

LAWS OF GUYANA

CARIBBEAN COMMUNITY (MOVEMENT OF FACTORS) ACT

CHAPTER 18:10

Act
7 of 2006

Current Authorised Pages

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Note
on
Subsidiary Legislation

This Chapter contains no subsidiary legislation.

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CARIBBEAN COMMUNITY (MOVEMENT OF FACTORS) ACT

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CHAPTER 18:10

CARIBBEAN COMMUNITY (MOVEMENT OF FACTORS) ACT

7 of 2006

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 Guyana and out of Guyana to other Member States of the Caribbean Community and for connected matters.

[1ST JANUARY, 2006]

**PART I
PRELIMINARY**

Short title.

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

Interpretation.

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;

“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.

“Minister” means the Minister assigned responsibility for

Foreign Trade and International Co-operation;

“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 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 organization for the production of, or the trade in, goods or the provision of services (other than a non-profit organisation) owned and 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 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;
- (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 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 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 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.

Application of
this Act.

3. (1) Subject to this section and 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 Guyana by a national of a Member State; and
- (b) the right of a national of a Member State to move capital into and within Guyana and out of Guyana to another Member State.

(2) An activity in Guyana 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 subsection (2) "an

activity in Guyana involving the exercise of governmental authority" means an activity conducted in Guyana neither on a commercial basis nor in competition with one or more economic enterprises such as –

- (a) an activity conducted by the Central Bank of Guyana or a monetary authority or any other public entity 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; and
- (e) such other activity as may be excluded by regulations made pursuant to section 31.

Rights of nationals of a Member State in respect of establishment, services and capital.

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

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

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- (b) the right to move capital into and within Guyana and out of Guyana to other Member States, without discrimination on the ground of nationality.

Schedule.

(2) Notwithstanding any other law, a person to whom this subsection applies, shall, for the purposes of the Acts mentioned in the Schedule and to the extent set out therein in respect of each Act, be treated as if he were a national of Guyana.

(3) Subsection (2) applies to a national exercising or seeking to exercise a right conferred by subsection (1).

(4) The Minister may, by order which shall be subject to negative resolution of the National Assembly, amend the Schedule.

Obligation to
notify
restrictions.

5. The Minister shall not later than 30th April, 2006, notify the Council for Trade and Economic Development or the Council for Finance and Planning, as the case may require, any remaining restrictions on –

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

Prohibition of
new
restrictions.

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

PART II
THE RIGHT OF ESTABLISHMENT

Treatment of monopolies.

7. (1) Notwithstanding any of the provisions of 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.

(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 Member States, 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 the provisions of 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.

Programme to remove restrictions on establishment.

8. Restrictions on the right of establishment in Guyana by 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.

Minister to adopt

9. The Minister shall, by order, adopt measures based

safeguard
measures.

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 Guyana or another Member State.

Management of
removal of
restrictions on
the rights of
establishment.

10. (1) In carrying out his duties under this Part, the Minister shall use his best endeavours to ensure that a national of another Member State of the Community desirous of engaging in an approved economic activity in Guyana is not impeded in the exercise of his right of establishment.

(2) Without prejudice to the generality of subsection (1) the 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 by a national of a Member State in Guyana;
- (c) remove all restrictions on entering and residing in Guyana by spouses and immediate dependent family members of nationals establishing economic enterprises 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 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 have rights equivalent to those of similar entities in other Member States;
- (f) implement measures established by the Council for Human and Social Development for the coordination of legislative and administrative requirements of member States for the conduct of non-wage-earning activities in the Community.

PART III

THE RIGHT TO PROVIDE SERVICES

Programme to remove restrictions.

11. (1) Subject to the provisions of this Act, restrictions on the right to provide a service in Guyana by a national of another Member State shall be removed in accordance with the programme approved by Conference pursuant to Article 38(2) of the Treaty.

(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.

Collateral activities by service providers.

12. Without prejudice to the provisions relating to the right of establishment, a national exercising the right to provide a service in Guyana may, in order to provide

the service, temporarily engage in an approved activity in Guyana under conditions no less favourable than those enjoyed by nationals of Guyana.

Management of removal of restriction on right to provide a service.

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 right to provide a service in Guyana.

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

- (a) remove administrative practices and procedures in Guyana 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 Guyana 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 Guyana 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 the movement of capital

14. Subject to this Act, the Minister –

- (a) shall not introduce new restrictions -
 - (i) on the movement of capital;
 - (ii) on payments connected with the movement of capital; and
 - (iii) on current payments and transfers;
- (b) shall not render more restrictive the operation of existing subsidiary legislation or other law governing the movement of capital, except as authorised by the Treaty.

Removal of restrictions on capital movements.

15. (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 Member States shall be removed.

(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 amortisation;
- (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.

Authorisation to facilitate movement of capital.

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.

(2) Loans intended for State purposes shall require prior notification to the Government.

Coordination of foreign exchange policies and information exchange.

17. (1) The Minister shall take such measures as may be required to coordinate the foreign exchange policies of Guyana with those of other Member States in respect of the movement of capital among them and with third States.

(2) The Minister shall keep the competent authorities of other Member States informed of significant unusual movements of capital within his knowledge to and from third States.

**PART V
SAFEGUARD MEASURES**

Restrictions to safeguard balance-of-payments.

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 obligation assumed by Government, adopt or maintain restrictions to address the difficulties.

(2) The restrictions which may be adopted or maintained pursuant 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 or transactions connected therewith.

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

- (a) subject to the provisions of this Act, and relevant determination of Conference, the Council for Finance and Planning 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 minimise 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 and not longer than eighteen months and must be removed progressively as the situation mentioned in subsection (1) improves.

Incidence and notification of restrictions.

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

Consultations for the removal of restrictions.

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.

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

- (a) designed to assist Government to overcome its Balance-of-payments and external financial difficulties;
- (b) assess the balance-of-payments situation of Government 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 Guyana; and
- (iii) alternative corrective measures which may be available.

(3) The consultations 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 such consultations, 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 the Committee of the balance-of-payments and external financial situation of Guyana.

Application of restrictions on exercise rights to resolve difficulties.

21. (1) Where the exercise of rights conferred by this Act creates serious difficulties in any sector of the economy of Guyana, or results in economic hardship in any region thereof, 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.

(2) If the Minister intends to apply restrictions pursuant to subsection (1), the Minister shall, prior to applying the restrictions, notify the 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, 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.

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 Guyana to resolve the difficulties or alleviate the hardships.

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

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

Permissible restrictions.

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

- (a) to resolve the difficulties in the affected sectors;
- (b) to alleviate economic hardships in a particular region;
- (c) to minimise damage to the commercial or economic interests of other Member States;
- (d) to prevent the unreasonable exercise of rights granted by this Act;

- (e) the exercise of which could impair the development of the CARICOM Single Market and Economy.

Non-discrimination applying permissible restrictions.

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

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

General exceptions to the obligation to remove restrictions.

25. (1) Notwithstanding any of the provisions of this Act, the Minister shall not be precluded from taking measures –

- (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 any 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.

Security exceptions to obligation to remove restrictions.

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

- (a) protect the essential security interests of Guyana –
 - (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 Guyana for the maintenance of international peace and security.

PART VI GENERAL

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

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 section 4, carry out such determination.

Implementation of Community

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.

Right to appeal to Minister for speedy review of decision of a functionary.

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.

Offences against this Act.

30. Any person who, contrary to the provisions of this Act, knowingly 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 shall be liable on summary conviction to a fine not exceeding one hundred and twenty thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Regulations.

31. (1) The Minister may make regulations generally for giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (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 the spouses and immediate dependent family members.

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SCHEDULE

Act	Provision
Immigration Act, Cap. 14:02	Section 12 (7A)
Customs Act, Cap. 82:01- Customs Regulations Subsidiary Legislation	Regulation 204B
Sale of Travel Tickets Act, Cap. 80:08	Sections 2, 6A
Mining Act, Cap. 65:01	Section 2, 17 (1), 17 (3)
Institute of Chartered Accountants Act Cap. 97:03	Sections 2, 10 (1)
Medical Practitioners Act, Cap 32:02	Section 6 (1)(a)
Financial Institutions Act, Cap 85:03	Sections 2 (1), 7 (1), 7 (2)
Dental Registration Act, Cap 32:03	Sections 2, 7 (1) (a)
Guyana Shipping Act, Cap 49:01	Sections 2 (1), 2 (g), 11(1),

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11(2)

Securities Industry Act, Cap. 73:04

Section 47 (3), (3A)
