

THE CARIBBEAN INVESTMENT FUND ACT

Act
13 of 1998.

[23rd March, 2004.]

1. This Act may be cited as the Caribbean Investment Fund Act. Short title.

2. In this Act— Interpreta-
tion.
 - “the Fund” means the Caribbean Investment Fund established by the Fund Agreement;
 - “the Fund Agreement” means the Agreement establishing the Caribbean Investment Fund as amended by the Supplemental Agreement, the original of which is deposited with the Secretary-General of the Caribbean Community Secretariat and of which the text of the original clauses is set out in Part I of the Schedule to this Act; Schedule.
 - “Minister” means the Minister responsible for investment;
 - “the Supplemental Agreement” means the Agreement amending the Fund Agreement the original of which is deposited with the Secretary-General of the Caribbean Community Secreteriat and of which the text of the clauses is set out in Part II of the Schedule to this Act.

3. Acceptance by the Government of the Fund Agreement is hereby approved. Approval of
Fund
Agreement.

4. The provisions of clauses 4.2 and 12.2, of the Fund Agreement shall have the force of law in Jamaica. Certain pro-
visions of
Fund
Agreement
given force
of law in
Jamaica.

Power of
Minister to
make order.

5. The Minister may, by order, make such provisions as he may consider necessary or expedient for giving effect to any provisions of the Fund Agreement.

Amendment
of Schedule
and matters
consequen-
tial thereon.

6.—(1) Where any amendment to the Fund Agreement is accepted by the Government, the Minister may, by order, amend the Schedule by including therein the amendment so accepted.

(2) Any order made under this section may contain such consequential, supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purpose of giving due effect to the amendment accepted as aforesaid and, without prejudice to the generality of the foregoing, may contain provisions amending references in this Act to specific provisions of the Fund Agreement.

(3) Every order made under this section shall be subject to affirmative resolution.

(4) Where the Schedule is amended pursuant to this section, any reference in this Act or any other instrument to the Agreement shall unless the context otherwise requires be construed as a reference to the Agreement as so amended.

SCHEDULE

(Sections 2 and 6)

PART I

Agreement between the ICWI Group and CARICOM Governments on the Establishment of the Caribbean Investment Fund

This Agreement made between the Governments of the Member States and Associate Members of the Caribbean Community (CARICOM) listed in paragraph 1 of the Schedule to this Agreement which are signatories to this Agreement (hereinafter referred to as "the Signatory States") and ICWI Group Limited of 2 St. Lucia Avenue, Kingston 5 in the parish of St. Andrew, Jamaica (hereinafter called "ICWI") WITNESSETH as follows:—

1. OBJECTIVES:

1.1 To establish through a public company an investment fund or series of investment funds in United States Dollars to be known as the Caribbean Investment Fund (hereinafter called "the Fund") the main objects of which shall be the investment in private sector majority owned and controlled companies and corporations located in the Signatory States listed in the Schedule hereto preferably those which are listed or which have committed to the list on a stock exchange in any of the Signatory States. Such investment shall include but not be limited to investment by way of a new stock and share issues, joint venture participation, project financing, and loan funding.

1.2 The main thrust of investment by the Fund shall be the encouragement and promotion of projects involving new ventures, business expansion and plant expansion (including divestment and privatisation of public sector owned and/or controlled companies, corporations and authorities) which are geared towards increasing exports and/or fostering import substitution and/or increasing hard currency earnings and/or increasing production of goods or services which are projected to stimulate economic growth in the Signatory States in which the investment and/or funding is made.

2. ESTABLISHMENT AND MANAGEMENT OF THE FUND:

2.1 ICWI shall be responsible for the establishment of the Fund which shall be capitalized at a minimum of Fifty Million United States Dollars (US\$50,000,000) in two tranches. The first tranche or a minimum of US\$25,000,000 shall be subscribed and paid up within 365 days of the entry into force of this Agreement. The second tranche comprising the difference between the capital of the Fund and the amount of the first tranche shall be subscribed and paid up within two years of the latest date for subscription of the first tranche.

2.2 ICWI shall be responsible for promoting the Fund and for procuring suitable managers of the Fund. The appointment of members of the Board of the Fund shall be made in accordance with the Charter and By-Laws of the Fund.

2.3 Unless the Signatory States otherwise determine, if the first tranche is not fully subscribed and paid up within the period required by Clause 2.1 hereof this Agreement will forthwith terminate.

2.4 In the event that the Signatory States determine that this Agreement should be terminated as provided in Clause 2.3 hereof this Agreement shall terminate without ICWI incurring any liability whatsoever to the Signatory States.

2.5 In the event that the Signatory States determine that this Agreement should not be terminated as provided in Clause 2.3 hereof then such of the first tranche as has not been subscribed and paid up shall form part of the second tranche to be subscribed and paid up within the further period required by Clause 2.1 hereof.

2.6 If the second tranche (including such amount of the first tranche pursuant to Clause 2.5 if applicable) is not fully subscribed within the period required by Clause 2.1 hereof ICWI shall not incur any liability whatsoever to the Signatory States and the provisions of Clause 12 shall cease to apply, unless the Signatory States otherwise determine.

3. SUBSCRIPTION OF CAPITAL TO THE FUND:

3.1 The investment in the Fund shall be in hard currency. For this purpose it shall be denominated in US Dollars.

4. CONCESSIONS AND PRIVILEGES OF THE FUND:

4.1 ICWI and the Signatory States recognize that the grant of certain concessions and privileges to the Fund for a certain period of time will facilitate the establishment and operation of the Fund and enhance its viability and that the grant of concessions and privileges is subject to legislative and/or administrative authority as required in the respective Signatory States.

4.2 In consideration of the Fund becoming duly established as provided herein and of the Fund pursuing the objectives of Clause 1.2 in the Signatory States each Signatory State hereby undertakes to ensure that the following concessions and privileges are granted to and may be enjoyed by the Fund in its territory:—

4.2.1 The Fund's operations may be established in any Signatory State and the Signatory States will promptly provide all consents and approvals necessary for the establishment of the Fund's operations in their respective territories without any restrictions;

4.2.2 The Fund shall be entitled to acquire, hold and dispose of both real and personal property whether by way of purchase, mortgage, charge, transfer, sale or otherwise without any restriction;

4.2.3 The shares of the Fund shall be freely transferable both within and outside of the Signatory States to residents and non-residents thereof without any restrictions;

4.2.4 The Signatory States will promptly provide all consents and approvals necessary in order to permit or provide that any restrictions (including without limitation exchange control restrictions) contained in any legislation or governmental or statutory order from time to time in force in any of the Signatory States shall not be applicable to:—

4.2.4.1 any investment or subscription in the Fund whether made inside or outside and whether made by residents or non-residents of Signatory States;

4.2.4.2 gold and any currency held by the Fund whether issued by the Signatory States or not;

4.2.4.3 securities of any nature whatsoever including but not limited to shares, stocks, bonds, notes, debentures, debenture stocks, mortgages, charges or liens on realty, and personalty and units under a unit trust scheme whether issued by the Fund as part of its capitalization or issued to the Fund as a result of any investment by the Fund including investment in or funding provided by the Fund in any project in a Signatory State;

4.2.4.4 any real and personal property and any certificates of title in relation thereto which form part of or affecting any project in which the Fund has invested or provided funding in a Signatory State;

4.2.4.5 the remittance by the Fund of any profits, dividends, capital gains, interest and other income and revenues of whatsoever nature of and in the Fund and the proceeds of any sales, transfer or other disposition of any shares of the Fund and of any securities issued by or to the Fund.

4.2.5 The Signatory States will promptly provide all consents and approvals necessary in order to permit or provide that no taxes, duties, levies or imposts shall be payable on or levied in respect of any or all of the following:—

- 4.2.5.1 Subscriptions to or investments in the Fund and any securities issued by the Fund;
- 4.2.5.2 Revenues, income, dividends, interest or profits of whatsoever nature accruing to the Fund from any project in which the Fund has made on investment and/or provided funding;
- 4.2.5.3 The proceeds of sale, transfer or other disposition of any securities issued to the Fund as a result of any investment in and/or funding to any project by the Fund pursuant to the objectives for which the Fund was established;
- 4.2.5.4 Any revenue, profits (including capital profits), capital gains, and income generated by the Fund;
- 4.2.5.5 Remittances of any interest, dividends, distributions or other payments paid by the Fund to any subscriber, investor or shareholder in the Fund.

4.3 Unless otherwise agreed by the parties in writing, the Signatory States and each of them shall not be obliged to extend any or all of the concessions and privileges which they are obliged to grant to the Fund beyond ten (10) years from the date of the subscription of the second tranche under Clause 2.1 hereof.

4.4 At the expiration of 5 years from the date of the subscription of the second tranche under Clause 2.1 hereof the parties shall either directly or through the Advisory Board consult and discuss the desirability of extending the concessions and privileges granted to and enjoyed by the Fund and if considered desirable the concessions and privileges granted to and enjoyed by the Fund shall be duly extended for such period as the Signatory States consider appropriate.

5. LIMITATION ON INVESTMENT IN A PROJECT:

5.1 The Fund in consultation with the Fund's managers shall from time to time set the investment policy of the Fund in projects and the minimum and maximum investment by the Fund in any single project.

6. POLICY ON INVESTMENT IN SIGNATORY STATES:

6.1 The Fund in consultation with the Fund's managers shall set the investment policy of the Fund in projects in Signatory States but will nevertheless give due consideration to investing in every participating Signatory State from time to time. It is acknowledged that there is no obligation on the Fund and/or the Fund's managers to invest in any particular Signatory State.

7. START UP DATE:

7.1 The proposed start up date of the Fund is 90 days after the entry into force of this Agreement.

8. PROMOTION OF CAPITAL MARKETS:

8.1 The Fund and the Fund's managers will use their best endeavours to ensure that generally investment by the Fund will be in projects which will promote and enhance the capital markets in the Signatory States.

9. INVESTMENT OF FUNDS:

9.1 Not less than 75 per cent of the funds from the first tranche and not less than 75 per cent of the total funds from both tranches shall, within two and three years, respectively, of the entry into force of this Agreement, be invested in projects contemplated in Clause 1.

9.2 If the Fund fails to satisfy the requirements of Clause 9.1 the provisions of Clause 12 shall cease to apply unless the Signatory States otherwise determine.

10. BORROWING BY THE FUND:

10.1 Nothing contained in this Agreement shall restrict the Fund's right to borrow money from time to time and use same or any part thereof to invest projects contemplated by Clause 1.

11. ADVISORY BOARD:

11.1 There shall be an Advisory Board consisting of not more than 7 members to be appointed by the countries listed in Item 1 of the Schedule which become parties to this Agreement. Subject to Clause 11.2, each participating country shall have the right to appoint one (1) member to the Advisory Board.

11.2 For the purposes of Clause 11.1 such member countries of the Organization of Eastern Caribbean States (OECS) and such Associate Members which become parties to this Agreement shall have the right collectively to appoint only one (1) member to the Advisory Board.

11.3 The function of the Advisory Board shall be to monitor the performance of the Fund and to liaise between the Signatory States and the Fund on matters relating to this Agreement and the performance of the Fund.

11.4 The Fund will provide written quarterly reports to the Advisory Board indicating the investments in and/or funding provided to projects by the Fund and the investment of its funds in non-project activities. The reports shall also include an outline of the status of projects being investigated for investment and/or funding.

12. EXCLUSIVITY OF FUND:

12.1 The Signatory States recognize that in order for the Fund to be successful and meet its objectives the Fund needs exclusivity for investment in the Signatory States for a period of not less than 5 years and to this end undertake not to grant to any other Caricom Regional Fund or institution, that is to say, a CARICOM Regional Fund or institution established by an Agreement open for signature by all CARICOM Member States, the concessions and privileges or any of them granted to the Fund under Clause 4.

12.2 During the existence of the Fund the Signatory States undertake not to grant to any other fund or institution which is established to operate regionally in the Signatory States in competition with the Fund any concession and privileges more favourable than those granted to the Fund from time to time.

13. ENTRY INTO FORCE:

13.1 Subject to Clause 13.2 this Agreement shall enter into force when it has been duly executed by ICWI and any number of the Signatory States listed in the Schedule hereto which number must include any three of the States of Barbados, Guyana, Jamaica and Trinidad and Tobago.

13.2 If this Agreement is not executed pursuant to Clause 13.1 within 60 days of the date that the CARICOM Secretary-General declares it to be open for signature this Agreement shall not enter into force unless ICWI and the prospective Signatory States determine otherwise.

13.3 None of the parties hereto shall incur any liability to the other until after the date that this Agreement shall enter into force.

14. ADDITIONAL PARTIES TO THE AGREEMENT:

14.1 The parties hereto affirm that it is their intention that upon the incorporation of the Fund the rights and obligations to be carried out and performed by the Fund and the Signatory States under this Agreement shall be binding on each of the Fund and the Signatory States. To this end the Parties hereto hereby acknowledge and agree each with the other that on its incorporation the Fund will become a party to this Agreement by depositing with the Secretary-General of the Caribbean Community at the Caribbean Community Secretariat a written notice duly executed by the Fund under its common seal stating that it undertakes to be bound by the terms and conditions of this Agreement as if it had been a signatory hereto at the time of execution by the other parties. The deposit of the abovementioned notice will create a valid and binding Agreement between the Fund and the Signatory States, collectively and individually, as if the Fund had been an original party and signatory hereto.

14.2 The parties hereto acknowledge and recognize that non-signatory Member States or Associate Members of CARICOM listed in Item 1 of the Schedule hereto at the time this Agreement enters into force and countries to which paragraph 2 of the Schedule to this Agreement refers may wish to become parties to this Agreement subsequent to the entry into force of this Agreement. The Parties hereto hereby acknowledge and agree each with the other that any Member State or Associate Member of CARICOM shall be entitled at any time to sign the counterpart of the Agreement deposited with the Secretary-General of the Caribbean Community at the Caribbean

Community Secretariat pursuant to Clause 17 below and the signing thereof by the Government of such Member State or Associate Member and each of them as if such Member State or Associate Member had been an original party and signatory hereto.

15. RELEASE OF OBLIGATIONS:

15.1 After delivery of the written notice by the Fund under Clause 14.1 and after the date for subscription of the first and second tranche referred to in Clause 2.1 ICWI shall be deemed to have performed all of its obligations under this Agreement and shall be released from this Agreement.

16. AMENDMENTS:

16.1 This Agreement may be amended by consent of the parties hereto.

16.2 No amendment to this Agreement shall be binding on the parties unless it is in writing and duly executed by all the parties to the Agreement. Any such document amending this Agreement shall be deposited with the Secretary-General of the Caribbean Community at the Caribbean Community Secretariat within 30 days of its execution.

17. DEPOSIT OF AGREEMENT:

17.1 This Agreement shall be deposited with the Secretary-General of the Caribbean Community and the Secretary-General shall furnish each party to this Agreement with a certified copy thereof.

18. JURISDICTION FOR REGISTRATION OF THE FUND:

18.1 The parties hereto agree that, at the discretion of ICWI and the Fund, the Fund shall be registered in a jurisdiction highly conducive to the enhancement of the attractiveness of the Fund in the eyes of prospective investors.

19. ADMINISTRATIVE HEADQUARTERS OF THE FUND:

19.1 The Administrative Headquarters of the Fund shall be in Jamaica.

20. CHOICE OF LAW:

20.1 The parties hereto agree that prior to the written notice by the Fund under Clause 14.1, this Agreement shall be governed by the laws of Jamaica.

20.2 The parties hereto agree that upon delivery of the written notice by the Fund under Clause 14.1, this Agreement shall be governed by the laws of England.

21. ARBITRATION:

21.1 The parties hereto agree that:—

21.1.1 In the event of controversy, dispute or question arising out of or in connection with or relation to this Agreement of its interpretation, performance or non-performance or any breach thereof, the matter shall first be subjected to negotiation.

21.1.2 If the controversy, dispute or question is not resolved by negotiation pursuant to Clause 21.1.1 hereof within 30 days, it shall be referred to arbitration.

21.1.3 All controversy, dispute or questions arising in connection with this Agreement save and except as hereinafter provided shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules.

21.1.4 If any event giving rise to any controversy, dispute or question arises prior to ICWI being released under Clause 15.1, then such controversy, dispute or question shall be finally settled by arbitration before a single arbitrator under the rules of arbitration in accordance with the Arbitration Act of Jamaica as amended from time to time.

SCHEDULE

1. Antigua and Barbuda

The Bahamas

Barbados

Belize

Dominica

Grenada
 Guyana
 Jamaica
 Montserrat
 St. Kitts/Nevis
 St. Lucia
 St. Vincent and the Grenadines
 Trinidad and Tobago
 The British Virgin Islands
 The Turks and Caicos Islands

2. Any other country which becomes a Member State of the Caribbean Community or an Associate Member of the Caribbean Community.

PART II

Supplemental Agreement to the Agreement Establishing the Caribbean Investment Fund

This Agreement made Between the Governments of the Member States and Associate Members of the Caribbean Community (CARICOM) which are signatories to the Agreement Establishing the Caribbean Investment Fund which entered into force on October 15, 1993 (hereinafter referred to as the Signatory States) and ICWI Group Limited of 28-48 Barbados Avenue, Kingston 5 in the Parish of St. Andrew, Jamaica (hereinafter called ICWI) WITNESSETH AS FOLLOWS: That the Parties hereto have agreed that the Agreement Establishing the Caribbean Investment Fund which entered into force on October 15, 1993 (hereinafter referred to as the Original Agreement) is hereby amended pursuant to Clause 16 of the Original Agreement by this Agreement (hereinafter referred to as the Supplemental Agreement) in the following material particulars:—

1. OBJECTIVES:

1.1 The objectives of the Caribbean Investment Fund (hereinafter called "the Fund") as described in the Original Agreement shall be extended to permit investment by the Fund, of up to a maximum of

40% of the capital thereof in the countries listed in the Schedule to this Supplemental Agreement, provided that the managers of the Fund, after due consideration, have reasonably concluded that the investment opportunities in the Signatory States as contemplated by the objectives of the Original Agreement will, from time to time, be insufficient to provide a competitive return to investors in the Fund.

1.2 The Fund shall at all times give priority to investments of equal opportunity to investment in the Signatory States under the Original Agreement.

1.3 The objectives established in the Original Agreement shall equally apply to investment by the Fund in the countries listed in the Schedule to this Agreement.

2. ESTABLISHMENT OF THE FUND:

2.1 ICWI shall establish the Fund which shall be capitalised at a minimum of Fifty Million United States Dollars (US\$50,000,000) within 365 days of this Supplemental Agreement entering into force. Subscription shall be in two tranches; the first tranche or a minimum of US\$25,000,000 shall be subscribed and paid up within 180 days of the entry into force of this Supplemental Agreement. The second tranche comprising the difference between the capital of the Fund and the amount of the first tranche shall be subscribed and paid up within 365 days of the entry into force of the Supplemental Agreement. In the event that the Fund is not fully capitalised within 365 days of this Supplemental Agreement entering into force the Original Agreement and this Supplemental Agreement shall forthwith terminate unless the Signatory States otherwise determine.

2.2 In the event that the Signatory States determine that the Original Agreement and this Supplemental Agreement should be terminated as provided in Clause 2.1 hereof the Original Agreement and this Supplemental Agreement shall terminate without ICWI incurring any liability whatsoever to the Signatory States.

3. CONCESSIONS AND PRIVILEGES OF THE FUND:

3.1 The period of ten (10) years referred to in Clause 4.3 of the Original Agreement shall run from the date of the establishment of the Fund as provided herein.

3.2 The period of five (5) years referred to in Clause 4.4 of the Original Agreement shall run from the date of the establishment of the Fund as provided herein.

4. INVESTMENT OF FUNDS:

4.1 Clause 9.1 of the Original Agreement shall be amended to provide that not less than 75% of the minimum amount to be invested in the Signatory States pursuant to this Supplemental Agreement be invested in projects in the Signatory States contemplated in Clause 1 of the Original Agreement within three years from the establishment of the Fund failing which the provisions of Clause 12 "EXCLUSIVITY OF FUND" of the Original Agreement shall cease to apply unless the Signatory States otherwise determine.

5. ENTRY INTO FORCE:

5.1 This Supplemental Agreement shall enter into force when it has been duly executed by ICWI and the Signatory States which have executed the Original Agreement.

5.2 If this Supplemental Agreement is not executed pursuant to Clause 5.1 hereof within 60 days of the date the CARICOM Secretary-General declares it to be open for signature this Supplemental Agreement shall not enter into force unless ICWI and the Signatory States determine otherwise.

5.3 None of the Parties to the Original Agreement shall incur any liability to the other if this Supplemental Agreement shall not enter into force.

6. ADDITIONAL PARTIES TO THIS SUPPLEMENTAL AGREEMENT:

6.1 The Parties hereto acknowledge and recognise that non-Signatory Member States or Associate Members of CARICOM listed in Item 1 of the Schedule of the Original Agreement at the time this Supplemental Agreement enters into force and countries to which paragraph 2 of the Schedule to the Original Agreement refers may wish to become Parties to this Supplemental Agreement subsequent to its entry into force. The Parties hereto hereby acknowledge and agree with each other that any Member State or Associate Member of CARICOM shall be entitled at any time to sign the counterpart of this Supplemental Agreement deposited with the Secretary-General of the Caribbean Community Secretariat pursuant to Clause 8.1 hereof and the signing thereof by the Government of such Member State or Associate Member and each of them as in such Member State or Associate Member had been an original party and signatory hereto.

7. RELEASE OF OBLIGATIONS:

7.1 After delivery of the written notice by the Fund pursuant to Clause 14.1 of the Original Agreement and after the time provided for subscription to the Fund referred to in Clause 2.1 hereof ICWI shall, notwithstanding anything to the contrary contained in the Original Agreement and this Supplemental Agreement, be deemed to have performed all its obligations under the Original Agreement and this Supplemental Agreement and shall be released therefrom.

8. DEPOSIT OF SUPPLEMENTAL AGREEMENT:

8.1 This Supplemental Agreement shall be deposited with the Secretary-General of the Caribbean Community and the Secretary-General shall provide each party to this Supplemental Agreement with a certified copy thereof.

SCHEDULE

Columbia
Costa Rica
Cuba
Dominican Republic
El Salvador
Guatamala
Haiti
Honduras
The United States of Mexico
Aruba and the Netherlands Antilles
Nicaragua
Panama
Venezuela
Bermuda
Cayman Islands