

**THE CARIBBEAN COURT OF JUSTICE (ORIGINAL
JURISDICTION) ACT, 2005**

(Act 7 of 2005)

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SCHEDULE.

JAMAICA

No. 17 2005

I assent,

[L.S.]

(Sgd.) H. F. Cooke
April 15, 2005

AN ACT to Provide for the implementation of the provisions of the Agreement establishing the Caribbean Court of Justice which confer original jurisdiction on the Court, and for connected matters.

*The date notified by the Minister
bringing the Act into operation*

[]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and with the authority of the same, as follows:—

1. This Act may be cited as the Caribbean Court of Justice (Original Jurisdiction) Act, 2005, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title
and com-
mencement.

PART I. *Preliminary*

2. 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 day of February, 2001, as amended by the Protocol to the Agreement Establishing the Caribbean Court of Justice Relating to the Juridical Personality and Legal Capacity of the Court signed at Montego Bay, Jamaica on the 4th day of July, 2003, of which the text of the Articles is set out in the Schedule;

Schedule.

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

“Community” means the Caribbean Community established by Article II of the Treaty;

“Contracting Party” means a Contracting Party within the meaning of Article I of the Agreement;

“Court” means the Caribbean Court of Justice established by Article III of the Agreement acting, subject to the provisions of this Act, in the exercise of the original jurisdiction conferred on it in Part II of the Agreement;

“judgment” includes a decree, ruling, order or decision;

“national” means a person who—

- (a) is a citizen of Jamaica;
- (b) has a connection with Jamaica which entitles him to be regarded as belonging to or, if it be so expressed, as being a native or resident of Jamaica for the purposes of the laws relating to immigration; or
- (c) is a company or other legal entity constituted in Jamaica in accordance with the laws of Jamaica and which Jamaica regards as belonging to it, provided that such company or other legal entity has been formed for gainful purposes and has its registered office and central administration and carries on substantial activity within the Community and is substantially owned and effectively controlled by persons mentioned in paragraphs (a) and (b), and for

the purposes of this paragraph, a company or other legal entity is—

- (i) substantially owned if more than 50% of the equity interest therein is beneficially owned by nationals mentioned in paragraph (a) or (b);
- (ii) effectively controlled if nationals mentioned in paragraphs (a) and (b) have the power to name a majority of its directors or otherwise legally to direct its actions;

“party” means any party to proceedings before the Court;

“President” means the President of the Court;

“record” means the aggregate of documents relating to proceedings before the Court, including the pleadings, evidence, judgments and exhibits required by Rules of Court to be filed or laid before the Court;

“Rules of Court” means the Rules of Court made pursuant to Article XXI of the Agreement;

“Supreme Court” means the Supreme Court of Judicature of Jamaica;

“Treaty” means the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy signed in the Bahamas on July 5, 2001.

3. The provisions of the Agreement other than paragraph 1 (b) of Article III, paragraph 1 (c) of Article XII, Article XIV, Article XXV and paragraph (b) of Article XXVI thereof (hereinafter referred to as the applicable provisions of the Agreement), shall have the force of law in Jamaica.

Certain provisions of Agreement given force of law in Jamaica.

4. The Minister may, by order, subject to affirmative resolution, make such provisions as may be necessary for carrying into effect any of the applicable provisions of the Agreement.

Power of Minister to make order.

PART II. *Jurisdiction of Court*

Jurisdiction
of Court.

5. Subject to the provisions of this Act, the Court shall have the original jurisdiction provided for in this Act and as is conferred on it in accordance with Part II of the Agreement.

Original
jurisdiction
of Court.

6.—(1) The Court shall, in the exercise of its original jurisdiction, have exclusive jurisdiction to—

(a) hear and deliver judgments on—

- (i) disputes between Contracting Parties;
- (ii) disputes between any of the Contracting Parties and the Community;
- (iii) applications by nationals in accordance with subsection (2);

(b) deliver advisory opinions at the request of a Contracting Party or the Community,

concerning the interpretation and application of the Treaty.

(2) Nationals 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 enure to the benefit of such persons directly;
- (b) the persons concerned have established that they have been prejudiced in respect of the enjoyment of the benefit mentioned in paragraph (a);
- (c) the Crown, being entitled to espouse the claim in proceedings before the Court, has omitted or declined to espouse the claim, or has expressly agreed that the persons concerned may espouse the claim instead of the Crown; and
- (d) the Court has found that the interest of justice requires that the persons be allowed to espouse the claim.

(3) The Court in exercising its original jurisdiction, shall apply such rules of international law as may be applicable.

7.—(1) Where a court or tribunal is seized of an issue whose resolution involves a question concerning the interpretation or application of the Treaty, the court or tribunal concerned may, before delivery of its judgment in the matter, in writing request the designated authority to refer the question to the Court for an advisory opinion to be given.

Referral for
advisory
opinion.

(2) In this section—

"designated authority" means the public officer or authority designated by the Minister responsible for justice, for the purpose of making referrals under this section.

8. Any matter pertaining to the exercise of the original jurisdiction of the Court shall be brought before the Court by written application in the manner prescribed by rules of court.

Procedure re
applications
before Court.

9. Judgments of the Court shall legally bind parties to the proceedings before the Court unless such judgments have been revised in accordance with section 10.

Binding
precedents.

10.—(1) An application for the revision of a judgment of the Court in the exercise of its original jurisdiction may be made only where—

Revision of
judgment.

- (a) there is the discovery of some fact of such a nature as to be a decisive factor;
- (b) the fact was, when the judgment was given, unknown to the Court and to the party claiming revision; and
- (c) the ignorance regarding the fact 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, recognizing 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 section shall affect the rights of third parties that have accrued since the delivery of the judgment mentioned in subsection (1).

PART III. Enforcement, Execution, etc., of Judgments

Powers of
Court.

11. Subject to rules of court, the Court shall as respects the area within its jurisdiction, have power to make orders for the purpose of securing the attendance of any person, the discovery or production of any document, the examination of witnesses and otherwise in relation to the execution of process.

Enforcement
of judgment
of Court.

12. A judgment of the Court shall be enforced in like manner as a judgment of the Supreme Court.

PART IV. Administrative Provisions

Right of
audience.

13. Attorneys-at-law, duly entitled to practise law in any Contracting Party, shall not be required to satisfy any other condition in order to practise 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.

PART V. Regional Judicial and Legal Services Commission

Regional
Judicial and
Legal
Services
Commission.

14.—(1) The Commission shall possess full juridical personality including, in particular, full capacity to contract.

(2) The Commission shall consist of the persons who shall be appointed in the manner and for the periods set out in paragraphs 1 and 2 and 4 to 7 of Article V and paragraph 2 of Article VI of the Agreement.

Responsibility
of
Commission.

15.—(1) The Commission shall have responsibility for—

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

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

(2) The Commission shall make a recommendation for the appointment of the President.

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

(4) The Commission shall exercise disciplinary control over Judges of the Court, other than the President, and over officials and employees of the Court.

(5) The proceedings of the Commission shall not be inquired into by any court of law or tribunal.

16. Rules of Court made by the President in accordance with Article XXI of the Agreement shall be published in the *Gazette*. Rules of Court.

SCHEDULE

PART I

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 4th July, 1973 and any amendments thereto which take effect either provisionally or definitively.

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 Organisation 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 OECS 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.
10. The Commission shall, no later than 31 March in every year, submit to the Heads of Government, an Annual Report of its work and operations during the previous year.
11. The Registrar of the Court shall perform the functions of Secretary of the Commission and shall be the chief administrative officer of the Commission.
12. In the exercise of their functions under this Agreement, the members of the Commission shall neither seek nor receive instructions from any body or person external to the Commission.
13. A quorum for the transaction of business by the Commission shall consist of not less than six members of the Commission including the Chairman or, where the Deputy Chairman is presiding, the Deputy Chairman.
14. Subject to this Article, the Commission shall have power to regulate its own procedure.

ARTICLE VI

THE FIRST APPOINTMENT OF THE PRESIDENT AND MEMBERS OF THE COMMISSION

1. For the purposes of the first appointment of the President and Commissioners and notwithstanding the provisions of paragraph 6 of Article IV, the members of the Commission appointed pursuant to the Agreement shall make a recommendation for the appointment of the President.
2. Notwithstanding the provisions of paragraphs 4 and 5 of Article V:
 - (a) the term of office of the members of the Commission appointed in accordance with paragraph 1 of this Article shall be one year; and

- (b) the members of the Commission mentioned in sub-paragraph (a) of this paragraph shall be appointed by letter under the hand of the heads of the judiciary of the Contracting Parties.

ARTICLE VII

LEGAL STATUS OF THE COMMISSION

1. The Commission shall possess full juridical personality including, in particular, full capacity to contract.
2. The privileges and immunities to be accorded the Commission and its members in the territories of the Contracting Parties shall be laid down in a Protocol to this Agreement.
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 maybe, 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 maybe, 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. If 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.—(1) 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.

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 seised 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 DECISIS*

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

LOCUS STANDI OF PRIVATE ENTITIES

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 enure 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 on 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 subparagraph, 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 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 practise 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 practise 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 Depository").

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 Depository 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 Depository.

ARTICLE XXXVII

WITHDRAWAL

1. A Contracting Party may withdraw from this Agreement by giving three years' notice in writing to the Depository 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 Depository, unless the Contracting Party before the withdrawal becomes effective notifies the Depository 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 Agreement. 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.

IN WITNESS WHEREOF the undersigned duly authorised in that behalf by their respective Governments have executed this Agreement.

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 ill-will and in accordance with the Code of Judicial Conduct.

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

APPENDIX II

- | | <u>Annual Salary</u> |
|---|--|
| 1. (a) The President of the Court | — [EC\$] |
| (b) Any other Judge of the Court | — [EC\$] |
| 2. Judges of the Court shall be paid superannuation 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. | |
| 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. | |

PART II

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 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.

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.

IN WITNESS WHEREOF the undersigned representatives, being duly authorised by their respective Governments or Institutions, have signed this Protocol.

Passed in the House of Representatives this 12th day of April, 2005, with seven (7) amendments.

MICHAEL PEART
Speaker.

Passed in the Senate this 15th day of April, 2005.

SYRINGA MARSHALL-BURNETT, C.D.
President.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Clerk to the Houses of Parliament.