

No. 10 of 2004.

*The Caribbean Court of Justice
Act, 2004.*

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ANTIGUA
AND
BARBUDA



[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

17th October, 2004.

ANTIGUA AND BARBUDA

No. 10 of 2004

AN ACT to implement the Agreement Establishing the Caribbean Court of Justice and other Agreements relating to the Court and the Regional Judicial and Legal Services Commission and for other related matters.

[*Published in the Official Gazette Vol. XXIV
No. 77 dated 28th October, 2004.]*

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. This Act may be cited as the Caribbean Court of Justice Act, 2004 and shall come into operation on a date appointed by the Minister by notice published in the *Gazette* Short title and commencement.

2. (1) In this Act, unless the context otherwise requires — Interpretation.

"Agreement" means the Agreement Establishing the Caribbean Court of Justice, signed at Bridgetown, Barbados on the 14th February, 2002, the text of which is set out in the First Schedule;

"appellate jurisdiction" means the appellate jurisdiction conferred upon the Court by or under Part III of the Agreement;

"Commission" means the Regional Judicial and Legal Services Commission established by Article V of the Agreement;

"Contracting Party" means a Contracting Party within the meaning of Article I of the Agreement; and, in relation to Antigua and Barbuda, means the Government of Antigua and Barbuda;

"Court" means the Caribbean Court of Justice established by the Agreement;

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"Court of Appeal" or "Court of Appeal of a Contracting Party", in relation to Antigua and Barbuda, means the Court of Appeal established under the Supreme Court Order;

"Minister" means the Minister responsible for justice and legal affairs;

"original jurisdiction" means the original jurisdiction of the Court provided for in Part II of the Agreement;

"Rules of Court" means the Rules of Court made under Article XXI of the Agreement; and

"Treaty" means the Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy, signed in the Bahamas on the 5th July, 2001.

(2) For the purposes of Article XXIV of the Agreement, a reference to a national of a Contracting Party, in relation to Antigua and Barbuda, includes a reference to —

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(a) a citizen of Antigua and Barbuda by virtue of the Constitution or any other law;

(b) a person who, not being a citizen of Antigua and Barbuda, is lawfully resident in Antigua and Barbuda;

Barbuda in accordance with the Immigration and
Passport Act or any other law; and **Cap. 208**

- (c) an entity, in Antigua and Barbuda, established by
or under any law of Antigua and Barbuda.

3. The following shall have the force of law in Antigua and
Barbuda:

**Agreement, its
related Instru-
ments, and Rules
of Court to have
force of law.**

- (a) the Agreement (other than the provisions of the
Agreement relating to the appellate jurisdiction of the
Court provided for in Part III of the Agreement) and
the relevant Rules of Court made thereunder; and

First Schedule.

- (b) the Second, Third and Fourth Schedules.

**Second, Third
and Fourth
Schedules.**

4. The Court shall have the original jurisdiction conferred
on it by Part II of the Agreement.

**Adoption of Juris-
diction of the
Court.**

5. Nothing in this Act shall be construed as conferring ju-
risdiction on the Court to hear any matter in relation to the Court
of Appeal which on the date of commencement of this Act was,
pursuant to the Constitution or any other law, declared to be
final.

**Exclusion of mat-
ters declared final.**

6. (1) Matters pertaining to the exercise of the **original juris-**
diction of the Court shall be brought before the Court in the
manner prescribed by the relevant Rules of Court.

**Mode of bringing
matters before
Court.**

(2) The Minister shall cause the Rules of Court to be pub-
lished in the *Gazette*.

7. The amount of the contribution assessed under the Fourth
Schedule as payable by the Government for the expenses of
the Court and Commission in accordance with Article XVIII of
the Agreement shall be charged on and paid from the **Consoli-**
dated Fund.

**Expenses of
Court and
Commission to
be a charge on
Consolidated
Fund.**

8. The proceedings of the Commission shall not be enquired
into in any court.

**Immunity of
Commission
from court
proceedings.**

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SCHEDULES

- First Schedule:* The Agreement Establishing the Caribbean Court of Justice.
- Second Schedule:* The Protocol to the Agreement Establishing the Caribbean Court of Justice Relating to the Juridical Personality and Legal Capacity of the Court.
- Third Schedule:* The Protocol on **the** Status, Privileges and Immunities of the Caribbean Court of Justice and the Regional Judicial and Legal Services Commission.
- Fourth Schedule:* The Agreement Establishing the Caribbean Court of Justice Trust Fund.

FIRST E

AGREEMENT ESTABLISHING THE CARIBBEAN COURT OF JUSTICE

THE CONTRACTING PARTIES,

CONVINCED that the Caribbean Court of Justice, (hereinafter referred to as "**the** Court"), will have a determinative role in the **further** development of Caribbean jurisprudence through the judicial process;

CONVINCED ALSO of the desirability of entrenching the Court in their national Constitutions;

AWARE that the establishment of the Court is a further step in the deepening of the regional integration process;

RECOGNISING the sovereignty of Members of the Caribbean Community;

HEREBY AGREE as follows:

**ARTICLE I
USE OF TERMS**

In this Agreement, unless the context otherwise requires:

'Commission' means the Regional Judicial and Legal Services Commission established by Article V;

'Conference' **means** the Conference of Heads of **Government** of Member States of the Caribbean Community;

'Contracting Party' means an entity referred to in Article **II** which has satisfied the requirements of membership and in relation to which this Agreement is in force;

'Heads of Government' means the Heads of Government of the Contracting Parties;

'President' means the President of the Court;

'Secretary-General' means the Secretary-General of the Caribbean Community;

'Treaty' means the Treaty establishing the Caribbean Community signed at **Chaguaramas** on 4 July 1973 and any amendments thereto which take effect either provisionally or definitively.

PART I

**MEMBERSHIP, ESTABLISHMENT OF THE COURT,
THE COMMISSION AND RELATED MATTERS**

**ARTICLE II
MEMBERSHIP**

This Agreement shall be open to —

- (a) Member States of the Caribbean Community;
- (b) Any other Caribbean country, which is invited by the Conference to become a Party to this Agreement.

ARTICLE III

ESTABLISHMENT AND SEAT OF THE CARIBBEAN COURT OF JUSTICE

1. The Court is hereby established with:
 - (a) Original jurisdiction in accordance with the provisions of Part II, and
 - (b) Appellate jurisdiction in accordance with the provisions of Part III.
2. The decisions of the Court shall be final.
3. The Seat of the Court shall be in the territory of a Contracting Party as determined by a qualified majority of the Contracting Parties but, as circumstances warrant, the Court may sit in the territory of any other Contracting Party.
4. The **Government** of the Contracting Party in whose territory the Seat of the Court is situated shall provide suitable accommodation for the Seat of the Court and the offices of the Commission and shall conclude with the Court and the Commission an Agreement relating to the Seat of the Court and the offices of the Commission.
5. The Court shall have and use, as occasion may require, a seal having a device or impression with the inscription 'The Caribbean Court of Justice'.

ARTICLE IV

CONSTITUTION OF THE COURT

1. Subject to paragraph 2 of this Article, the Judges of the Court shall be the President and not more than nine other Judges of whom at least three shall possess expertise in international law including international trade law.
2. The number of Judges, excluding the President, may be increased by the Heads of Government, upon the recommendation of the Commission.
3. The Court shall be duly constituted as set out in Parts II and III and may sit in such number of divisions as may be directed by the President but every Judge of the Court may sit in any division.
4. The determination of any question before the Court shall be according to the opinion of the majority of the Judges of the Court hearing the case.

5. Notwithstanding the provisions of this Article, the President may appoint one or more judges to determine interlocutory matters.

6. The President shall be appointed or removed by the qualified majority vote of three-quarters of the Contracting Parties on the recommendation of the Commission.

7. The Judges of the Court, other than the President, shall be appointed or removed by a majority vote of all of the members of the Commission.

8. The President shall take precedence over all other Judges of the Court and the seniority of the other Judges of the Court shall be determined in accordance with the dates of their **appointment**.

9. The appointment of the President shall be signified by letter under the hand of the Chairman for the time being of the Conference acting on the advice of the Heads of Government and the appointment of any other Judge of the Court shall be signified by letter under the hand of the Chairman of the Commission.

10. A person shall not be qualified to be appointed to hold or to act in the office of Judge of the Court, unless that person satisfies the criteria mentioned in paragraph 11 and —

- (a) is or has been for a period or periods amounting in the aggregate to not less than five years, a Judge of a court of unlimited jurisdiction in civil and criminal matters in the territory of a Contracting Party or in some part of the Commonwealth, or in a State exercising civil law jurisprudence common to Contracting Parties, or a court having jurisdiction in appeals from any such court and who, in the opinion of the Commission, has distinguished himself or herself in that office; or
- (b) is or has been engaged in the practice or teaching of law for a period or periods amounting in the aggregate to not less than fifteen years in a Member State of the Caribbean Community or in a Contracting Party or in some part of the Commonwealth, or in a State exercising civil law jurisprudence common to Contracting parties, and has distinguished himself or herself in the legal profession.

11. In making appointments to the office of Judge, regard shall be had to the following criteria: high moral character, intellectual and analytical ability, sound judgment, integrity, and understanding of people and society.

12. The Commission may, prior to appointing a Judge of the Court, consult with associations representative of the legal profession and with other bodies and individuals that it considers appropriate in selecting a Judge of the Court.

ARTICLE V
ESTABLISHMENT OF THE REGIONAL JUDICIAL AND
LEGAL SERVICES COMMISSION

1. There is hereby established a Regional Judicial and **Legal** Services Commission which shall consist of the following persons:

- (a) The President who shall be the Chairman of the Commission;
- (b) Two persons nominated jointly by the Organization of the **Commonwealth Caribbean Bar Association (OCCBA)** and the Organisation of Eastern Caribbean States (OECS) **Bar Association**;
- (c) One **chairman** of the Judicial Services Commission of a Contracting Party **selected in** rotation in the English alphabetical order for a period of three years;
- (d) The Chairman of a Public Service Commission of a Contracting **Party** selected in rotation in the reverse English alphabetical order for a period of three years;
- (e) Two persons from civil society nominated jointly by the **Secretary-General** of the Community and the Director General of the **QECS** for a period of three years following consultations with regional **non-governmental organisations**;
- (f) Two distinguished jurists nominated jointly by the Dean of the Faculty of Law of the University of the West **Indies**, the Deans of the Faculties of Law of any of the Contracting Parties and the Chairman of the Council of Legal Education; and
- (g) **Two** persons nominated jointly by the Bar or Law Associations of the Contracting Parties.

2. Where any person or body required to nominate a candidate for appointment to the Regional Judicial and Legal Services Commission in accordance with paragraph 1, fails to make such nomination within thirty (30) days of a written request in that behalf, the nomination shall be made jointly by the heads of the judiciaries of the Contracting Parties.

3. (1) The Commission shall have responsibility for:

- (a) making appointments to the office of Judge of the Court, other than that of President;

- (b) making appointments of those officials and employees referred to in Article XXVII and for determining the salaries and allowances to be paid to such officials and employees;
- (c) the determination of the terms and conditions of service of officials and employees; and
- (d) the termination of appointments in accordance with the provisions of this Agreement.

(2) The Commission shall, in accordance with the Regulations, exercise disciplinary control over Judges of the Court, other than the President, and over officials and employees of the Court.

4. The term of office of members of the Commission, other than the Chairman shall be three years, but such members shall be eligible for re-appointment for another term of office.

5. The members of the Commission referred to in paragraph 1(b), (c), (d), (f) and (g) shall be appointed by letter under the hand of the President.

6. If the office of a member of the Commission, other than the Chairman is vacant or the holder thereof is unable to perform the functions of his office, a person may be appointed to perform the functions of that office for the unexpired term of the holder of the office or until the holder resumes office.

7. Subject to paragraph 13 of this Article, the Commission shall not be:

- (a) disqualified from the transaction of business by reason of any vacancy in its membership and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present or to participate in those proceedings;
- (b) disqualified from the transaction of business nor its proceedings invalidated by reason of the non-receipt by a member of the Commission, of a notice for a meeting of the Commission.

8. The Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under paragraph 3(1) (b) and (c) of this Article to any one or more of its members or to the Registrar.

9. A member of the Commission, other than the Chairman may, by writing under the hand of that member, addressed to the Chairman of the Commission, resign from the Commission

3. The Contracting Parties undertake to make provision to ensure that the proceedings of the Commission shall not be enquired into in any Court.

ARTICLE VIII ACTING APPOINTMENTS

1. If the office of President is vacant, or if the President is for any reason unable to perform the functions of that office, then, until some other person has been appointed to and has assumed the functions of that office or, as the case may be, until the President has resumed those functions, they shall be performed by the Judge of the Court who is most senior according to the date of his appointment and he shall be appointed by letter under the hand of the Chairman for the time being of the Conference.

2. When none of the other Judges is senior by appointment, the functions of President shall be performed by such one of the other Judges of the Court appointed by letter.

3. An appointment referred to in paragraph 2 shall be made in accordance with the advice of the Heads of Government tendered after consultations with the President and such other persons or bodies of persons as the Heads of Government may think fit.

4. If one of the Judges of the Court is acting as the President of the Court or if the office of a Judge of the Court, other than the President, is vacant or if such a Judge is for any reason unable to perform the functions of that office, then, until some other person has been appointed to act and has assumed the functions of that office or, as the case may be, until the Judge has resumed those functions, they shall be performed by a person qualified for appointment as a Judge of the Court to be appointed by the Commission by letter under the hand of the Chairman of the Commission.

5. The person appointed in accordance with paragraph 4 shall continue to perform the functions of the office until a person is appointed to the office and has assumed the functions thereof or, as the case may be, until the holder resumes office.

ARTICLE IX TENURE OF OFFICE OF JUDGES

1. The office of a Judge of the Court shall not be abolished while there is a substantive holder thereof.

2. Subject to the provisions of this Article, the President shall hold office for a non-renewable term of seven years or until he attains the age of seventy-two

years, whichever is earlier, except that the President shall continue in office, if necessary, for a further period not exceeding three months to enable him to deliver judgment or to do any other thing in relation to any proceedings part-heard by him.

3. Subject to the provisions of this Article, a Judge of the Court shall hold office until he attains the age of seventy-two years, except that he shall continue in office, if necessary, for a further period not exceeding three months to enable him to deliver judgment or to do any other thing in relation to any proceedings part-heard by him.

4. A Judge may be removed from office only for inability to perform the functions of his office, whether arising from illness or any other cause or for misbehaviour, and shall not be so removed except in accordance with the provisions of this Article.

5. (1) Subject to Article IV, paragraph 5, the President shall be removed from office by the Heads of Government on the recommendation of the Commission, if the question of the removal of the President has been referred by the Heads of Government to a tribunal and the tribunal has advised the Commission that the President ought to be removed from office for inability or misbehaviour referred to in paragraph 4.

(2) Subject to Article IV, paragraph 6, a Judge other than the President shall be removed from office by the Commission if the question of the removal of the Judge has been referred by the Commission to a tribunal; and the tribunal has advised the Commission that the Judge ought to be removed from office for inability or misbehaviour referred to in paragraph 4.

6. If at least three Heads of Government in the case of the President jointly represent to the other Heads of Government, or if the Commission decides in the case of any other Judge, that the question of removing the President or the Judge from office ought to be investigated, then —

- (a) the Heads of Government or the Commission shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Heads of Government or the Commission, as the case may be, after such consultations as may be considered expedient, from among persons who hold or have held office as a Judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth, or in a State exercising civil law jurisprudence common to Contracting Parties, or a court having jurisdiction in appeals from any such court; and

- (b) the tribunal shall enquire into the matter and advise the Heads of Government or the Commission, as the case may be, whether or not the President or the Judge ought to be removed from office.

7. The provisions of any law relating to the holding of commissions of inquiry in the Member State of the Caribbean Community where the inquiry is held shall apply as nearly as may be in relation to tribunals appointed under paragraph 6 of this Article or, as the context may require, to the members thereof as they apply in relation to Commissions or Commissioners appointed under that law.

8. Of the question of removing the President or any other Judge of the Court from office has been referred to a tribunal under paragraph 6 of this Article, the Heads of Government in the case of the President, or the Commission, in the case of any other Judge of the Court, may suspend such Judge from performing the functions of his office, and any such suspension may at any time be revoked by the Heads of Government or the commission, as the case may be, and shall in any case cease to have effect if the tribunal advises the Heads of Government or the Commission that the Judge ought not to be removed from office.

9. (i) The President may at any time resign the office of President by writing under the hand of the President addressed to the Chairman for the time being of the Conference.

(2) Any other Judge of the Court may at any time resign the office of Judge of the Court by writing under the hand of the Judge addressed to the Chairman of the Commission.

ARTICLE X OATH OF OFFICE

1. A Judge of the Court shall not enter upon the duties of that office unless he has taken and subscribed the oath of office as set out in Appendix I to this Agreement.

2. The oath of office shall be taken and subscribed before the Head of State of any Contracting Party.

PART II ORIGINAL JURISDICTION OF THE COURT

ARTICLE XI CONSTITUTION OF THE COURT

1. The Court, in the exercise of its original jurisdiction, shall be duly constituted if it consists of not less than three judges being an uneven number of judges.

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2. The judges referred to in paragraph 1 shall possess the expertise necessary for the Court to adjudicate the matter.

3. The deliberations of the Court shall be under the authority and control of a Chairman, who shall be the most senior of the judges appointed by the President.

4. Notwithstanding paragraph 1, the original jurisdiction of the Court may be exercised by a sole judge appointed by the Chairman.

5. The decision of a sole judge exercising jurisdiction under paragraph 4 may, on application of a Party aggrieved, be reviewed by a panel comprising not more than five judges.

ARTICLE XII JURISDICTION OF THE COURT IN CONTENTIOUS PROCEEDINGS

1. Subject to the Treaty, the Court shall have exclusive jurisdiction to hear and deliver judgment on:

- (a) disputes between Contracting Parties to this Agreement;
- (b) disputes between any Contracting Parties to this Agreement and the Community;
- (c) referrals from national courts or tribunals of Contracting Parties to this Agreement;
- (d) applications by nationals in accordance with Article XXIV, concerning the interpretation and application of the Treaty.

2. For the purposes of this part, "national courts" includes the Eastern Caribbean Supreme Court.

ARTICLE XIII ADVISORY OPINIONS OF THE COURT

1. The Court shall have exclusive jurisdiction to deliver advisory opinions concerning the interpretation and application of the Treaty.

2. Advisory opinions shall be delivered only at the request of Contracting Parties or the Community.

**ARTICLE XIV
REFERRAL TO THE COURT**

Where a national court or tribunal of a Contracting Party is seized of an issue whose resolution involves a question concerning the interpretation or application of the Treaty, the court or tribunal concerned shall, if it considers that a decision on the question is necessary to enable it to deliver judgment, refer the question to the Court for determination before delivering judgment.

**ARTICLE XV
COMPLIANCE WITH JUDGMENTS OF THE COURT**

Member States, Organs, Bodies of the Community or persons to whom a judgment of the Court applies, shall comply with that judgment.

**ARTICLE XVI
COMPULSORY JURISDICTION OF THE COURT**

1. Contracting Parties agree that they recognise as compulsory, *ipso facto* and without special agreement, the original jurisdiction of the Court provided for in Article XII.

2. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be determined by decision of the Court.

**ARTICLE XVII
LAW TO BE APPLIED BY THE COURT IN THE EXERCISE OF
ITS ORIGINAL JURISDICTION**

1. The Court, in exercising its original jurisdiction under Article XII (b) and (c), shall apply such rules of international law as may be applicable.

2. The Court may not bring in a finding of *non-liquet* on the ground of silence or obscurity of the law.

3. The provisions of paragraphs (1) and (2) shall not prejudice the power of the Court to decide a dispute *ex aequo et bono* if the parties so agree.

**ARTICLE XVIII
INTERVENTION BY THIRD PARTIES**

1. Should a Member State, the Community or a person consider that it has a substantial interest of a legal nature which may be affected by a decision of the

Court in the exercise of its original jurisdiction, it may apply to the Court to intervene and it shall be for the Court to decide on the application.

2. Whenever the construction of a convention to which Member States and persons other than those concerned in the case are parties, is in question, the Registrar shall notify all such States and persons forthwith.

3. Every State or person so notified has the right to intervene in the proceedings; but if the right is exercised, the construction given by the judgment will be equally binding on all parties.

ARTICLE XIX APPLICATION FOR INTERIM MEASURES

The Court shall have the power to prescribe if it considers the circumstances so require, any interim measures that ought to be taken to preserve the rights of a Party.

ARTICLE XX REVISION OF JUDGMENTS OF THE COURT IN THE EXERCISE OF ITS ORIGINAL JURISDICTION

1. An application for the revision of a judgment of the Court in the exercise of its original jurisdiction may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and to the party claiming revision: provided always that such ignorance was not due to negligence on the part of the applicant.

2. Proceedings for a revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognising that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

3. The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

4. The application for revision shall be made within six months of the discovery of the new fact.

5. No application for revision may be made after the lapse of five years from the date of the judgment.

6. Nothing in this Article shall affect the rights of third parties accrued since the delivery of the judgment mentioned in paragraph 1.

ARTICLE XXI
RULES OF COURT GOVERNING ORIGINAL JURISDICTION

1. The President shall, in consultation with five other Judges of the Court selected by him, establish rules for the exercise of the original jurisdiction of the Court.

2. Without prejudice to the generality of the preceding sub-paragraph, Rules of Court may be made for all or any of the following purposes —

- (a) Regulating the sittings of the Court, the selection of Judges for any purpose, and the period to be observed as a vacation in the Court and the transaction of business during any such vacation;
- (b) Regulating the pleading, practice, procedure, execution of the process of the Court and the duties of the officers of the Court;
- (c) Regulating matters relating to practice in the Court by Attorneys-at-Law, Legal Practitioners or advocates and the representation of persons concerned in any proceedings in the Court;
- (d) Providing for the summary **determination** of **any** matter which appears to the Court to be frivolous or vexatious or to be brought for the purpose of delay;
- (e) Regulating matters relating to the costs and the taxation thereof, of proceedings in the Court;
- (f) Providing for the delivery of judgments in an expeditious manner;
- (g) Prescribing forms and fees in respect of proceedings in the Court;
- (h) Prescribing the time within which any requirement of the rules of Court is to be complied with;
- (i) Regulating or prescribing or doing any other thing which may be regulated, prescribed or done by rules of Court.

ARTICLE XXII
JUDGMENT OF THE COURT TO
CONSTITUTE *STARE DECISZS*

Judgments of the Court shall be legally binding precedents for parties in proceedings before the Court unless such judgments have been revised in accordance with Article XX.

**ARTICLE XXIII
ALTERNATIVE DISPUTE RESOLUTION**

1. Each Contracting Party shall, to the maximum extent possible, encourage and **facilitate** the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes.

2. To this end, each Contracting Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.

**ARTICLE XXIV
LOCUSSTANDI OF PRIVATE ENTRIES**

Nationals of a Contracting Party may, with the special leave of the Court, be allowed to appear as parties in proceedings before the Court where:

- (a) The Court has determined in any particular case that the Treaty intended that a right conferred by or under the Treaty on a Contracting Party shall ensure to the benefit of such persons directly; and
- (b) the persons concerned have established that such persons have been prejudiced in respect of the enjoyment of the benefit mentioned in sub-paragraph (a) of this Article; and
- (c) the Contracting Party entitled to espouse the claim in proceedings before the Court has:
 - (i) omitted or declined to espouse the claim, or
 - (ii) expressly agreed that the persons concerned may espouse the claim instead of the Contracting Party so entitled; and
- (d) the Court has found that the interest of justice requires that the persons be allowed to espouse the claim.

**PART III
APPELLATE JURISDICTION OF THE COURT**

**ARTICLE XXV
APPELLATE JURISDICTION OF THE COURT**

1. In the exercise of its appellate jurisdiction, the Court is a superior Court of record with such jurisdiction and powers as are conferred on it by this Agreement or by the Constitution or **any** other law of a Contracting **Party**.

2. Appeals shall lie to the Court from decisions of the Court of Appeal of a Contracting Party as of right in the following cases:

- (a) final decisions in civil proceedings where the matter in dispute on appeal to the Court is of the value of not less than twenty-five thousand dollars Eastern Caribbean currency (EC\$25,000) or where the appeal involves directly or indirectly a claim or a question respecting property or a right of the aforesaid value;
- (b) final decisions in proceedings for dissolution or nullity of marriage;
- (c) final decisions in any civil or other proceedings which involve a question as to the interpretation of the Constitution of the Contracting Party;
- (d) final decisions given in the exercise of the jurisdiction conferred upon a superior court of a Contracting Party relating to redress for contravention of the provisions of the Constitution of a Contracting Party for the protection of fundamental rights;
- (e) final decisions given in the exercise of the jurisdiction conferred upon a superior court of a Contracting Party relating to the determination of any question for which a right of access to the superior court of a Contracting Party is expressly provided by its Constitution;
- (f) such other cases as may be prescribed by any law of the Contracting Party.

3. An appeal shall lie to the Court with the leave of the Court of Appeal of a Contracting Party from the decisions of the Court of Appeal in the following cases:

- (a) final decisions in any civil proceedings where, in the opinion of the Court of Appeal, the question involved in the appeal is one that by reason of its great general or public importance or otherwise, ought to be submitted to the Court; and
- (b) such other cases as may be prescribed by any law of the Contracting Party.

4. Subject to paragraph 2, an appeal shall lie to the Court with the special leave of the Court **from** any decision of the Court of Appeal of a Contracting Party in any civil or criminal matter.

5. Nothing in this Article shall apply to matters in relation to which the decision of the Court of Appeal of a Contracting Party is, at the time of the entry into force of the Agreement pursuant to the Constitution or any other law of that Party, declared to be final.

6. The Court shall, in relation to any appeal to it in any case, have all the jurisdiction and powers possessed in relation to that case by the Court of Appeal of the Contracting Party from which the appeal was brought.

7. (1) The President shall in consultation with five other Judges of the Court selected by him, make Rules of Court for regulating the practice and procedure of the Court in exercise of the appellate jurisdiction conferred on the Court and, in relation to appeals brought before the Court, the practice and procedure of any court in respect of such appeals.

(2) Without prejudice to the generality of the preceding sub-paragraph, Rules of Court may be made for all or any of the following purposes —

- (a) Regulating the sittings of the Court, the selection of Judges for any purpose, and the period to be observed as a vacation in the Court and the transaction of business during any such vacation;
- (b) Regulating the pleading, practice, procedure, execution of the process of the Court and the duties of the officers of the Court;
- (c) Regulating matters relating to practice in the Court by **Attorneys-at-Law** or Legal Practitioners and the representation of persons concerned in any proceedings in the Court;
- (d) Prescribing the cases in which, and the conditions upon which an appellant in a criminal appeal to the Court shall be entitled to be present at the hearing of the appeal;
- (e) Providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or to be brought for the purpose of delay;
- (f) Regulating matters relating to the costs and the taxation thereof, of proceedings in the Court;
- (g) Providing for the delivery of judgments in an expeditious manner;
- (h) Prescribing forms and fees in respect of proceedings in the Court;
- (i) Prescribing the time within which any requirement of the rules of Court is to be complied with;

- (j) Regulating or prescribing or doing any other thing which may be regulated, prescribed or done by rules of Court.

**PART IV
ENFORCEMENT, FINANCIAL AND FINAL PROVISIONS**

**ARTICLE XXVI
ENFORCEMENT OF ORDERS OF THE COURT**

The Contracting Parties agree to take all the necessary steps, including the enactment of legislation to ensure that:

- (a) all authorities of a Contracting Party act in aid of the Court and that any judgment, decree, order or sentence of the Court given in exercise of its jurisdiction shall be enforced by all courts and authorities in any territory of the Contracting Parties as if it were a judgment, decree, order or sentence of a superior court of that Contracting Party;
- (b) The Court has power to make any order for the purpose of securing the attendance of any person, the discovery or production of any document, or the investigation or punishment of any contempt of court that any superior court of a Contracting Party has power to make as respects the area within its jurisdiction.

**ARTICLE XXVII
OFFICIALS AND EMPLOYEES OF THE COURT**

1. There shall be a Registrar of the Court, Deputy Registrars and other officials and employees of the Court as the Commission may consider necessary. The holders of those offices shall be paid such salaries and allowances and shall have such other terms and conditions of service as may, from time to time, be determined by the Commission.

2. With the concurrence of the competent authority of a Contracting Party, the Commission may appoint the Registrar of a superior court in the territory of that Contracting Party to be a Deputy Registrar of the Court.

3. The Commission may, by directions in writing and subject to such condition as it thinks fit, delegate any of its powers under paragraph 1 to any one or more of its members or to the Registrar of the Court.

4. For the purposes of paragraph 2 of this Article, "competent authority" means the authority vested with power to make appointments to the office of Registrar

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of a superior court and to exercise disciplinary control over persons holding or acting in that office.

**ARTICLE XXVIII
FINANCIAL PROVISIONS**

1. The expenses of the Court and of the Commission, including the cost of the maintenance of the Seat of the Court and the remuneration and allowances and other payments referred to in Article XXVII and this Article, shall be borne by the Contracting Parties in such proportions as may be agreed by the Contracting Parties. The assessed contributions to be paid by a Contracting Party shall be charged by law on the Consolidated Fund or public revenues of that Contracting Party.

2. (1) Subject to this Agreement and with the approval of the Conference, the Commission shall determine the terms and conditions and other benefits of the President and other Judges of the Court.

(2) The salaries and allowances referred to in sub-paragraph 1 shall be set out in Appendix II to this Agreement.

(3) Notwithstanding the provisions of Article XXXII, the Commission may, with the approval of the Conference, make regulations to amend Appendix II.

3. The salaries and allowances payable to the President and the other Judges of the Court and their other terms and conditions of service shall not be altered to their disadvantage during their tenure of office. For the purposes of this paragraph, in so far as the terms and conditions of service of any Judge of the Court depend upon the option of that Judge, the terms for which that Judge opts shall be taken to be more advantageous to that Judge than any other terms and conditions for which the Judge might have opted.

4. There shall be paid to members of the Commission, other than the Chairman, the actual travelling expenses and subsistence allowance at such rate per day as the Heads of Government may, from time to time, decide for the purpose of performing official duties as a member of the Commission.

**ARTICLE XXIX
RIGHT OF AUDIENCE**

Attorneys-at-Law, legal practitioners or advocates duly admitted to practice law in the courts of a Contracting Party shall, subject to the powers of the Court, not be required to satisfy any other condition in order to practice before the

Court wherever the Court is sitting in exercise of its jurisdiction and they shall enjoy the privileges and immunities necessary for the independent exercise of their duties.

ARTICLE XXX PRIVILEGES AND IMMUNITIES

The privileges and immunities to be recognised and granted by the Contracting Parties to the Judges and officers of the Court necessary to protect their independence and impartiality shall be laid down in a Protocol to this Agreement.

ARTICLE XXXI REGULATIONS

The **Commission** may make Regulations —

- (a) governing the appointment, discipline, **termination** of employment and other terms and conditions of service and employment for —
 - (i) Judges, other than the President; and
 - (ii) officials and employees of the Court;
- (b) prescribing the procedure governing the conduct of disciplinary proceedings;
- (c) generally giving effect to this Agreement.

ARTICLE XXXII AMENDMENT

1. This Agreement may be amended by the Contracting Parties.

2. Every amendment shall be subject to ratification by the Contracting Parties in accordance with their respective constitutional procedures and shall enter into force one month after the date on which the last Instrument of ratification or accession is deposited with the Secretary-General (hereinafter in this Agreement referred to as "the Depositary").

ARTICLE XXXIII SIGNATURE

This Agreement is open for signature by any of the States or countries referred to in Article II.

**ARTICLE XXXIV
RATIFICATION**

This Agreement shall be subject to ratification by the signatory countries in accordance with their respective constitutional procedures. Instruments of ratification shall be deposited with the Depositary who shall transmit certified copies to the Government of each Contracting Party.

**ARTICLE XXXV
ENTRY INTO FORCE**

This Agreement shall enter into force upon the deposit of Instruments of Ratification or Accession in accordance with Article XXXIV, by at least three Member States of the Caribbean Community.

**ARTICLE XXXVI
ACCESSION**

1. Any country to which paragraph (b) of Article II applies may accede to this Agreement and become a Contracting Party on such terms and conditions as the Conference may decide.

2. Instruments of Accession shall be deposited with the Depositary.

**ARTICLE XXXVII
WITHDRAWAL**

1. A Contracting Party may withdraw from this Agreement by giving three years' notice in writing to the Depositary who shall promptly notify the other Contracting Parties accordingly and the withdrawal shall take effect five years after the date on which the notice has been received by the Depositary, unless the Contracting Party before the withdrawal becomes effective notifies the Depositary in writing of the cancellation of its notice of withdrawal.

2. A Contracting Party that withdraws from this Agreement undertakes to honour any financial or other obligations duly assumed as a Contracting Party; this includes any matter relating to an appeal filed before withdrawal becomes effective.

**ARTICLE XXXVIII
IMPLEMENTATION**

The Contracting Parties shall take all necessary action, whether of a legislative, executive or administrative nature, for the purpose of giving effect to this Agree-

ment. Such action shall be taken as expeditiously as possible, and the Secretary-General shall be informed accordingly.

**ARTICLE XXXIX
RESERVATIONS**

A reservation may be entered to Article XXV of this Agreement **with** the consent of the Contracting Parties.

APPENDIX I

I..... do hereby swear (or solemnly **affirm**) that I will faithfully exercise the office of **President/Judge** of the Caribbean Court of Justice without fear or favour, affection or **illwill** and in accordance with the Code of Judicial Conduct.

So help me God (to be omitted in affirmation).

APPENDIX II

Annual Salary

1. (a) The President of the Court — [EC\$]
(b) Any other Judge of the Court — [EC\$]
2. Judges of the Court shall be paid super-annuation benefits in respect of their service as Judge of the Court as follows —
 - (a) Less than 5 years' service — a gratuity of 20 per cent of the Judge's pensionable emoluments at the time of retirement for every year of service;
 - (b) 5 to 10 years' service — a monthly pension equivalent to two — thirds of the Judge's monthly pensionable emoluments at the time of retirement.
 - (c) More than 10 years' service — a monthly pension equivalent to the Judge's monthly pensionable emoluments at the time of retirement.
3. Every Judge of the Court shall be paid a monthly allowance for housing to be determined by the Heads of Government of the Contracting Parties in respect of the Judge's occupation of a fully furnished residence.

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4. Every Judge shall be paid a monthly allowance to be determined by the Heads of Government of the Contracting Parties to meet the expenses incurred by the Judge in respect of the employment of a chauffeur.

5. Every Judge shall be paid a travelling allowance to be determined by the Heads of Government of the Contracting Parties in respect of the use by the Judge of a motor car owned by the Judge on official duty, subject to the conditions of payment as determined by the Heads of Government of the Contracting Parties.

6. Every Judge of the Court shall be provided with telephone services at the Judge's residence, without charge, except for unofficial overseas telephone calls.

7. Every Judge of the Court shall be paid a subsistence allowance to be determined by the Heads of Government of the Contracting Parties for each day on which the Judge is on official duty in the territory of a Contracting Party other than that of the seat of the Court

SECOND SCHEDULE

PROTOCOL TO THE AGREEMENT ESTABLISHING THE CARIBBEAN COURT OF JUSTICE RELATING TO THE JURIDICAL PERSONALITY AND LEGAL CAPACITY OF THE COURT

The Contracting Parties:

Noting that the Agreement Establishing the Caribbean Court of Justice (hereinafter referred to as "the Agreement") entered into force on 23 July 2002;

Conscious that Article VI of the Agreement confers on the Regional Judicial and Legal Services Commission (hereinafter referred to as "the Commission") full juridical personality, including, in particular, full capacity to contract;

Aware that the Government of Trinidad and Tobago, the Contracting Party in whose territory the Seat of the Caribbean Court of Justice (hereinafter referred to as "the Court") is situated, in accordance with Article III (4) of the Agreement, intends to conclude an Agreement relating to the Seat of the Court and the Headquarters of the Commission;

Desirous of conferring on the Court full juridical personality and legal capacity,

Have Agreed as follows:

**ARTICLE I
JURIDICAL PERSONALITY AND
LEGAL CAPACITY OF THE COURT**

1. The Court shall have full juridical personality.
2. Each Contracting party to the Agreement shall, in its territory, accord to the Court the most extensive legal capacity accorded to legal persons under its municipal law.
3. In any legal proceedings, the Court shall be represented by the Registrar of the Court.
4. Each Contracting Party to the Agreement shall take such action as is necessary to make effective in its territory the provisions of this Article and shall promptly inform the Secretary-General of the Caribbean Community of such action.

**ARTICLE II
PRIVILEGES AND IMMUNITIES
OF THE COURT AND THE COMMISSION**

The President of the Court shall conclude with the Government of Trinidad and Tobago an Agreement relating to the Seat of the Court and the Headquarters of the Commission setting out, *inter alia*:

- (a) the terms respecting the facilitation of the administration and operation of the Court and the Commission; and
- (b) the privileges and immunities to be accorded to the Commission and its members, the Court, the Judges and officers of the Court, parties, their counsel and other persons required to appear before the Court.

**ARTICLE III
RELATIONSHIP BETWEEN THIS PROTOCOL
AND THE AGREEMENT**

This Protocol shall be read as one with the Agreement.

**ARTICLE IV
SIGNATURE**

This Protocol shall be open for signature by the Contracting Parties to the Agreement.

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ARTICLE V ENTRY INTO FORCE

This Protocol shall enter into force on signature by the Contracting Parties to the Agreement.

ARTICLE VI ACCESSION

1. Any Contracting Party to the Agreement may accede to this Protocol.
2. Instruments of accession shall be deposited with the Secretary-General who shall transmit certified copies to the Governments.

THIRD SCHEDULE

PROTOCOL ON THE STATUS, PRIVILEGES AND IMMUNITIES OF THE CARIBBEAN COURT OF JUSTICE AND THE REGIONAL JUDICIAL AND LEGAL SERVICES COMMISSION

PREAMBLE

The Contracting Parties

Noting that the Agreement Establishing the Caribbean Court of Justice entered into force on 23 July 2002;

Recognising that paragraph 2 of Article VII of the Agreement Establishing the Caribbean Court of Justice (hereinafter referred to as "the Agreement") provides that the privileges and immunities to be accorded the Regional Judicial and Legal Services Commission shall be laid down in a Protocol to the Agreement;

Conscious that Article XXX of the Agreement also provides that the privileges and immunities to be recognised and granted by the Contracting Parties thereto to the judges and officers of the Court necessary to protect their independence and impartiality, shall be laid down in a Protocol to the Agreement; and

Desirous of establishing conditions to safeguard the independence and integrity of the judges and officers of the Caribbean Court of Justice (hereinafter referred to as "the Court") and the Members of the Regional Judicial and Legal Services Commission,

Have agreed as follows:

**ARTICLE I
USE OF TERMS**

In this Protocol, unless the context otherwise requires:

"archives of the Court or the Commission" includes the records, correspondence, documents, manuscripts, **photographs**, slides, films, sound recordings and electronic storage devices belonging to or held by the Court or the Commission;

"Commission" means the Regional Judicial and Legal Services Commission established by Article V of the Agreement;

"competent Authorities" means national, regional or local authorities of the Contracting Parties as may be appropriate in the context and in the laws of the Contracting Parties;

"Conference" means the Conference of Heads of Government of the Member States of the Caribbean Community;

"Contracting Party" means a state in relation to which this Protocol is in force;

"counsel" means a person qualified to conduct proceedings before the Court on behalf of another;

"the Court" means the Caribbean Court of Justice established by Article III of the Agreement;

"the Government" means the Government of a Contracting Party to this Protocol;

"officers of the Court" means the Registrar of the Court and the Deputy Registrar;

"the President" means the President of the Court;

"property" means all forms of property, including funds and assets belonging to or held or administered by the Court or the Commission and all income accruing to the Court or the Commission;

"Registrar" means the Registrar of the Court;

"Secretary-General" means the Secretary-General of the Caribbean Community.

ARTICLE II
PROPERTY FUNDS AND ASSETS OF THE COURT
AND THE COMMISSION

1. The Court, the Commission, their property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case such immunity has been expressly waived in accordance with Article X. No waiver of immunity shall extend to any measure of execution.

2. The property of the Court and the Commission, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference whether by executive, administrative or judicial action.

ARTICLE III
PREMISES OF THE COURT AND THE COMMISSION

1. The premises occupied by the Court or the Commission shall be inviolable.

2. The President may make regulations relating to the premises mentioned in paragraph 1 of this Article for the purpose of establishing therein conditions necessary for the full execution of the **functions** of the Court or the Commission, as the case may be.

3. Officials of the Government shall not enter the premises referred to in this Article to perform any official duties therein except with the consent of and under conditions agreed by the President. However, in case of **fire** or other emergency requiring prompt protective action or in the event that officials of the Government have reasonable cause to believe that such an emergency has occurred, the consent of the President to entry on the premises by the officials of the Government shall be presumed if the President cannot be reached in time.

ARTICLE IV
ARCHIVES OF THE COURT AND THE COMMISSION

The archives of the Court and the Commission, and in general all documents belonging to or held by the Court or the Commission, shall be inviolable wherever located.

ARTICLE V
EXEMPTION FROM FOREIGN
EXCHANGE CONTROLS

1. Without being restricted by financial controls, regulations or moratoria of **any kind**, the Court and the **Commission** shall be entitled for their official use only:

- (a) to purchase from authorised dealers, hold and make use of negotiable currencies, operate foreign currency **and** external accounts and purchase through authorised dealers, hold and make use of funds and securities;
- (b) to freely transfer their finds, securities and foreign currencies to or from the territory of any Contracting **Party** and to convert any currency held by them into any other currency.

2. The Court and the Commission, in exercising their rights under paragraph 1 of this **Article**, shall pay due regard to any representations made by the Government and shall give effect to such representations so far as this is possible without detriment to the interests of the Court or the Commission.

ARTICLE VI **EXEMPTION FROM TAXES, CUSTOMS** **DUTIES AND IMPORT OR EXPORT DUTIES**

1. The Court and the **Commission** shall be exempt from:

- (a) any **form** of direct or indirect taxation, but the **Court** or the Commission shall not claim exemption from taxes which are, in fact, no more **than** charges for public utility services;
- (b) customs duties and prohibitions and restrictions on imports in respect of articles imported or exported by the Court or the **Commission** for their official use, subject to the condition that articles imported under such exemption shall not be sold within the territory of the Contracting Party except under conditions agreed to with the Government;
- (c) customs duties and other levies and prohibitions and restrictions in respect of the import, sale and export of their publications.

2. For the purposes of this Article, "indirect taxation" means airport departure or travel tax, travel ticket tax, hotel and restaurant taxes, customs and excise duties, consumption tax, stamp duties, withholding tax on interest, value added tax, finance charges and imposts with equivalent effect.

ARTICLE VII **FACILITIES IN RESPECT OF COMMUNICATIONS**

1. The **Court** and the Commission shall, in relation to their official communications, enjoy in the territory of the Contracting Party, treatment no less favourable than that accorded by the Government to any other international **organisation**.

2. The Court and the Commission shall be immune from censorship of their official correspondence and official communications.

3. The Court and the Commission shall have the right to use codes and to despatch and receive correspondence whether by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

4. Nothing in this Article shall be construed so as to preclude the adoption of appropriate security measures in the interest of the Government concerned.

**ARTICLE VIII
JUDGES AND OFFICERS OF THE COURT AND
MEMBERS OF THE COMMISSION**

1. Judges and officers of the Court and members of the Commission engaged in the business of the Court or the Commission, as the case may be, in the territory of a Contracting Party, shall enjoy:

- (a) immunity from legal process in respect of words spoken or written and all acts done by them in their official capacity; such immunity shall continue notwithstanding that the persons concerned have ceased to exercise their functions with the Court or the Commission;
- (b) immunity from personal arrest or detention in relation to acts performed by them in their official capacity;
- (c) inviolability of all papers, documents and materials related to the work of the Court or the Commission as the case may be;
- (d) exemption from immigration restrictions, alien registration requirements and national service obligations;
- (e) the same protection and repatriation facilities in times of international crisis as are accorded representatives of foreign governments on temporary official missions;
- (f) the right, for the purpose of all communications with the Court or the Commission, as the case may be, to use codes and to despatch or receive papers, correspondence or other official material by courier or in sealed bags;
- (g) the same privileges and facilities in respect of currency and exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

- (h) immunity from inspection and seizure of personal and official baggage except in cases where the person is caught *in flagrante delicto*. In such cases, the competent authorities shall immediately inform the Registrar or other appropriate official of the Court. Inspection of personal baggage shall be conducted in the presence of the person concerned or his authorised representative, and in the case of official baggage, in the presence of a duly authorised representative of the Registrar;
- (i) exemption from any form of direct taxation on salaries, remuneration and allowances paid by the Court or the Commission and from customs duties on imports in respect of articles imported for personal use, subject to the condition that articles imported under such exemption shall not be sold within the territory of the Contracting Party except under conditions determined by the Government.

**ARTICLE IX
COUNSEL APPEARING IN PROCEEDINGS
BEFORE THE COURT**

1. Counsel appearing in proceedings before the Court while present in the territory of a Contracting Party shall, in the performance of their functions connected with such proceedings, enjoy:

- (a) inviolability of all papers, documents and materials relating to the proceedings before the Court;
- (b) immunity from personal arrest or detention and legal process in relation to words spoken or written or acts performed by them in relation to proceedings before the Court;
- (c) exemption from immigration restrictions, alien registration requirements and national service obligations;
- (d) the same privileges and facilities in respect of currency and exchange restrictions in relation to proceedings before the Court as are accorded to representatives of foreign governments on temporary official missions.

2. The immunity mentioned in paragraph 1(a) and (b) shall continue although the person entitled is no longer conducting proceedings before the Court.

3. The privileges, immunities and facilities mentioned in this Article are only intended to assist Counsel in the efficient representation of clients in proceedings before the Court and shall not be employed to circumvent applicable laws and regulations of the Government.

**ARTICLE X
CO-OPERATION WITH COMPETENT AUTHORITIES**

1. Privileges and immunities are recognised and granted by this Protocol in the interest of the Court and the Commission and not for the personal benefit of persons entitled thereto. The Conference in the case of the President and the President in the case of other persons entitled thereto, shall have the right to waive such privileges and immunities whenever in their opinion the enjoyment of the privileges and immunities would impede the course of justice and could be waived without prejudice to the interests of the Court or the Commission.

2. The President and the Registrar, as the case may be, shall co-operate at all times with the competent authorities to facilitate the proper administration of justice, secure the observance of the laws and regulations of the Government and to avoid the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Protocol.

3. Without prejudice to the privileges and immunities accorded by this Protocol, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the Government and not to interfere in the internal affairs of the Contracting Party.

4. If the Government considers that an abuse has occurred in the enjoyment of any privilege or immunity conferred by this Protocol, the Registrar shall, at the request of the Government, consult with the competent authorities to determine whether such an abuse has occurred. If such consultations fail to achieve results satisfactory to the Registrar and the Government, the issue shall be settled in accordance with the procedure laid down in Article XII.

**ARTICLE XI
FACILITATION OF TRAVEL**

1. Subject to the laws or regulations restricting entry or movement for reasons of national security, the Contracting Party shall extend all facilities for the uninterrupted passage within its territory as well as for the entry and departure therefrom of the categories of persons mentioned below:

- (a) judges of the Court and members of their families forming part of their households;
- (b) officers of the Court and members of their families forming part of their households;

- (c) members of the Commission;
- (d) counsel and their clients appearing in proceedings before the Court;
- (e) persons appearing in proceedings before the Court;
- (f) persons other than officers of the Court performing missions for the Court and members of their families forming part of their household; and
- (g) other persons invited to the Seat of the Court or the offices of the Commission on official business.

2. The Registrar shall communicate to the Government the names of the persons mentioned in paragraph 1 of this Article.

3. This Article shall not be applicable in case of a general interruption of transportation and shall not impede the effective application of laws in force nor waive the reasonable application of quarantine and health regulations.

4. Visas required by persons referred to in paragraph I of this Article shall be granted by the Government expeditiously and free of charge.

ARTICLE XII SETTLEMENT OF DISPUTES

1. The President shall make appropriate provisions for the settlement of:

- (a) disputes arising out of contracts and other disputes of a private law character to which the Court or the Commission is a party;
- (b) disputes involving any judge or officer of the Court or Counsel conducting proceedings before the Court enjoying immunity if such immunity has not been waived by the persons empowered in that behalf.

2. Any difference between the Government and the Court or the Commission arising out of the interpretation or application of this Protocol and which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a Tribunal of three arbitrators at the instance of any Contracting Party to this Protocol: one to be appointed by the Government, one to be appointed by the Registrar, and the third, who shall be the Chairman of the Tribunal, to be chosen by the **first** two arbitrators.

3. If any of the parties fails to appoint an arbitrator within six weeks of the decision to resort to arbitration, an arbitrator or arbitrators, as the case may be, shall be appointed for such purposes by the Secretary-General.

4. If the first two arbitrators within three weeks of their appointment fail to agree upon the third arbitrator, the Government or the Registrar shall request the Secretary-General to appoint the third arbitrator.

5. A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding.

6. The Chairman shall be empowered to settle all questions of procedure in any case where there is disagreement between the other arbitrators in respect thereto.

ARTICLE XIII ENTRY INTO FORCE

This Protocol shall enter into force immediately upon signature by at least three Contracting Parties to the Agreement.

ARTICLE XIV ACCESSION

1. Any Contracting Party to the Agreement may accede to this Protocol.

2. Instruments of accession shall be deposited with the Secretary-General who shall transmit certified copies to the Governments.

ARTICLE XV AMENDMENTS

1. Consultations in respect of any amendment to this Protocol may be initiated either by the Government or the Registrar.

2. Amendments shall enter into force upon their acceptance by all of the Contracting Parties.

ARTICLE XVI DEPOSITARY

This Protocol and any amendment thereto shall be deposited with the Secretary-General who shall transmit certified copies thereof to the Contracting Parties.

ARTICLE XVII IMPLEMENTATION

Each Contracting Party shall promptly inform the Conference of the action which it has taken to make effective the provisions of this Protocol in its territory.

**ARTICLE XVIII
WITHDRAWAL**

1. A Contracting Party which withdraws from the Agreement, may also withdraw from this Protocol by giving notice in writing to the Depositary who shall promptly notify the other Contracting Parties accordingly.

2. Withdrawal shall take effect five years after the date on which the notice was received by the Depositary, unless the Contracting Party before the withdrawal becomes effective notifies the Depositary in writing of the cancellation of its notice of withdrawal.

3. A Contracting Party withdrawing from this **Protocol** shall honour all obligations assumed by it before the effective date of its withdrawal.

FOURTH SCHEDULE**AGREEMENT ESTABLISHING THE CARIBBEAN COURT OF
JUSTICE TRUST FUND***The Parties to the Agreement Establishing the Caribbean Court of Justice:*

Cognisant that the Court is indispensable for the good governance of the Caribbean Community;

Recognising the critical role of the Court in the efficient administration of Justice in the territories of the Contracting Parties to the Agreement establishing the Court;

Recognising further that the Court is vital for the structured and efficient functioning of the CARICOM Single Market and Economy;

Noting the provisions of Article XXVIII of the Agreement establishing the Court which requires the expenses of the Court and the Commission to be borne by the Contracting Parties to the Agreement establishing the Court;

Conscious that the financial viability of the Court is essential for its efficiency, effectiveness and independence in the performance of its functions;

Bearing in mind the decision of the Twenty-third Meeting of the Conference of Heads of Government of the Caribbean Community concerning the capital and recurrent expenditures of the Court;

Determined to promote and safeguard the independence, integrity and credibility of the Court,

Have agreed as follows:

ARTICLE I INTERPRETATION

1. In this Agreement unless the context otherwise requires:

"Board" means the Board of Trustees of the Fund;

"Commission" means the Regional Judicial and Legal Services Commission established under Article V of the Agreement Establishing the Caribbean Court of Justice;

"Court" means the Caribbean Court of Justice established under Article III of the Agreement Establishing the Caribbean Court of Justice;

"fund" means the Caribbean Court of Justice Trust Fund established by Article II of this Agreement;

"Member" means a Contracting Party to the Agreement Establishing the Caribbean Court of Justice and in relation to which this Agreement is in force; and

"Secretary-General" means the Secretary-General of the Caribbean Community.

ARTICLE II

ESTABLISHMENT OF THE CARIBBEAN COURT OF JUSTICE TRUST FUND

The Caribbean Court of Justice Trust Fund is hereby established.

ARTICLE III PURPOSE OF FUND

The purposes of the Fund shall be to provide the resources necessary to finance the biennial capital and operating budget of the Court and the Commission in perpetuity.

ARTICLE IV RESOURCES OF THE FUND

1. **The** resources of the Fund shall consist of:

- (a) the contributions of Members;
- (b) income derived from operations of the Fund or otherwise accruing to the Fund, and
- (c) contributions of third parties being contributions which are not likely to prejudice the independence or integrity of the Court.

2. The Fund shall not solicit nor accept any grant, gift or other material benefit from any source except with the consent of all the Members.

3. Each original Member shall, upon the entry into force of this Agreement, contribute or cause to be contributed to the Fund the amount expressed in the scale of contributions set out in the Annex to this Agreement.

4. Each Member acceding to this Agreement shall make contributions to the Fund in accordance with the provisions set out in its instrument of accession.

5. The Board shall review the adequacy of the resources of the Fund, not later than two years after the entry into force of this Agreement and thereafter at least once within every succeeding biennium.

6. The Board shall communicate the results of the review to the Members.

7. Where upon such a review an inadequacy in resources is found to exist, the Members shall make additional contributions in the proportions reflected in the Annex to this Agreement.

8. Contributions of Members shall be made for the purpose of the Fund without restriction as to use.

9. Financing from the Fund shall be governed by considerations of economy, efficiency and cost effectiveness and the need to safeguard the independence and sustainability of the Court and the Commission.

10. For the purpose of this Article "original Member" means a State or territory of the Caribbean Community which was a Member on the date this Agreement entered into force.

ARTICLE V STRUCTURE OF THE FUND

The Fund shall have a Board of Trustees.

**ARTICLE VI
COMPOSITION OF THE BOARD OF TRUSTEES**

1. Subject to the provisions, of this Article, the Board of Trustees shall consist of the following or their nominees:

- (a) The Secretary-General;
- (b) The Vice-Chancellor of the University of the West Indies;
- (c) The President of the Insurance Association of the Caribbean;
- (d) The Chairman of the Association of Indigenous Barks of the Caribbean;
- (e) The President of the Caribbean Institute of Chartered Accountants;
- (f) The President of the Organisation of Commonwealth Caribbean Bar Associations;
- (g) The Chairman of the Conference of Heads of the Judiciary of Member States of the Caribbean Community;
- (h) The President of the Caribbean Association of Industry and Commerce; and
- (i) The President of the Caribbean Congress of Labour.

2. There shall be a Chairman and Vice-Chairman of the Board elected by the Board from among its members. The Chairman and Vice-Chairman shall hold office for a period of three years.

3. Where a trustee —

- (a) resigns or dies;
- (b) becomes bankrupt or otherwise insolvent;
- (c) becomes unwilling or refuses to serve as a trustee;
- (d) is convicted of an offence involving dishonesty; or
- (e) in the unanimous opinion of the other members of the Board, becomes unfit or incapable to act as such, the competent institution

shall nominate a person of comparable status or experience to act in place of that trustee.

4. Where an institution fails to nominate a trustee in accordance with paragraph 3 or an institution mentioned in paragraph 1 ceases to exist, the Secretary-General may designate a person or persons, as the case may require, to act as a trustee.

5. Where more than three designations by the Secretary-General are required to make up the full complement of the Board of Trustees, the Members may, by consensus, propose an amendment to the Agreement in accordance with Article XII.

6. A trustee may resign by transmitting a written notice in that behalf to the Chairman of the Board. Where the Chairman wishes to resign from the office of Chairman or Trustee, such notice shall be transmitted to the Vice-Chairman of the Board.

ARTICLE VII FUNCTIONS OF THE BOARD

1. The Board shall be responsible for directing the operations of the Fund, and, for this purpose shall, in particular, exercise the following functions:

- (a) evaluate the performance of the Fund;
- (b) establish with the approval of the Members guidelines for prudent investment of the resources of the Fund;
- (c) establish with the approval of the Members the financial regulations of the Fund;
- (d) appoint the Executive Officer of the Fund;
- (e) authorise the provision of resources required for the biennial capital and operating budget of the Court and the Commission submitted by the Executive Officer;
- (f) appoint an investment manager or managers to manage the investments of the Fund in accordance with the investment guidelines for the Fund;
- (g) approve the annual report on the performance of the Fund for transmission to the Members

- (h) approve the capital and operating annual budget of the Fund;
- (i) appoint an external Auditor of the Fund;
- (j) submit an annual report to the Members, and
- (k) perform such other functions as may be necessary or appropriate for the operations of the Fund

(2) The Board may exercise such powers and establish such rules as may be necessary or appropriate in furtherance of its purpose and functions consistent with this Agreement.

ARTICLE VIII PROCEDURES OF THE BOARD

1. The Board shall hold two regular meetings each year and may hold such other meeting as the Board considers necessary
2. The Board shall elect a Chairman and one Vice-chairman at its first regular annual meeting.
3. Each member of the Board shall have one vote.
4. A simple majority of the members of the Board shall constitute the quorum for any meeting of the Board.
5. Subject to paragraph 6 of this Article the Board shall take decisions by consensus. A proposal shall be deemed to have been adopted by consensus if no member of the Board raised a formal objection against it during the meeting.
6. Where the Chairman of the Board determines that a decision cannot be reached by consensus, the Chairman shall submit the matter to a vote. In such a case the Board shall take its decision by a majority of two-thirds of its members.
7. Subject to this Agreement, the Board may adopt its own rules of procedure.

ARTICLE VIII bis THE SEAL OF THE FUND

1. The Fund shall have and use as occasion may require, a Seal having a device or impression with the inscription "Caribbean Court of Justice Trust Fund."

2. The Seal of the Fund shall be kept in the custody of the Executive Officer and shall be affixed to documents pursuant to a resolution of the Board in the presence of the Chairman of the Board and the Executive Officer.

3. The Seal shall be authenticated by the signature of the Chairman of the Board and the Executive Officer.

ARTICLE IX **FUNCTIONS OF THE EXECUTIVE OFFICER**

The Executive Officer shall report to the Board and shall be invited to participate in all its meetings, except where the Board considers it inexpedient, having regard to the matters on the agenda for any meeting. The Executive Officer shall:

- (a) prepare and submit to the Board the capital and operating annual budget of the Fund;
- (b) manage the day-to-day operations of the Fund;
- (c) employ staff and engage the services of consultants;
- (d) prepare and submit to the Board for submission to the Members:
 - (i) a quarterly report on the performance of the Fund;
 - (ii) an annual report on the operations of the Fund;
- (e) submit to the Board a statement of receipts and expenditures relating to the Fund during the preceding fiscal year as audited by the External Auditor;
- (f) represent the Fund in relation to third parties; and
- (g) perform any other functions as may be assigned by the Board from time to time.

ARTICLE X **JURIDICAL PERSONALITY AND LEGAL CAPACITY**

1. The Fund shall possess **full** juridical personality and in particular capacity to:

- (a) contract;
- (b) acquire and dispose of immovable and movable property; and

(c) institute legal proceedings.

2. The principal office of the Fund shall be located in Trinidad and Tobago.

3. The Fund shall conclude an agreement with the Government of Trinidad and Tobago on the status, privileges and immunities of the Fund. The agreement shall be approved by the Board, and signed by the Chairman.

ARTICLE XI **PRIVILEGES AND IMMUNITIES**

1. To enable the Board and Officers of the Fund to fulfill the functions with which it is entrusted, the status, immunities and privileges provided in this Article shall be accorded to the Fund in the territories of each Member.

2. The Fund shall enjoy immunity from every form of legal process. Its property and assets, wheresoever located and by whomsoever held, shall be immune from all forms of seizure, attachment or execution.

3. The archives of the Fund shall be inviolable.

4. To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Fund shall be free from restrictions, regulations, controls and moratoria of any nature.

5. The official communications of the Fund shall be accorded by each Member the same treatment that it accords to the official communications of other Members.

6. The Fund, its assets, property, income and its operations and transactions, shall be exempt from all taxation, all customs duties on goods imported for its official use and all other imposts.

7. Notwithstanding the provisions of paragraph 6 of this Article, the Fund will not claim exemption from imposts that are no more than charges for public utility services.

8. Where the Fund has paid any duties, taxes or other imposts, the Members shall make appropriate administrative arrangements for the remission or return of the amount of duty, tax or imposts paid.

9. Articles imported under an exemption from customs duties as provided by paragraph 6 of this Article, or in respect of which a remission or return of duty

or tax has been made under paragraph 8, shall not be sold in the territory of the Member which granted the exemption, remission or return except under **conditions** agreed with that Member.

10. No tax shall be levied on or in respect of salaries and emoluments paid by the Fund to members of the Board or other officers, but Members reserve the right to tax their own citizens or **nationals** or persons permanently resident in the territories of such Members.

11. All officers of the Fund:

- (a) shall be exempt from the payment of **income** taxes except where that officer is a citizen, permanent resident or national of the State granting the exemption;
- (b) shall be accorded such immunities from immigration restrictions, alien registration requirements and national service obligations, and such facilities as regards exchange control restrictions, as are not less favourable than those accorded by the Member concerned to the representatives, officials and employees of comparable rank of any other Member;
- (c) shall be given such repatriation in time of international crisis as are not less favourable than those accorded by the Member concerned to the representatives, officials and employees of comparable rank of any other **Member**.

12. The Trustees:

- (a) shall be immune from all legal process in respect of the **lawful** discharge of their responsibilities under this Agreement;
- (b) shall be accorded immunities from immigration restrictions and such facilities as would ensure the proper discharge of their functions.

13. The immunities, exemptions and privileges provided in this Article are granted in the interests of the Fund. The Board may waive to such extent and upon such conditions as it may determine, the immunities, exemptions and privileges provided in this Article in cases where such action would, in its opinion, be appropriate in the best interests of the Fund.

14. The Executive Officer shall have the right and the duty to waive any immunity, exemption or privilege in respect of any other officer where, in his opin-

ion, the immunity, exemption or privilege would impede the course of justice and can be waived without prejudice to the interests of the Fund. In similar circumstances and under the same conditions, the Board shall have the right and duty to waive any immunity, exemption or privilege respecting the Executive Officer, and in the case of members of the Board, the Members shall waive such immunity.

15. The Members shall take such action as is necessary in their own territories for the purpose of making effective in terms of their law the principles set forth in this Article and shall inform the Fund of the detailed action which they have taken.

ARTICLE XII AMENDMENT

Any Member may submit to the Board a proposal to amend a provision of this Agreement. The Board shall promptly submit the proposal to all other Members. The amendment shall take effect on the thirtieth day following the date on which the Secretary-General (hereinafter referred to as "the Depositary") has received the approval of three-quarters of the Members.

ARTICLE XIII SIGNATURE

This Agreement shall be open for signature by the States mentioned in the Annex hereto.

ARTICLE XIV ENTRY INTO FORCE

This Agreement shall enter into force on signature by the States mentioned in the Annex hereto.

ARTICLE XV RESERVATIONS

No reservations may be entered in respect of any provision of this Agreement.

ARTICLE XVI ANNEX

The Annex to this Agreement shall constitute an integral part of this Agreement.

**ARTICLE XVII
ACCESSION**

1. Any Member State of the Caribbean Community or any State or territory invited by the Conference of Heads of Government of the Caribbean Community to participate in the Court may become a Member by acceding to this Agreement on terms and conditions agreed between it and the Fund. Accession shall be effected by the deposit of an instrument of accession approved by the Board. This Agreement shall enter into force for the acceding Member on the thirtieth day following the date on which its instrument of accession was deposited with the Depository.

2. Where any State accedes to this Agreement and undertakes to discharge its financial obligations to the Trust Fund, the Annex shall be amended to reflect such accession and undertaking.

**ARTICLE XVIII
WITHDRAWAL**

1. Where a Member withdraws from the Agreement Establishing the Caribbean Court of Justice, such a Member shall be deemed to have withdrawn from this Agreement with effect from the date of that Member's withdrawal from the Agreement establishing the Caribbean Court of Justice.

2. A Member withdrawing from this Agreement shall honour all obligations assumed by it before the effective date of its withdrawal.

**ARTICLE XIX
DEPOSITARY AND REGISTRATION**

1. This Agreement shall be deposited with the Depository.

2. This Agreement shall be registered in accordance with the provisions of Article 102, of the Charter of the United Nations.

ANNEX**CONTRIBUTION OF THE MEMBERS OF THE TRUST FUND**

MEMBERS	PER CENT SHARE
Antigua and Barbuda	2.11
Barbados	12.77
Belize	3.44

ANTIGUA 48 *The Caribbean Court of Justice* No. 10 of 2004.
AND
BARBUDA *Act, 2004.*

Dominica	2.11
Grenada	2.11
Guyana	8.33
Haiti	1.68
Jamaica	27.09
Montserrat	0.42
St. Kitts and Nevis	2.11
Saint Lucia	2.11
St. Vincent and the Grenadines	2.11
Suriname	3.92
Trinidad and Tobago	29.73
TOTAL	100.00

Passed the House of Representatives
this 26th day of August, 2004.

D. Giselle Isaac-Arrindell,
Speaker.

Y. Henry,
*Acting Clerk to the House of Represen-
tatives.*

Passed the Senate this 3rd day of
September, 2004.

Edmond A. Mansoor,
President.

Y. Henry,
Acting Clerk to the Senate.

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—By Authority, 2004.