

*Legal Supplement Part A to the "Trinidad and Tobago Gazette", Vol. 44,
No. 11, 20th January, 2005*

Third Session Eighth Parliament Republic of
Trinidad and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 2 of 2005

[L.S.]

AN ACT to amend certain laws to facilitate the implementation of the Revised Treaty of Chaguaramas Establishing the Caribbean Community, including the CARICOM Single Market and Economy.

[Assented to 14th January, 2005]

Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:—

PART I

PRELIMINARY

Short title **1.** This Act may be cited as the Caribbean Community (Removal of Restrictions) Act, 2005.

Interpretation **2.** In this Act, “Minister” means the Minister to whom the responsibility for CARICOM Affairs has been assigned.

PART II

THE TOURISM DEVELOPMENT ACT, NO. 9 OF 2000

Interpretation
No. 9 of 2000 **3.** In this Part, “the Act” means the Tourism Development Act, 2000.

Section 2
amended **4.** Section 2 of the Act is amended by—

- (a) renumbering section 2 as section 2(1);
- (b) inserting in the appropriate alphabetical order, the following definitions:
 - “Member State” has the meaning assigned to it in the Revised Treaty of Chaguaramas;
 - “national” means a person who—
 - (a) is a citizen of Trinidad and Tobago or of another Member State;
 - (b) has a connection with—
 - (i) Trinidad and Tobago of a kind which entitles the person to be regarded as a resident of Trinidad and Tobago, within the meaning of the Immigration Act; or

(ii) another member state of a kind which entitles the person to be regarded as belonging to it for the purposes of the laws of that state relating to immigration or if it be so expressed in those laws, as being a native or resident of that member state;

(c) is a company or other legal entity—

(i) incorporated or constituted in Trinidad and Tobago in conformity with its laws;

(ii) incorporated or constituted in another member state in conformity with its laws which that member state regards as belonging to it;

(iii) formed for gainful purposes;

(iv) has its registered office and central administration and carries on substantial activity within the Community; and

(v) which is substantially owned and effectively controlled by persons mentioned in paragraphs (a) and (b);

“Revised Treaty of Chaguaramas” means the Treaty establishing the Caribbean Community (CARICOM), including the CARICOM Single Market and Economy, signed at Nassau, The Bahamas, on 5th July, 2001;”;

(c) by inserting after section 2(1) as renumbered, the following subsection:

“ (2) For the purposes of the definition of “national”, a company or other legal entity is—

(a) substantially owned if more than fifty per cent of the equity interest therein, is beneficially owned by nationals mentioned in subsection (1)(a) or (b);

(b) effectively controlled if the nationals mentioned in subsection (1)(a) or (b) have the power to name a majority of its directors or otherwise legally, to direct its actions;”.

5. Section 7 of the Act is amended by inserting in paragraph (d) after the words “Trinidad and Tobago” the words “or a Member State”. Section 7 amended

6. Section 9 of the Act is repealed and replaced as follows: Section 9 repealed and replaced

“Mandatory ownership by nationals of Trinidad and Tobago and other Member States **9.** Tourism projects the incentives for which will be reserved solely for nationals of Trinidad and Tobago and other Member States are—

- (a) accommodation facilities under twenty-one rooms;
- (b) transportation services;
- (c) ground tour operations or destination management companies; and
- (d) dive operations.”.

PART III

THE CUSTOMS BROKERS AND CUSTOMS CLERKS ACT, CHAP. 78:03

7. In this Part, “the Act” means the Customs Brokers and Customs Clerks Act. Interpretation Chap. 78:03

8. Section 2 of the Act is amended by inserting in the appropriate alphabetical order, the following definitions: Section 2 amended

“ “Member State” has the same meaning assigned to it under the Revised Treaty of Chaguaramas Establishing the Caribbean Community (CARICOM), including the CARICOM Single Market and Economy signed at Nassau, The Bahamas, on 5th July, 2001;

“national” means a person who—

- (a) is a citizen of a Member State; or
- (b) has a connection with a Member State of a kind which entitles the 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.”.

Section 8 amended

9. Section 8 of the Act is amended—

- (a) by deleting the word “and” at the end of paragraph (b);
- (b) by deleting the full stop at the end of paragraph (c) and substituting the words “; and”; and
- (c) by inserting after paragraph (c), the following paragraph:
 - “(d) is a resident of Trinidad and Tobago or a national of a Member State.”.

G.N. 199 of 1973
amended

10. The Customs Brokers and Customs Clerks Regulations are amended in Form 1 of the First Schedule by deleting paragraph (2) and substituting the following paragraph:

- “(2) I am a resident of Trinidad and Tobago/
a national of a Member State.”.

PART IV

THE IMMIGRATION ACT, CHAP. 18:01

Interpretation
Chap. 18:01

11. In this Part, “the Act” means the Immigration Act.

12. Section 2 of the Act is amended by inserting Section 2 amended in the appropriate alphabetical order, the following definitions:

“Member State” has the same meaning assigned to it in the Revised Treaty of Chaguaramas establishing the Caribbean Community (CARICOM) including the CARICOM Single Market and Economy signed at Nassau, The Bahamas, on 5th July, 2001;

“national” means a person who—

(a) is a citizen of a Member State; or

(b) has a connection with a Member State of a kind which entitles the person to be regarded as belonging to or, if it be so expressed, as being a native or resident of such Member State for the purposes of the laws thereof relating to immigration;”.

13. Section 9 of the Act is amended by—

Section 9 amended

(a) inserting after subsection (1), the following subsection:

“ (1A) Notwithstanding subsection (1), and subject to such requirements as may be prescribed by regulations made by the Minister under section 44, an immigration officer shall allow to enter Trinidad and Tobago—

(a) a national of a Member State who is seeking to exercise in Trinidad and Tobago any of the rights or privileges conferred on him by the Immigration (Caribbean Community Skilled Nationals) Act, 1996;

(b) the spouse and immediate dependent members of the family of the national to whom paragraph (a) applies for the duration of the permission given the national under the Immigration (Caribbean Community Skilled Nationals) Act, 1996.”;

(b) inserting after the new subsection (1A), the following subsection:

“ (1B) Notwithstanding subsection (1), and subject to such requirements as may be prescribed by regulations made by the Minister under section 44, an immigration officer shall allow to enter Trinidad and Tobago—

(a) a national of a Member State who is seeking to exercise in Trinidad and Tobago the right of establishment or the right to provide a service conferred on him by the Caribbean Community (Movement of Factors) Act;

(b) subject to the provisions of the Caribbean Community (Movement of Factors) Act, the spouse and immediate dependent family members of the above-mentioned national establishing an economic enterprise; or

(c) subject to the Caribbean Community (Movement of Factors) Act, the managerial, technical and supervisory staff of an economic enterprise of the national.”.

14. Regulation 10 of the Immigration Regulations is Regulation 10 amended amended by inserting after subregulation (14), the following subregulations:

“ (15) A national of a Member State seeking to exercise any of his rights conferred by the Immigration (Caribbean Community Skilled Nationals) Act, 1996 shall be exempt from the Act No. 26 of 1996 provisions of this regulation.

(16) A national of a Member State seeking to exercise any of his rights conferred by the Caribbean Community (Movement of Factors) Act, shall be exempt from the provisions of this regulation.”.

PART V

THE IMMIGRATION (CARIBBEAN COMMUNITY SKILLED NATIONALS) ACT, 1996

15. In this Part, “the Act” means the Immigration Interpretation No. 26 of 1996 (Caribbean Community Skilled Nationals) Act, 1996.

16. Section 2 of the Act is amended by inserting in the Section 2 amended appropriate alphabetical order the following definition:

“ “national” means a person who—

(a) is a citizen of a qualifying Caribbean Community state; or

(b) has a connection with a qualifying Caribbean Community 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 state for the purposes of the laws thereof relating to immigration;”.

17. Sections 3(1), 4(1), 5(1) and 10A of the Act are Sections 3, 4, 5 and 10A amended amended by deleting the words “, 12”.

Section 3 amended **18.** Section 3 of the Act is amended by deleting subsection (2) and substituting the following:

Schedule II

“ (2) This section applies to a national who presents on entry to Trinidad and Tobago, a passport issued by a qualifying Caribbean Community state, or any other state together with a certificate issued by the Government of Trinidad and Tobago in the form set out in Schedule II, certifying that the national is recognized by the Government of Trinidad and Tobago as holding qualifications which satisfy the conditions for recognition of Caribbean Community skills qualification.”.

Section 4 amended **19.** Section 4 of the Act is amended by deleting subsection (2) and substituting the following:

“ (2) This section applies to a national who presents on entry to Trinidad and Tobago, a passport issued by a qualifying Caribbean Community state, or any other state together with a certificate issued by the Government of a qualifying Caribbean Community state in a form which is of a nature equivalent to the form prescribed in Schedule II, certifying that the national is recognized by the Government of that qualifying Caribbean Community state as holding qualifications which satisfy the conditions for recognition of Caribbean Community skills qualification.”.

The Act amended

20. The Act is amended—

(a) by repealing section 6 and substituting the following:

“Application
for
a Ministerial
certificate

6. Any national—

(a) of Trinidad and Tobago;
or

(b) of a qualifying Caribbean
Community state,

may apply to the Minister for
a certificate in the form

Schedule II set out in Schedule II, with such supporting evidence and accompanied by the payment of such fees, as may be prescribed by the Minister.”;

(b) by repealing section 11 and substituting the following:

“ 11. The rights and privileges conferred by the Act on a national of a qualifying Caribbean Community state shall not derogate from any other rights and privileges of that national.”.

21. Section 7(1) of the Act is amended by deleting paragraph (b) and substituting the following: Section 7 amended

“(b) a national of a qualifying Caribbean Community state.”.

22. Section 9A of the Act is amended by deleting the word “citizen” and substituting the word “national”. Section 9A amended

23. Section 10(1) and (2) of the Act are amended by deleting the words “sections 12 and 15” and substituting the words “section 15”. Section 10 amended

24. The Act is amended by repealing section 12. Section 12 repealed

PART VI

THE FOREIGN INVESTMENT ACT, NO. 16 OF 1990

25. In this Part, “the Act” means the Foreign Investment Act, 1990. Interpretation No. 16 of 1990

26. Section 2 of the Act is amended by— Section 2 amended

(a) deleting—

(i) the definition “CARICOM member state” and substituting in the

appropriate alphabetical order, the following definition:

“Member State” has the same meaning assigned to it under the Revised Treaty of Chaguaramas establishing the Caribbean Community (CARICOM), including the CARICOM Single Market and Economy signed at Nassau, The Bahamas, on 5th July, 2001;”;

(ii) the definition “foreign investor” and substituting the following definition:

“foreign investor” means—

(a) an individual who is not a national of Trinidad and Tobago or another Member State;

(b) any firm, partnership or unincorporated body of persons of which at least one half of its membership is held by persons who are not nationals of Trinidad and Tobago or another Member State; or

(c) any company or corporation that is not incorporated in Trinidad and Tobago or another Member

State or if so incorporated is under the control of persons to whom paragraph (a) or (b) apply or is deemed to be under the control of a foreign investor in accordance with subsection (2);”;

(b) inserting in the appropriate alphabetical sequence, the following definition:

“ “national” means a person who—

(a) is a citizen of a Member State;
or

(b) has a connection with a Member State of a kind which entitles that person to be regarded as belonging to or, if it be so expressed, as being a native or resident of such a Member State for the purposes of the laws thereof relating to immigration.”.

Passed in the House of Representatives this 13th day of December, 2004.

J. SAMPSON-JACENT

Clerk of the House

Passed in the Senate this 21st day of December, 2004.

N. JAGGASSAR

Acting Clerk of the Senate