - (i) the movement of capital;
 - (ii) payments connected with the movement of capital; and
 - (iii) current payments and transfers; and

- (b) shall not render more restrictive the operation of existing regulations governing the movement of capital,

except as authorised by the Treaty.

15. (1) Subject to 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 a Member State shall be removed.

Removal of
restrictions on
capital
movements

(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.

16. (1) Subject to subsection (2), the Minister shall, where necessary, grant the authorisations required for the movement of capital mentioned in section 15 on a non-discriminatory basis.

Authorisation to
facilitate
movement of
capital

(2) Where a loan is to be obtained for the purposes of the State of Antigua and Barbuda in another Member State prior notification shall be given by the person obtaining the loan to the Member State in which the loan is being issued or placed.

17. (1) The Minister shall take such measures as may be required to coordinate the foreign exchange policies of Antigua and Barbuda with those of another Member State in respect of the movement of capital among Member States and with a third country.

Co-ordination of foreign exchange policies and information exchange

(2) The Minister shall keep the competent authorities of a Member State informed of significant unusual movements of capital within his or her knowledge to and from a third country.

PART V

SAFEGUARD MEASURES

18. (1) Subject to subsection (3), where the Minister is satisfied that there are serious balance-of-payments and external financial difficulties or the threat thereof, the Minister may, consistently with international obligations assumed by Antigua and Barbuda, 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 this Act, and relevant determinations of the Conference, the Council for Finance and Planning and the Council for Trade and Economic Development, as the case may require, not discriminate among a Member State or against a Member State in favour of a third country;
- (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 sub-section (1);
- (d) be temporary and not longer than eighteen months and must be removed progressively as the situation mentioned in subsection (1) improves.

19. (1) In determining the incidence of restrictions mentioned in section 18, the Minister may accord priority to activities which are essential to the economic stability of Antigua and Barbuda 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 the reserves of Antigua and Barbuda or its need for reserves.

Incidence and notification of restrictions

(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, and, in any event, the Minister shall consult immediately with the competent organ of the Community if requested to do so.

20. (1) The Minister shall consult with the Council for Finance and Planning, and, where practicable, before the imposition of restrictions mentioned in section 18, 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 Antigua and Barbuda to overcome its balance-of-payments and external financial difficulties;
- (b) assess the balance-of-payments situation of Antigua and Barbuda and the restrictions adopted or maintained under section 18 taking into account *inter alia*-
 - (i) the nature and extent of the balance-of-payments and external financial difficulties;
 - (ii) the external economic and trading environment of Antigua and Barbuda; and
 - (iii) alternative corrective measures which may be available.

(3) The consultations under this section shall address the compliance of any restrictions with section 18 (3) and, in particular, the progressive removal of restrictions in accordance with section 18 (3)(d).

(4) In consultations under this section all findings of statistical and other facts presented by the Committee of Central Bank Governors relating to foreign exchange, monetary reserves and balance-of-payments shall be accepted and conclusions shall be based on the assessment by that Committee of the balance-of-payments and external financial situation of Antigua and Barbuda.

21. (1) Where the exercise of rights conferred by this Act creates serious difficulties in any sector of the economy of Antigua and Barbuda, or results in economic hardships in any district, region or part of Antigua and Barbuda, the 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.

Restrictions to resolve difficulties arising from the exercise of rights.

(2) If the Minister intends to apply restrictions pursuant to sub-section (1), the Minister shall, prior to applying the restrictions, notify the competent organ of the Community of the Minister's intention and the nature of the restrictions.

(3) If the Minister is unable to notify the competent organ prior to 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 restrictions.

22. (1) The Minister shall, at the time of applying the restrictions mentioned in section 21, 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 by Antigua and Barbuda to resolve the difficulties or alleviate the hardships.

Conditions for the application of restrictions

(2) The Minister shall act on the determinations of the competent organ of the Community regarding the-

- (a) appropriateness of the restrictions and whether they shall continue; and
- (b) adequacy of the programme and the duration of the restrictions.

23. Restrictions applied by the Minister pursuant to section 21 shall be confined to those necessary to-

Permissible restrictions

- (a) resolve the difficulties in the affected sectors;
- (b) alleviate economic hardships in a particular district region or part of Antigua and Barbuda;
- (c) minimise damage to the commercial or economic interests of another Member State; and
- (d) prevent the unreasonable exercise of rights granted by this Act, the exercise of which could impair the development of the CARICOM Single Market and Economy.

24. The Minister in applying the restrictions pursuant to section 21 shall not discriminate on the ground of nationality and-

Non-discrimination applying permissible restrictions

- (a) shall progressively relax the restrictions as relevant conditions improve;
- (b) may maintain the restrictions only to the extent that conditions mentioned in section 21 continue to justify their application.

25. (1) Notwithstanding any provision to the contrary in this Act, the 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 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 or enterprises given 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 prison labour;
- (g) relating to child labour;
- (h) to protect national treasures of artistic, historic or archaeological value;
- (i) to prevent or relieve critical food shortages in another exporting Member State;
- (j) relating to the conservation of natural resources or the preservation of the environment;
- (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;

(l) to protect existing economic activities which are based on traditional, historical or customary practices;

(m) 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 which constitutes arbitrary or unjustifiable discrimination against a national of another Member State.

26. Nothing in this Act shall be construed as preventing the Minister from taking measures to-

Security exceptions to obligation to remove restrictions

(a) protect the essential security interests of Antigua and Barbuda-

(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 Antigua and Barbuda for the maintenance of international peace and security.

PART VI

GENERAL

27. The Minister shall, where an organ or body of the Community has been authorised to make any determinations in respect of any of the rights referred to in section 4, carry out such determination.

Determinations of organs and bodies of the Community to be carried out

28. The Minister shall establish or employ as required an appropriate mechanism to implement Community standards to determine equivalency or to accord accreditation or mutual recognition to diplomas, certificates and other evidence of qualifications secured by a national of another Member State.

Implementation of Community Standards

- 29.** Where a functionary purports to restrict a person in the exercise of a right under section 4, the person aggrieved may, without prejudice to any other remedy, appeal to the Minister for a speedy review of the decision of such functionary. Right to appeal to Minister for speedy review of decision of a functionary
- 30.** Any person who, contrary to the provisions of this Act, obstructs or otherwise impedes a national of a Member State in the lawful enjoyment of any right mentioned in section 4 or any right collateral thereto commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of 3 months or to both. Offences against this Act
- 31.** (1) The Minister may make regulations generally for giving effect to the provisions of this Act. Regulations
- (2) Without limiting the generality of sub-section (1) the Minister may make regulations to-
- (a) identify those activities in respect of which the right of establishment shall not apply;
 - (b) determine the conditions under which the right of establishment is to be exercised;
 - (c) remove restrictions on the entry of managerial, technical and supervisory staff to be employed in an economic enterprise and their spouses and immediate dependent family members;
 - (d) remove restrictions on the entry of a spouse and an immediate dependent family member of a national exercising the right to provide services;
 - (e) provide for the temporary imposition of restrictions under section 21; and
- specify the nature of restrictions imposed pursuant to section 21.

FIRST SCHEDULE

- (i) Antigua and Barbuda
- (ii) Bahamas
- (iii) Barbados
- (iv) Belize
- (v) Commonwealth of Dominica
- (vi) Grenada
- (vii) Haiti
- (viii) Guyana
- (ix) Jamaica
- (x) Montserrat
- (xi) St. Kitts-Nevis and Anguilla
- (xii) Saint. Lucia
- (xiii) St. Vincent and the Grenadines
- (xiv) Trinidad and Tobago

SECOND SCHEDULE

Column 1	Column 2
ENACTMENT	AMENDMENT
<p>Engineers (Registration) Act</p> <p>Chapter 153</p>	<p>In the Act-</p> <p>1) In Section 2, insert in their appropriate order the following-</p> <p style="padding-left: 40px;">“Caribbean Community Accreditation Agency” means the agency established under the Caribbean Community Agreement;</p> <p style="padding-left: 40px;">“Council for Human and Social Development” means the body of the Caribbean Community empowered by Article 35 of the Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy to establish common standards and measures for accreditation or mutual recognition of diplomas, certificates and other evidence of qualification of nationals of CARICOM Member States;</p> <p style="padding-left: 40px;">“Member State” means a Member State of the Caribbean Community listed in the Third Schedule;</p> <p style="padding-left: 40px;">“national” means a person who-</p> <ul style="list-style-type: none"> (a) is a citizen of a Member State; (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 that Member State for the purposes of the laws of that Member State relating to immigration; or (c) is a company or other legal entity constituted in a Member State in accordance with the laws of that Member State and which that Member State regards as belonging to it, if that 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); <p style="text-align: right;">For the purposes of this definition, a company or other legal</p>

Column 1	Column 2
ENACTMENT	AMENDMENT
	<p>entity is-</p> <p>(i) substantially owned if more than 50 percent of the equity interest in the company or entity is beneficially owned by a person mentioned in paragraphs (a) and (b);</p> <p>(ii) effectively controlled if the persons mentioned in paragraphs (a) and (b) have the power to name a majority of its directors or otherwise legally to direct its actions;”</p> <p>2) In Section 6-</p> <p>insert immediately after subsection (1) the following-</p> <p>“(2) Paragraphs (c) and (d) shall not apply to a national of a Member State”.</p> <p>3) In Section 7-</p> <p>insert immediately after subsection (3) the following-</p> <p>“(4) Subsection 1(d) shall not apply to a national of a Member State”.</p> <p>4) insert immediately after section 26 the following-</p> <p>“Adoption of Common Caribbean Community Standards.</p> <p>27 (1) In making any regulation under paragraph (c) of section 26 the Minister shall adopt the common standards and measures for accreditation and for the mutual recognition of diplomas, certificates and other evidence of qualifications of a national of a Member State established by the Council for Human and Social Development and by the Caribbean Community Accreditation Agency.</p>

Column1	Column 2
ENACTMENT	AMENDMENT
	<p>(2) Where there is a conflict between the rules made by the Council or the Caribbean Community Accreditation Agency and the standards or measures established by the Council for Human and Social Development for adoption in a Member State, the latter shall prevail.</p> <p>(3) Where there is a conflict between the rules made by the Council and any rule made by the Caribbean Community Accreditation Agency the latter shall prevail.</p> <p>Equal application of the Act to citizens and a national of a Member State. 28. Notwithstanding anything to the contrary in this Act or any other law, the provisions of this Act shall apply equally and without discrimination to citizens of Antigua and Barbuda and a national of a Member State.”</p>
	<p>5) insert immediately after the Third Schedule the following-</p> <p>“</p> <p style="text-align: center;">FOURTH SCHEDULE</p> <p style="text-align: center;">Member States</p> <p style="text-align: center;">(i) Barbados (ii) Belize (iii) Commonwealth of Dominica (iv) Grenada (v) Guyana (vi) Jamaica (vii) St Christopher and Nevis (viii) Saint Lucia (ix) Saint Vincent and the Grenadines (x) Suriname (xi) Trinidad and Tobago.”</p>

Column 1	Column 2
ENACTMENT	AMENDMENT
<p>Franchises (Registration and Control) Act</p> <p>Chapter 182a</p>	<p>In the Act-</p> <p>1) In Section 2, insert in their appropriate alphabetical order the following-</p> <p style="padding-left: 40px;">“Member State” means a Member State of the Caribbean Community or the Organisation of Eastern Caribbean States listed in the Second Schedule;</p> <p style="padding-left: 40px;">“national” means a person who-</p> <ul style="list-style-type: none"> (a) is a citizen of a Member State; (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 that Member State for the purposes of the laws of that Member State relating to immigration; or (c) is a company or other legal entity constituted in a Member State in accordance with the laws of that Member State and which that Member State regards as belonging to it, if that 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); <p style="padding-left: 40px;">For the purposes of this definition, a company or other legal entity is-</p> <ul style="list-style-type: none"> (i) substantially owned if more than 50 percent of the equity interest in the company or entity is beneficially owned by a person mentioned in paragraphs (a) and (b); (ii) effectively controlled if the persons mentioned in paragraphs (a) and (b) have the power to name a majority of its directors or otherwise legally to direct its actions. <p>2) In Section 3-</p> <p>In subsection (1) (b), insert “or a national of a Member State” after “citizen”.</p>

Column 1	Column 2
ENACTMENT	AMENDMENT
	In subsection (2) (b), insert “or a national of a Member State” after “citizen”.
	<p>3) Insert immediately after section 21 the following-</p> <p>“Act to apply equally to a national of a Member State. 22. Notwithstanding anything to the contrary in any other law, the provisions of this Act shall apply equally and without discrimination to citizens of Antigua and Barbuda and a national of a Member State.”.</p>
	<p>4) Insert “First” before “Schedule” and insert immediately after the First Schedule the following-</p> <p style="text-align: center;">“SECOND SCHEDULE</p> <p style="text-align: center;">Member States</p> <p style="text-align: center;">(i) Barbados (ii) Belize (iii) Commonwealth of Dominica (iv) Grenada (v) Guyana (vi) Jamaica (vii) St Christopher and Nevis (viii) Saint Lucia (ix) Saint Vincent and the Grenadines (x) Suriname (xi) Trinidad and Tobago.”</p>
Insurance (Licence) Act Chapter 220	<p>In the Act-</p> <p>1) In Section 2, insert in their appropriate alphabetical order the following-</p> <p>“Member State” means a Member State of the Caribbean Community or the Organisation of Eastern Caribbean States listed in the Second Schedule;</p>

Column1	Column 2
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	<p data-bbox="548 302 971 338">“national” means a person who-</p> <ul style="list-style-type: none"> <li data-bbox="646 380 1130 415">(a) is a citizen of a Member State; <li data-bbox="646 453 1455 632">(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 that Member State for the purposes of the laws of that Member State relating to immigration; or <li data-bbox="646 669 1455 999">(c) is a company or other legal entity constituted in a Member State in accordance with the laws of that Member State and which that Member State regards as belonging to it, if that 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); <p data-bbox="548 1037 1455 1108">For the purposes of this definition, a company or other legal entity is-</p> <ul style="list-style-type: none"> <li data-bbox="740 1146 1455 1293">(i) substantially owned if more than 50 percent of the equity interest in the company or entity is beneficially owned by a person mentioned in paragraphs (a) and (b); <li data-bbox="740 1331 1455 1476">(ii) effectively controlled if the persons mentioned in paragraphs (a) and (b) have the power to name a majority of its directors or otherwise legally to direct its actions;”.

Column 1	Column 2				
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	2) In Section 8 (1), insert “or who is a national of a Member State” after “Antigua and Barbuda” where the latter first occurs.				
	3) In Section 14 (1), insert “or who is a national of a Member State” after “Antigua and Barbuda” where the latter first occurs.				
	<p>4) Insert immediately after section 30 the following-</p> <p>“</p> <table border="0" data-bbox="552 588 1380 966"> <tr> <td data-bbox="552 588 747 672">“Amendment of Schedule.</td> <td data-bbox="844 588 1380 714">31. The Minister may by Order subject to affirmative resolution amend the Schedule.</td> </tr> <tr> <td data-bbox="552 735 747 861">Application to a citizen and a national of a Member State.</td> <td data-bbox="844 735 1380 966">32. Notwithstanding anything to the contrary in any other law, the provisions of this Act shall apply equally and without discrimination to a citizen of Antigua and Barbuda and a national of Member State.”</td> </tr> </table>	“Amendment of Schedule.	31. The Minister may by Order subject to affirmative resolution amend the Schedule.	Application to a citizen and a national of a Member State.	32. Notwithstanding anything to the contrary in any other law, the provisions of this Act shall apply equally and without discrimination to a citizen of Antigua and Barbuda and a national of Member State.”
“Amendment of Schedule.	31. The Minister may by Order subject to affirmative resolution amend the Schedule.				
Application to a citizen and a national of a Member State.	32. Notwithstanding anything to the contrary in any other law, the provisions of this Act shall apply equally and without discrimination to a citizen of Antigua and Barbuda and a national of Member State.”				
	<p>5) Insert “First” before “Schedule” and insert immediately after the First Schedule the following-</p> <p style="text-align: center;">“SECOND SCHEDULE</p> <p style="text-align: center;">Member States</p> <ul style="list-style-type: none"> (i) Barbados (ii) Belize (iii) Commonwealth of Dominica (iv) Grenada (v) Guyana (vi) Jamaica (vii) St Christopher and Nevis (viii) Saint Lucia (ix) Saint Vincent and the Grenadines (x) Suriname (xi) Trinidad and Tobago.” 				

Column 1	Column 2
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<p>Nurses Registration Act</p> <p>Chapter 296</p>	<p>In the Act-</p> <p>1) Insert after section 1 the following-</p> <p>“Interpretation</p> <p>1A. “Caribbean Community Accreditation Agency” “means the agency established under the Caribbean Community Accreditation Agreement;</p> <p>“Council for Human and Social Development” means the body of the Caribbean Community empowered by Article 35 of the Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy, to establish common standards and measures for accreditation or mutual recognition of diplomas, certificates and other evidence of qualification of nationals of CARICOM Member States;</p> <p>“Member State” means a Member State of the Caribbean Community or the Organisation of Eastern Caribbean States listed in the Second Schedule;</p> <p>“national” means a person who-</p> <ul style="list-style-type: none"> (a) is a citizen of a Member State; (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 that Member State for the purposes of the laws of that Member State relating to immigration; or (c) is a company or other legal entity constituted in a Member State in accordance with the laws of that Member State and which that Member State regards as belonging

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	<p>to it, if that 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);</p> <p>For the purposes of this definition, a company or other legal entity is-</p> <p>(i) substantially owned if more than 50 percent of the equity interest in the company or entity is beneficially owned by a person mentioned in paragraphs (a) and (b);</p> <p>effectively controlled if the persons mentioned in paragraphs (a) and (b) have the power to name a majority of its directors or otherwise legally to direct its actions</p> <p>2) insert immediately after section 4 the following-</p> <p>“Adoption of common Caribbean Community standards.</p> <p>4. (A) (1) In making any rules under this Act the Council shall adopt the common standards and measures for accreditation and for the mutual recognition of diplomas, certificates and other evidence of qualifications of a national of a Member State established by the Council for Human and Social Development or by the Caribbean Community Accreditation Agency.</p> <p>(2) Where there is a conflict between the rules made by the Council or the Caribbean Community Accreditation Agency and the standards or measures established by the Council for Human and Social Development for adoption in a Member State, the latter shall prevail.</p> <p>(3) Where there is a conflict between the rules</p>

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	<p>made by the Council and any rule made by the Caribbean Community Accreditation Agency for adoption in a Member State, the latter shall prevail.”</p> <p>3) In Section 7 (1), insert “or a Member State” after “United Kingdom”.</p> <p>4) In the Act –</p> <p>Insert immediately after section 10 the following-</p> <p>“Equal application of Act to a citizens and a national of a Member State</p> <p>11 (1) A national of a Member State who is registered as a nurse under this Act, shall not require a work permit, a visa or other immigration permit to enter or remain in Antigua and Barbuda for the purpose of practicing as a nurse.</p> <p>(2) Subsection (1) applies notwithstanding anything to the contrary in any other law.</p> <p>(3) Notwithstanding anything to the contrary in any other law, the provisions of this Act shall apply equally and without discrimination to citizens of Antigua and Barbuda and a national of a Member State.”</p>

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	<p>5) In the Act -</p> <p>insert the word “First” before “Schedule” and insert immediately after the First Schedule the following-</p> <p style="text-align: center;">“SECOND SCHEDULE Member States</p> <p style="text-align: center;">(i) Barbados (ii) Belize (iii) Commonwealth of Dominica (iv) Grenada (v) Guyana (vi) Jamaica (vii) St Christopher and Nevis (viii) Saint Lucia (ix) Saint Vincent and the Grenadines (x) Suriname (xi) Trinidad and Tobago.”</p>
<p>Stamps Act</p> <p>Chapter 410</p>	<p>In the Schedule to the Act under the heading, “LOANS TO NON-CITIZENS” insert immediately after paragraph (b) the following-</p> <p style="text-align: center;">“(c) Paragraphs (a) and (b) shall not apply to a national of a CARICOM Member State who is seeking to establish a right under the revised Treaty of Chaguaramas or the Caribbean Community (Movement of Factors) Act, 2006.”</p>
<p>Antigua and Barbuda Labour Code</p> <p>Chapter 27</p>	<p>In the Act-</p> <p>1) In Section F2, insert in their appropriate alphabetical order the following-</p> <p>“</p> <p style="text-align: center;">“Member State” means a Member State of the Caribbean Community or the Organisation of Eastern Caribbean States listed in the Fourth Schedule;</p> <p style="text-align: center;">“national” means a person who-</p> <p style="text-align: center;">(a) is a citizen of a Member State;</p> <p>”</p>

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	<p>(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 that Member State for the purposes of the laws of that Member State relating to immigration; or</p> <p>(c) is a company or other legal entity constituted in a Member State in accordance with the laws of that Member State and which that Member State regards as belonging to it, if that 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);</p> <p>For the purposes of this definition, a company or other legal entity is-</p> <p>(i) substantially owned if more than 50 percent of the equity interest in the company or entity is beneficially owned by a person mentioned in paragraphs (a) and (b);</p> <p>(iii) effectively controlled if the persons mentioned in paragraphs (a) and (b) have the power to name a majority of its directors or otherwise legally to direct its actions;”.</p> <p>2) In Section F3, reletter paragraph (g) as (h) and insert immediately after paragraph (f) the following-</p> <p>“(g) a national of a Member State;”</p> <p>3) insert immediately after the Third Schedule the following-</p>

Column 1	Column 2
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	<p style="text-align: center;">“FOURTH SCHEDULE</p> <p style="text-align: center;">Member States</p> <ul style="list-style-type: none"> (i) Barbados (ii) Belize (iii) Commonwealth of Dominica (iv) Grenada (v) Guyana (vi) Jamaica (vii) St Christopher and Nevis (viii) Saint Lucia (ix) Saint Vincent and the Grenadines (x) Suriname (xi) Trinidad and Tobago.”
<p>Immigration and Passport Act</p> <p>Chapter 208</p>	<p>In the Act-</p> <p>1) In Section 2 insert in their appropriate alphabetical order the following-</p> <p>“</p> <p style="padding-left: 40px;">“Member State” means a Member State of the Caribbean Community or the Organisation of Eastern Caribbean States listed in the Schedule;</p> <p style="padding-left: 40px;">“national” means a person who-</p> <ul style="list-style-type: none"> (a) is a citizen of a Member State; (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 that Member State for the purposes of the laws of that Member State relating to immigration; or (c) is a company or other legal entity constituted in a Member State in accordance with the laws of that Member State and which that Member State regards as belonging to it, if that company or other legal entity has been formed for gainful purposes and has its registered office and central administration, and <p>”</p>

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	<p>carries on substantial activity within the Community and is substantially owned and effectively controlled by persons mentioned in paragraphs (a) and (b);</p> <p>For the purposes of this definition, a company or other legal entity is-</p> <ul style="list-style-type: none"> (i) substantially owned if more than 50 percent of the equity interest in the company or entity is beneficially owned by a person mentioned in paragraphs (a) and (b); (ii) effectively controlled if the persons mentioned in paragraphs (a) and (b) have the power to name a majority of its directors or otherwise legally to direct its actions;”. <p>2) In Section 9, reletter paragraph (e) as paragraph (f) and insert immediately after paragraph (d) the following-</p> <p>“(e) a national of a “Member State” seeking to enjoy a right conferred under the Revised Treaty of Chaguaramas or the Caribbean Community (Movement of Factors) Act, 2006.”.</p> <p>3) insert immediately after section 41 the following-</p> <p>“Amendment of Schedule. 42. The Minister may by Order subject to affirmative resolution of the House amend the Schedule.”</p>

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	<p>4) insert immediately after section 42 the following-</p> <p style="text-align: center;">“SCHEDULE</p> <p style="text-align: center;">Member States</p> <p style="text-align: center;">(i) Barbados (ii) Belize (iii) Commonwealth of Dominica (iv) Grenada (v) Guyana (vi) Jamaica (vii) St Christopher and Nevis (viii) Saint Lucia (ix) Saint Vincent and the Grenadines (x) Suriname (xi) Trinidad and Tobago.”.</p>
Alien Restrictions Act Cap 16	<p>In the Act-</p> <p>1) Insert immediately after section 3 the following-</p> <p>Application 4. (1) .This Act shall not apply to a national of a Member State.</p> <p style="text-align: center;">(2) In this Act-</p> <p style="text-align: center;">(a) “Member State” means a Member State of the Caribbean Community or the Organisation of Eastern Caribbean states listed in the Schedule;</p> <p style="text-align: center;">(b) “national” means a person who-</p> <p style="text-align: center;">(i) is a citizen of a Member State;</p> <p style="text-align: center;">(ii) 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</p>

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	<p>being a native or resident of that Member State for the purposes of the laws of that Member State relating to immigration; or</p> <p>(iii) is a company or other legal entity constituted in a Member State in accordance with the laws of that Member State and which that Member State regards as belonging to it, if that 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);</p> <p>For the purposes of this definition, a company or other legal entity is-</p> <p>(i) substantially owned if more than 50 percent of the equity interest in the company or entity is beneficially owned by a person mentioned in paragraphs (a) and (b);</p> <p>(ii) effectively controlled if the persons mentioned in paragraphs (a) and (b) have the power to name a majority of its directors or otherwise legally to direct its actions.”</p>

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	<p>Amendment of Schedule 5. The Minister may by Order subject to affirmative resolution amend the Schedule.”</p> <p>2) Insert immediately after section 5 the following-</p> <p style="text-align: center;">“SCHEDULE</p> <p style="text-align: center;">Member States</p> <ul style="list-style-type: none"> (i) Barbados (ii) Belize (iii) Commonwealth of Dominica (iv) Grenada (v) Guyana (vi) Jamaica (vii) St Christopher and Nevis (viii) Saint Lucia (ix) Saint Vincent and the Grenadines (x) Suriname (xi) Trinidad and Tobago.”.

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<p>Architects (Registration) Act</p> <p>Chapter 34</p>	<p>In the Act-</p> <p>1) In Section 2 insert in their appropriate alphabetical order the following-</p> <p>“Council for Human and Social Development” means the body of the Caribbean Community empowered by Article 35 of the Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy to establish common standards and measures for accreditation or mutual recognition of diplomas, certificates and other evidence of qualification of nationals of CARICOM Member States;</p> <p>“Member State” means a Member State of the Caribbean Community or the Organisation of Eastern Caribbean States listed in the Second Schedule;</p> <p>“national” means a person who-</p> <ul style="list-style-type: none"> (a) is a citizen of a Member State; (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 that Member State for the purposes of the laws of that Member State relating to immigration; or (c) is a company or other legal entity constituted in a Member State in accordance with the laws of that Member State and which that Member State regards as belonging to it, if that 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); <p>For the purposes of this definition, a company or other legal entity is-</p> <ul style="list-style-type: none"> (i) substantially owned if more than 50 percent of the equity interest in the company or entity is beneficially owned by a person mentioned in

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	<p>paragraphs (a) and (b);</p> <p>(i) effectively controlled if the persons mentioned in paragraphs (a) and (b) have the power to name a majority of its directors or otherwise legally to direct its actions;”.</p>
	<p>2) In Section 5 (1) substitute the words “; and” for the full stop occurring at the end of paragraph (c) and insert immediately after paragraph (c) the following-</p> <p>“(d) he is a national of a Member State.”</p>
	<p>3) In Section 8 (b) insert “not being a Member State” after “country”.</p>
	<p>4) Insert the word “First” before “Schedule” and insert immediately after the First Schedule the following-</p> <p style="text-align: center;">“SECOND SCHEDULE</p> <p style="text-align: center;">Member States</p> <p>(i) Barbados (ii) Belize (iii) Commonwealth of Dominica (iv) Grenada (v) Guyana (vi) Jamaica (vii) St Christopher and Nevis (viii) Saint Lucia (ix) Saint Vincent and the Grenadines (x) Suriname (xi) Trinidad and Tobago.”</p>
<p>Caribbean Community Skilled Nationals Act No. 3 of 1997</p>	<p>In the Act-</p> <p>1) In Section 5, delete “section 14 and” occurring after “subject to”</p> <p>2) In Section 6, delete “subject to section 14” occurring after “may”</p> <p>3) In Section 7 (1), delete “and to section 14 ” occurring before “grant”.</p>

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	<p>4) In Section 10-</p> <p style="padding-left: 40px;">a) in subsection (1), delete “sections 14 and” and insert “section” after “subject to”</p> <p style="padding-left: 40px;">b) in subsection (2), delete “section 14 and” occurring after “subject to”.</p> <p>5) In Section 11 (1) and (2) and Section 12 delete “section 14 and” occurring after “subject to”.</p> <p>6) Delete Section 14.</p>
Veterinary Act Chapter 464	<p>In the Act-</p> <p>1) In section 2 insert in their appropriate alphabetical order the following-</p> <p>“</p> <p style="padding-left: 40px;">“Caribbean Community Accreditation Agency” “means the agency established under the Caribbean Community Accreditation Agreement;</p> <p style="padding-left: 40px;">“Council for Human and Social Development” means the body of the Caribbean Community empowered by Article 35 of the Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy, to establish common standards and measures for accreditation or mutual recognition of diplomas, certificates and other evidence of qualification of nationals of CARICOM Member States;</p> <p style="padding-left: 40px;">“Member State” means a Member State of the Caribbean Community or the Organisation of Eastern Caribbean States listed in the Third Schedule;</p> <p style="padding-left: 40px;">“national” means a person who-</p> <p style="padding-left: 80px;">(a) is a citizen of a Member State;</p> <p style="padding-left: 80px;">(b) has a connection with a Member State of a kind which entitles that person to be regarded as belonging to or,</p>

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	<p>if it be so expressed, as being a native or resident of that Member State for the purposes of the laws of that Member State relating to immigration; or</p> <p>(c) is a company or other legal entity constituted in a Member State in accordance with the laws of that Member State and which that Member State regards as belonging to it, if that 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);</p> <p>For the purposes of this definition, a company or other legal entity is-</p> <p>(i) substantially owned if more than 50 percent of the equity interest in the company or entity is beneficially owned by a person mentioned in paragraphs (a) and (b);</p> <p>(ii) effectively controlled if the persons mentioned in paragraphs (a) and (b) have the power to name a majority of its directors or otherwise legally to direct its actions;”.</p> <p>2) In Section 11 insert immediately after subsection (1) the following-</p> <p>“</p> <p>“(2) A national of a Member State who is registered as a veterinary surgeon under this Act, shall not require a work permit or a visa to enter or remain in Antigua and Barbuda for the purpose of practicing as a veterinary surgeon.</p> <p>(3) Subsection (1) applies notwithstanding anything to the contrary in any other law.”.</p> <p>3). Insert after section 20 the following -</p> <p>“Adoption of common standards by 21. (1) In making any regulations under this Act the Board shall adopt the common standards and measures for</p>

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	<p>the Council. accreditation and for the mutual recognition of diplomas, certificates and other evidence of qualifications of a national of a Member State established by the Council for Human and Social Development or by the Caribbean Community Accreditation Agency.</p> <p>(2) Where there is a conflict between the rules made by the Board or the Caribbean Community Accreditation Agency and the standards or measures established by the Council for Human and Social Development for adoption in a Member State, the latter shall prevail.</p> <p>(3) Where there is a conflict between the rules made by the Board and any rule made by the Caribbean Community Accreditation Agency the latter shall prevail.”</p> <p>“Equal application of Act to a national of a Member State. 22 Notwithstanding anything to the contrary in any other law, the provisions of this Act shall apply equally and without discrimination to a citizen of Antigua and Barbuda and a national of a Member State.”</p>

Passed by the House of Representatives
this day of 2006.

Passed by the Senate
this day of 2006.

Speaker

President

Caribbean Community (Movement of Factors) Act

EXPLANTORY MEMORANDUM

The Bill seeks to give effect to the provisions of Chapter Three of the CARICOM Treaty and facilitate the development of the CARICOM single market and economy in the CARICOM/ OECS member States (CSME) that have expressed their commitment to participate in that market.

The Bill is presented in six Parts-

PART 1, PRELIMINARY, SHORT TITLE AND COMMENCEMENT, CLAUSES 1-6, provides for preliminary matters and contains the interpretation of the words or terms used in the Bill for clarity. The definitions of most of the terms used in *clause 2* were adopted from the CARICOM Treaty. Of particular note are the definitions of “**national**”, which means a citizen or a believer of or a legal entity constituted in a CARICOM member State that carries on substantial activity in a member State and is substantially owned and effectively controlled by a citizen or “believer” of a Member State. The “Minister” who would be responsible for the administration of the Bill, means the Minister who has been assigned the responsibility for trade and economic development or finance and planning, as the case may be. The term “**economic enterprise**” is defined to include an agency, branch or subsidiary of a national of a State. The word “**Member State**” is defined to include an associate member State of the Community that is also a Member State of the OECS. The word “**service**” means any service provided against remuneration other than wages.

Clause 3, Application of this Act, seeks to acknowledge three rights to be protected in relation to a national of a Member State. Firstly, the right of establishment or to set up a business in a Member State, secondly the right of a national to provide a service in a

Member State and thirdly, the right of a national to move capital into, within and outside a Member State.

Clause 4, Rights of nationals of a State in respect of establishment services and capital, serves as a proclamation of the right of a person to enjoy, in the State, the three rights that the law seeks to protect.

Clause 5, Removal and notification of removal of restrictions on establishment services and capital, provides for the amendments to the provisions of the laws that restrict the right of establishment, the right to provide services and the free movement of capital within the Community.

The specific amendments to the respective laws are listed in the Second Schedule. The Minister is authorised under *clause 5 (3)* to amend the Second Schedule to include any existing restrictions or restrictions that have not been notified to the Council for Trade and Economic Development (COTED) or the Council for Finance and Planning (COFAB) by June 2006. An Order that seeks to amend the Schedule shall be subject to an affirmative resolution of the Parliament.

Clause 6, Prohibition of new restrictions, prohibits the Minister from introducing any new restrictions on a national who is entitled to the three rights that the law seeks to protect.

PART II, THE RIGHT OF ESTABLISHMENT, CLAUSES 7-10

Clause 7, Treatment of monopolies, authorises the Minister to exclude or restrict the right of establishment in an industry, or a section of an industry, where the Minister determines that the exclusion or restriction is required in the public interest. This may be done in respect of certain government or private sector monopolies. The Minister should seek to ensure that the exclusion does not result in discrimination amongst nationals of a Member State.

Clause 8, Programme to remove restrictions on establishment, provides for restrictions to be removed in accordance with the programme approved by the Conference of Heads of Government (Conference) in accordance with *Article 33(3)* of the CARICOM Treaty, (Treaty).

Clause 9, Minister to adopt safeguard measures, authorises the Minister to 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 unfair advantage against a national of a Member State.

Clause 10, Management of removal of restrictions on the rights of establishment, urges the Minister to use his or her best efforts to ensure that a national of a Member State is not impeded in the exercise of his or her right of establishment. In so doing the Minister is required by *clause 10(2)* to *inter alia*, abolish administrative practices and procedures that impede the exercise of the right of establishment, remove restrictions on the movement of managerial, technical and supervisory staff of an economic enterprise established by a national of a Member State, remove restrictions on the entry and residential status of spouses and immediate dependent family members of nationals establishing economic enterprises, and to facilitate the acquisition, possession or control of land, building and other property by the enterprises.

PART III, RIGHT TO PROVIDE SERVICES, CLAUSES 11 – 13

Clause 11, Programme to remove restrictions, provides for restrictions on the right of a national of a Member State to provide services in another Member State to be removed in accordance with the programme approved by the Conference pursuant to *Article 38* of the Treaty. The Minister is authorised under *clause 11(2)* to exclude certain financial services from the application of the Act with the consent of COFAP and the approval of the Conference.

Clause 12, Collateral activities by service providers, provides for a national to be engaged in an approved activity in a Member State under conditions no less favourable than those enjoyed by a national of that Member State.

Clause 13, Management of removal of restriction on right to provide a service, under this clause the Minister is required to ensure that the right of a national to provide services in a Member State is not impeded. In so doing the Minister is required under *clause 13(2)* to remove administrative practices and procedures that impede the exercise of the right to provide a service by a national of a Member State and to take action similar to that taken in protecting the right of a national to establish in a Member State.

PART IV, THE RIGHT TO MOVE CAPITAL, CLAUSES 14 – 17, this Part contains provisions that are similar to provisions that seek to protect the right of a national to establish and provide services in a member State.

Clause 14, Prohibition of new restrictions on the movement of capital, prohibits the Minister from introducing new restrictions on the movement of capital and payments connected with the movement of capital such as, interest, dividends and payments relating to credit transactions and investment flows.

Clause 17, Co-ordination of foreign exchange policies and information exchange, requires the Minister to take measures to co-ordinate foreign exchange policies.

PART V, SAFEGUARD MEASURES, CLAUSES 18 – 26, this Part contains provisions that authorise the Minister to adopt or maintain certain restrictions to address difficulties that may arise in cases where there is, or is a threat of, serious balance of payments difficulties or a financial crisis. The safeguard measures to be adopted include the imposition of quantitative restrictions on imports, restrictions on the right of establishment, provision of services or movement of capital; provided that the maintenance of these restrictions does not discriminate amongst States.

Clause 19, Incidence and notification of restrictions, enables the Minister to accord priority to activities that are essential to the economic stability of the State on notification to COFAP and COTED.

Clause 20, Consultations for removal, provides for consultations to enable the State to, *inter-alia*, address any balance of payments or other financial difficulties.

Clause 21, Restrictions to resolve difficulties arising from the exercise of rights and *Clause 23, Permissible restrictions*, provide for the Minister to maintain restrictions that are required to resolve difficulties in an affected sector or alleviate economic hardships in a particular region and to prevent the unreasonable exercise of rights granted by the Act, which may affect the development of the CSME.

Under *Clause 24, Non - discrimination applying permissible restrictions*, the Minister is not permitted to discriminate in maintaining or relaxing permissible restrictions.

Clause 25, General exceptions to the obligation to remove restriction and *Clause 26, Security exceptions to obligations to remove restrictions*, seek to ensure that the Minister is not precluded, by virtue of this Act, from taking measures to protect public morals, maintain public order and safety, protect existing economic activities that are based on traditional, historical or customary practices, give effect to international obligations including treaties on the avoidance of double taxation or to discharge the obligations of the State to maintain international peace and security.

PART VI, GENERAL, CLAUSES 27 – 31, contain general provisions requiring the Minister to adopt an appropriate mechanism to implement Community standards to determine equivalency or to accord accreditation or mutual recognition of diplomas of a national of a State

If a person is aggrieved by the decision or any act or omission of a functionary, that person may appeal to the Minister for relief.

Clause 30, Offences against the Act, seeks to provide for a penalty of ten thousand dollars for non- adherence to the Act by any functionary.

Clause 31, Regulations, authorises the Minister to make Regulations to give due effect to and for the effective administration of the Act.

The Second Schedule, as stated in the summary of Part 1, identifies the provisions of the laws that contain restrictions and provides for the necessary adjustments to be made in the laws to facilitate the development of the CSME.

Some of the laws referred to contain provisions relating to all three rights, the right of establishment, the right to provide services and the right to move capital freely within the State.