

**The Right of Establishment  
CARICOM Single Market and Economy (CSME)**

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## Introduction

Regional integration comprises four main pillars: Economic Integration, Human and Social Development, Foreign Policy Coordination and Security Cooperation. Economic Integration means the CARICOM Single Market and Economy (CSME). The States participating in the CSME include:

- Antigua and Barbuda,
- Barbados,
- Belize,
- Dominica,
- Grenada,
- Guyana,
- Haiti
- Jamaica,
- St. Kitts and Nevis,
- Saint Lucia,
- St. Vincent and the Grenadines,
- Suriname and
- Trinidad and Tobago

The Caribbean Community (CARICOM) agreed in 2006 to start operating the CSME, focusing on the Single Market. At that point, twelve Member States declared they were ready to put into operation the CARICOM Single Market (CSM). Haiti signed on in 2010, but is not yet able to participate in all the regimes.

*“We the Heads of Government of the Caribbean Community solemnly declare that our Governments, in compliance with the provisions of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CSME and with relevant Decisions of the Conference of the Heads of Government, have taken the steps necessary to comply with the programme for removal of restrictions and for participating fully, as from the first day of July, 2006, in the Single Market component of the CSME.....And Resolve that we shall, in concert with the other members of the Community, do all that is necessary to attain the earliest possible establishment of the Single Economy component of the CSME”*

(From the “Declaration by the Heads of Government of the Caribbean Community on the Participation of their Countries in CARICOM Single Market”, 3rd. July, 2006)

### WHAT DOES THIS DECLARATION MEAN

A person or company from any one of those Member States would now be able to:

- Produce and Trade in Goods
- Provide Services
- Move Capital
- Establish Business Enterprises and
- Move Freely without a work-permit to another Member State.

In addition, Member States would have implemented policies and laws that would:

- regulate competition;

- set standards and technical regulations;
- allow transfers across each others' borders of Social Security and other associated benefits;
- avoid double taxation of CARICOM nationals and;
- enable qualifications earned in one Member State to be accepted in another Member State through national accreditation councils.

All these provisions are specifically mandated under the Revised Treaty in order to facilitate the full implementation of the CSME.

**This publication is about the CSME generally, and the Right of Establishment, in particular.**

## PART I

### WHAT DOES “THE RIGHT OF ESTABLISHMENT” MEAN FOR CARICOM NATIONALS?

It means that CARICOM Nationals can establish companies and other business enterprises in each other's territories and be treated as a national. The intention is to increase business opportunities and facilitate the expansion and growth of Economic Enterprises, Investment and Entrepreneurship in Member States, resulting in higher levels of economic growth, production, employment, export, and ultimately, higher standards of living.

### BASIC INFORMATION ON THE RIGHT OF ESTABLISHMENT

**In order for CARICOM Nationals to enjoy the Right of Establishment, Articles 30,32, 33, and 34 of the Revised Treaty of Chaguaramas:**

- Prohibit any new restrictions on the Right of Establishment by Member States;
- Require Member States to remove restrictions on companies, agencies, branches and subsidiaries;
- Grant that Member States ensure access to land, buildings and property **for the** Right of Establishment of Business and Economic Enterprises;
- Grant the right to engage in any non-wage-earning activities of a commercial, industrial, agricultural, professional or artisanal nature (“non-wage earning activities” means activities undertaken by self-employed persons), and create and manage economic enterprises.

### WHO HAS THE RIGHT TO ESTABLISH?

*According to Article 32 of the Revised Treaty of Chaguaramas:*

1. A **person** shall be regarded as a national of a Member State if such a person:
  - is a **citizen** of that State;
  - has a **connection** with that State of a kind that entitles him to be regarded as belonging to or, if it be so expresses, **as being a native or resident of the State** for the purposes of the laws thereof relating to immigration; or
  - is a **company** or other **legal entity** constituted in the Member State in conformity with the laws thereof and which that State regards as belonging to it, provided that such a 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 which is **substantially owned** and effectively controlled by persons mentioned in subparagraphs i. and ii. of this paragraph.

2. **“Economic Enterprises”** includes any type of organisation for the production of or trade in goods or the provision of services (other than a non-profit organisation) owned or controlled by any person or entity mentioned above.

3. A **company or legal entity** is:

- substantially owned if **more than 50%** of the equity interest therein is beneficially owned by nationals;
- effectively controlled if nationals have the power to name a majority of its directors or otherwise legally to direct its action.

## **WHERE CAN THE BUSINESS OR ENTERPRISE BE ESTABLISHED?**

CARICOM Nationals can exercise the Right of Establishment in the Member States that have currently signed on to the CSME arrangements, namely:

- Antigua and Barbuda,
- Barbados,
- Belize,
- Dominica,
- Grenada,
- Guyana,
- Haiti
- Jamaica,
- St. Kitts and Nevis,
- Saint Lucia,
- St. Vincent and the Grenadines,
- Suriname and
- Trinidad and Tobago

**Haiti is a Member of the Caribbean Community but is not yet able to participate in all the Regimes of the CSME.**

## **WHAT TREATMENT CAN BE EXPECTED IN MEMBER STATES UNDER THE RIGHT OF ESTABLISHMENT**

- Freedom to incorporate or register an incorporated company including agencies, branches and subsidiaries;
- Freedom to register a business name;
- Protection of Intellectual Property of the business;
- The right to engage in non-wage earning activities (as a self employed person);
- Freedom of movement, without a work permit, including the freedom to leave and re-enter the host country;

- Access to land and property for use in that person's business, other than for speculative purposes or for a purpose potentially destabilizing to the economy;
- Access to property for use as the person's residence;
- Non-discriminatory access to licenses and permits;
- Access to capital (loans, incentives etc.) in the receiving country;
- The entry of managerial, supervisory and technical staff to serve the business without a work permit;
- The entry of spouses and immediate dependent family members of the business person and his or her staff.

## FRAMEWORK FOR THE IMPLEMENTATION OF THE RIGHT OF ESTABLISHMENT

Implementation requires Member States to remove all forms of prohibition, discrimination or limitations on the Right of Establishment.

Restrictions to the Right of Establishment were removed either collectively, under the **Movement of Factors Act**, or by **Specific Legislation or Measures** addressing the following:-

- 
- restrictions on the movement of capital;
- restrictions of the provision of services;
- restrictions **to entry into** particular industries;
- 
- and restrictions to special licenses, permits, authorizations and incentives.

### Movement of Factors Act

Member State	Measure	Principal Action Needed
Antigua & Barbuda	The Movement of Factors Act 2006	Entry into force by statutory instrument
Belize	The Movement of Factors Act 2006	Entry into force by Amendment of 2005
Grenada	The Movement of Factors Act 2006	Entry into force by statutory instrument
Saint Lucia	The Movement of Factors Act 2006	Make regulations for actions by Competent Authority / Registrar, National Register, prescribed Certificate and prescribed procedures
St. Vincent & the Grenadines	The Movement of Factors Act 2006	Entry into force by statutory instrument
Guyana	The Movement of Factors Act 2006	Entry into force by statutory instrument

### **Specific Legislation or Measures**

Member State	Specific Legislation or Measures
Barbados	CARICOM Single market and Economy (Implementation) (Miscellaneous Provisions) Act No. 24 of 2004
Dominica	Caribbean Community (Work Permit Exemption) SRO No. 36 of 2008
St. Kitts & Nevis	Administrative Waiver of Work Permit under the Immigration At
Suriname	Administrative waiver of Work Permit under the Foreign Nationals Act
Trinidad & Tobago	The Caribbean Community (Removal of Restrictions) Act No. 2 of 2005

## **PART II**

### **MAKING USE OF THE PROVISIONS FOR THE RIGHT OF ESTABLISHMENT**

Summary Steps for the Right of Establishment in a Member State

#### ***STEP 1: AT THE POINT OF ENTRY OF A MEMBER STATE***

- Presentation of valid entry documents to immigration
- Immigration grants six months stay

#### ***STEP 2: PROCEDURE AFTER ENTRY***

- Registration of new or existing companies
- Presentation of relevant documentation to competent authority
- Access to Licenses, Permits and Authorizations
- Access to Land, Building and Property
- Access to identified Sectors and Industries

#### ***STEP 3: APPROVAL BY COMPETENT AUTHORITY IN MEMBER COUNTRY***

- Business established within six months
- Immigration grants indefinite stay



- Access to Incentives
- Movement of Managerial, Supervisory, Technical & support staff and spouses

## **STEP I – POINT OF ENTRY PROCEDURE**

Entry into a Member State requires:

- Valid Passport;
- Return ticket;
- Proof of financial resources for personal maintenance, namely credit cards, travelers' cheques, cash or a combination thereof.

Immigration grants the CARICOM National a definite stay of six (6) months.

## **STEP 2 – PROCEDURE AFTER ENTRY**

After entry the CARICOM National must submit to the Competent Authority:

- Business Names Certificate;
- Certificate of Incorporation;
- Financial Resources sufficient to start a business;
- Business Plan or Project Proposal for a new enterprise;
- Police certificate.

The Competent Authority (see Page for a list of the Competent Authorities in Member States) will determine if all requirements to establish the particular business have been satisfied. Once all requirements are satisfied, the Competent Authority will issue a letter of approval to the CARICOM National copied to the Immigration Department.

## **ACCESS TO LICENSES, AUTHORIZATIONS AND PERMITS**

Incorporation or Registration of a Business, in practice, is not sufficient to complete Establishment and start the Business. There are other requirements to be completed prior to commencement, such as Building Permits etc.

Additional requirements may include:

- compliance with Labour Laws and Codes; building permits; approval of installation and connection to utilities;
- environmental impact assessments;
- and minimum capital requirements.

## ACCESS TO LAND BUILDING AND PROPERTY

*According to Article 34 (f) of the Revised Treaty of Chaguaramas, Member States are to ensure that nationals of one Member State may have access to land, building, and other property situated in the territory of another Member State, on a non-discriminatory basis, bearing in mind the importance of agriculture for many national economies.*

In many cases, access to land and buildings require applicants to qualify under specific laws and regulations. For example, in the **OECS Member States**, one needs to qualify under the Aliens Land Holding License Laws.

However, **Saint Lucia** has taken a direct step within the Movement of Factor Act to remove restrictions on CARICOM Nationals' access to freehold property.

In **Belize**, the holding and transferring of land is restricted by the National Lands Act.

In **Suriname**, the Civil Law tradition has made access to State lands (domain) prohibited.

## ACCESS TO IDENTIFIED SECTORS AND INDUSTRIES

Some Sectors require special licenses, such as Banking, Insurance and Mining. An establishing entity should seek advice from the Competent Authority.

## STEP 3 – GRANTING INDEFINITE STAY AND EXTENSIONS

**If the business is established within the six-month period, then the CARICOM National must report to the Immigration Department for indefinite stay.**

### Extensions

In the event that the business is not established within the six-month period, the CARICOM National should present to the Immigration Department evidence from the Competent Authority that concrete steps have been undertaken to establish the Business. Where such evidence is provided, the CARICOM National is granted an extension.

## RUBBER STAMPS FROM IMMIGRATION

Immigration will provide the following stamps depending on the stage at which a CARICOM national is:

- Right of Establishment – Definite Entry for 6 months;

- Right of Establishment – Extension, and
- Right of establishment – Indefinite Entry.

## **ACCESS TO INCENTIVES**

Barbados, Belize, Dominica, St Vincent and the Grenadines, and Trinidad and Tobago have amended their Incentive Laws granting national treatment. In other Member States, an established entity must apply to the Competent Authority.

## **MOVEMENT OF MANAGERIAL, TECHNICAL & SUPERVISORY PERSONNEL, SPOUSES AND FAMILY MEMBERS**

Community Nationals who qualify as Managerial, Supervisory and Technical personnel attached to a company are not required to obtain work permits. However, they must present the following to the Immigration Department:

- Letter or Contract of employment;
- List of spouses and dependents ;
- Valid Passports;
- Birth certificates of dependents;
- Marriage Certificate;
- Police Record.

## **CAUSE FOR RESCINDING INDEFINITE STAY**

If the CARICOM National is no longer operating the business the Competent Authority will inform the Immigration Department, which has the right to rescind the indefinite stay or to indicate to the person that he/she needs to apply for a permit of stay and / or a work permit until such time that there is full free movement in the Community.

## **COMPETENT AUTHORITY IN MEMBER STATES**

### **Antigua & Barbuda**

Ministry of Finance and Economy  
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