

CHAPTER 40A CARICOM ENTERPRISES ACT

• Act • Subsidiary Legislation •

ACT

Act No. 4 of 1991

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CHAPTER 40A CARICOM ENTERPRISES ACT

An Act to provide for the implementation by Grenada of the Agreement for the Establishment of a Regime for CARICOM Enterprises, and for related matters.

[Act No. 4 of 1991.]

[10th May, 1991.]

1. Short title

This Act may be cited as the CARICOM Enterprises Act.

2. Interpretation

In this Act—

“Agreement” means the Agreement for the Establishment of a Regime for CARICOM Enterprises, the text of which is set out in the Schedule to this Act and to which Grenada is a party;

“Minister” means the Minister of Finance.

3. Agreement to have the force of law

Subject to this Act, the Agreement shall have the force of law in Grenada.

4. Purposes to be specified

A company that is desirous of becoming a CARICOM Enterprise shall, in its memorandum of Association—

- (a) specify the purposes for which it is established; and
- (b) state the Member State in which its central management and control is situated.

5. Power of Minister to make regulations and orders

(1) Subject to subsection (2), the Minister may, by regulations, make such provisions as are necessary for the carrying into effect of any of the provisions of the Agreement.

(2) Where any amendment to the Agreement is made pursuant to Article 20, the Minister may by order published in the *Gazette* amend the Schedule to this Act to give effect to the amendment made to the Agreement.

6. Jurisdiction and enforcement of judgements

(1) Subject to subsection (2), where a company is duly registered as a CARICOM Enterprise in Grenada and in any other Member State, any judgement or order made in respect of the Enterprise, including any interim or other judgement or order of a court of the Member State in which it is registered, may be enforced by the Supreme Court of Grenada as if the judgement or order had been made or issued by the Supreme Court of Grenada.

(2) A judgement or order to which subsection (1) refers, must first, with the approval of the Supreme Court, be registered under the Foreign Judgements (Reciprocal Enforcement) Act, Chapter 113, before it is enforced under subsection (1).

(3) Where a judgement is registered under this section the judgement shall, as from the date of registration, be of the same force and effect and proceedings may be taken thereon, as if it had been a judgement originally obtained or entered up on the date of registration in the registering court.

(4) Provision may be made by rules of court for regulating the practice and procedure, including the scale of fees and evidence, in respect of proceedings of any kind under this section.

7. Commencement

This Act comes into operation on a date to be fixed by proclamation.

Schedule **CARICOM ENTERPRISES ACT**

Agreement for the Establishment of a Regime for CARICOM Enterprises [Section 2.]

The Governments of the Member States of the Caribbean Common Market.

Having regard to the provisions of the Common Market Annex of the Treaty Establishing the Caribbean Community and, in particular, to—

- (a) Article 3 on the “Objectives of the Common Market”;
- (b) Article 35 on “Establishment” and Article 37 on “Movement of Capital”;
- (c) Article 42 on the “Harmonisation of Laws”, with respect to Company Law;
- (d) Article 44 on “Ownership and Control of Regional Resources”;

- (e) Article 45 on the "Co-ordination of National Development Planning", Article 46 on "Common Market Industrial Programming"; Article 47 on "Joint Development of Natural Resources"; and Article 49 on "Rationalisation of Agricultural Production"; and
- (f) Article 59 on "Financial Assistance from the More Developed Countries" to Less Developed Countries;

Cognisant of the urgent need to develop economic activities in the Common Market on the basis of joint enterprises between national investors (as hereinafter defined in Article 1);

Conscious of the continuing need to develop and give further scope for national and regional entrepreneurship, management and technological capacity in the production of goods and services on a regional basis for both the regional and extra-regional markets;

Mindful of the need to pool human, financial and natural resources of the Region for the implementation of high priority regional projects designed to benefit the people of the Region;

Emphasising the need for the creation of machinery whereby the movement of investment capital between Member States, particularly from the More Developed Countries to the Less Developed Countries may be expeditiously effected in the interests of the development of the Region;

Aware of the crucial role which the private sector, on its own or in partnership with the Region's public sector or suitable foreign investors, can play in the economic development of the Region;

Agree to the establishment of the following regime.

ARTICLE 1

Definitions

1. In this Agreement—

"Authority" means the Body established by Article 8 of this Agreement;

"CARICOM Enterprise" means, subject to this Agreement, a regionally-owned and controlled company which—

- (a) within such areas specified in Articles 46, 47 and 49 of the Treaty as the Council may from time to time prescribe, engages in the production of Common Market Origin goods; or
- (b) provides services—
 - (i) in areas specified in Articles 48 and 50 of the Treaty, or
 - (ii) in those sectors of the regional economy specified in the Annex to this Agreement and in such other sectors of the regional economy as the Council may, from time to time, determine;

"Common Market Origin" has the same meaning as that referred to in paragraphs 1, 2 and 3 of Article 14 of the Annex to the Treaty;

"company" means a company incorporated under the general statutes of any Member State relating to the formation of such a legal company;

"Council" means the Caribbean Common Market Council of Ministers established by the Treaty;

“Less Developed Country” means Antigua and Barbuda, Belize, Dominica, Grenada, Montserrat, Saint Christopher and Nevis, Saint Lucia or St. Vincent and the Grenadines;

“Member State” means a Member State which is a Member of the Caribbean Common Market established by the Annex to the Treaty and a Party to this Agreement;

“More Developed Countries” means Barbados, Guyana, Jamaica and Trinidad and Tobago;

“national” subject to paragraph 2 of this Article, has the same meaning as that set out in paragraph 6(a) of Article 35 of the Annex to the Treaty and includes companies controlled by such persons or by companies so controlled as specified in the definition of “regionally owned and controlled”;

“National Investor” means, subject to paragraph 2 of this Article, a Member State or a national of a Member State holding equity share capital of a Company;

“regionally-owned and controlled” in relation to a company means that the company is one in which, in the opinion of the Authority, nationals of at least two Member States exercise management and control by beneficially owning shares carrying between them directly or indirectly—

- (a) the right to exercise more than one-half of the voting power in that company; and
- (b) the right to receive more than one-half of the voting power in that company; and
- (c) the right to receive more than one-half of any capital distribution in the event of the winding-up or of a reduction in share capital of that company,

or such greater proportion than is specified in paragraphs (a) to (c) above as the Council may, from time to time, determine in relation to any sector of the regional economy.

“Registrar” in relation to a Member State, means the officer responsible for the registration of companies.

“Treaty” means the Treaty Establishing the Caribbean Community and Common Market done at Chaguaramas on the 4th July, 1973.

2. (1) The Caribbean Development Bank and the Caribbean Food Corporation and other similar bodies that hold equity share capital in a company shall, for the purposes of this Agreement, be deemed to be National Investors as well as nationals of the Member State which is to be the Headquarters State.

(2) Nothing in this Agreement shall be construed as derogating from any rights, privileges and immunities conferred on or accorded the Caribbean Development Bank and the Caribbean Food Corporation by virtue of the respective Agreements establishing them.

3. Nothing in this Agreement and in particular, the definition of CARICOM Enterprise shall entitle an enterprise to be registered as a CARICOM Enterprise unless it is approved as such by the Authority in accordance with this Agreement.

ARTICLE 2

Establishment of a Regime

Member States undertake to establish a Regime for the incorporation and registration, operation, management, winding-up and dissolution of a form of business

enterprise to be known as a CARICOM Enterprise, for the legal organisation, purposes and scope of operation as is hereinafter specified.

ARTICLE 3

Purposes and Functions of a CARICOM ENTERPRISE

A CARICOM Enterprise may be established for such purposes within the areas specified in Articles 46 to 50 of the Annex to the Treaty and such other sectors of the regional economy as are specified in the Annex to this Agreement and shall perform such functions as are by its Memorandum of Association and the provisions of this Agreement specified; the Council shall keep the Annex under review and may impose any conditions under which CARICOM Enterprises may operate.

ARTICLE 4

Formal Organisation of a CARICOM ENTERPRISE

1. The formal organisation of a CARICOM Enterprise shall be that of a company which has been established in accordance with this Regime.

2. The name of the Member State in which the central management and control of the CARICOM Enterprise will be situated (hereinafter called the "Head-quarters State") shall be stated in the Memorandum of Association.

3. The shares shall be registered in the name of the holder.

4. A CARICOM Enterprise shall be incorporated and registered in the Headquarters State.

ARTICLE 5

Law of Incorporation, Registration, Operation, Management, Winding-up and Dissolution of a CARICOM Enterprise

The incorporation, registration, operation, management, winding-up and dissolution of a CARICOM Enterprise shall be governed by the provisions of this Agreement as well as the company law and other relevant laws of the Headquarters State and those other Member States in which the CARICOM Enterprise is.

ARTICLE 6

Formation of a CARICOM Enterprise

1. The status of a CARICOM Enterprise may be conferred on a company formed for the purpose and in the manner provided by this Article. However, a Company not so formed for the purpose may acquire the status of a CARICOM Enterprise if it is qualified therefor and its objects are confined to those of such an enterprise.

2. The Memorandum of Association, Articles of Association and other constituent documents that are required for the incorporation of a Company (hereinafter referred to as "the constituent documents"), together with programmes of activities of a proposed CARICOM Enterprise for the first five years of its operation, shall be submitted to the Authority for its approval in writing and any material alteration of any such programme shall be submitted to the Authority forthwith for its approval.

3. In the case of a Company not formed for the purpose of becoming a CARICOM Enterprise that desires to obtain such status, the programme of activities together with certified copies of its registration certificate and its constituent documents must similarly be submitted to the Authority for its approval in writing.