

**THE OFFICIAL GAZETTE 5TH OCTOBER, 2004
LEGAL SUPPLEMENT – C**

BILL No. 18 of 2004

Tuesday 5th October, 2004

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.
5th October, 2004.

The following Bill will be passed in the National Assembly is published for general information.

S. E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL No. 18 of 2004

CARIBBEAN COURT OF JUSTICE

TRUST FUND AGREEMENT BILL 2004

ARRANGEMENT OF SECTIONS

Section

1. Short title and commencement.
2. Interpretation.
3. Financial provisions.
4. Provisions of Article XII of the Agreement given the force of law.
5. Certificate of Minister conclusive as to contents.
6. Amendment of the Schedule.
7. Regulations.

SCHEDULE - Revised Agreement Establishing the Caribbean Court of Justice Trust Fund.

A BILL
intituled

AN ACT to enable the implementation by Guyana of the Agreement for the establishment of the Caribbean Court of Justice Trust Fund and for purposes connected therewith

A.D. 2004 Enacted by the Parliament of Guyana:-

Short title and commencement

1. This Act may be cited as the Caribbean Court of Justice Trust Fund Agreement Act 2004 and shall come into operation on such date as the Minister may by Order appoint.

Interpretation

2.(1) In this Act -

(a) "Agreement" means the Revised Agreement establishing the Caribbean Court of Justice Trust Fund the text of which is set out in the Schedule.

Schedule

(b) "Fund" means the Caribbean Court of Justice Trust Fund.

(2) The reference in Article XI of the Agreement to the effect that the Fund shall possess full juridical personality shall be construed as meaning that the Fund is a body corporate.

Financial provisions

3. There shall be paid out of the Consolidated Fund, all payments required to be made from time to time to the Fund in respect of Guyana under the provisions of the Agreement.

Provisions of Article XII of the Agreement given the force of law.

4. The provisions of Article XII of the Agreement shall have the force of law in Guyana.

Certificate of Minister conclusive as to contents

5. If in any proceedings a question arises as to the entitlement of the Fund to any immunities or privileges under the Agreement, a certificate issued by or under the authority of the Minister to the effect that the Fund is or is not entitled shall be conclusive evidence of the fact.

Amendment of the Schedule

6.(1) Where Guyana becomes a party to any agreement to amend the Agreement the Minister may, by order, amend the Schedule by including therein the amendment.

(2) An order made under subsection (1) may contain such consequential, supplemental or ancillary provisions (including provisions amending this Act) as appear to the Minister to be necessary or expedient for the purpose of giving due effect to the amendment of the Agreement as mentioned aforesaid.

(3) Where the Agreement in 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.

(4) Every order made under this section shall be subject to negative resolution of the National Assembly.

Regulations

7. The Minister may make regulations which he considers necessary for giving effect to the provisions of this Act.

SCHEDULE

s.2

**REVISED AGREEMENT
ESTABLISHING THE
CARIBBEAN COURT OF JUSTICE
TRUST FUND**

REVISED 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. **A State or Territory listed in the Annex to this Agreement:**
 - (a) which is a Member on the date this Agreement enters into force; or
 - (b) which accedes to this Agreement within such period as may be determined by the Members,shall, contribute or cause to be contributed to the Fund the amount of the initial capital of the Fund represented by the scale of contributions set out in the Annex.

4. **A State or Territory acceding to this Agreement, other than a State or Territory to which paragraph 3(b) applies,** 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.

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 Banks 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 XIII.

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 prudential 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 meetings 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 IX 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 signatures of the Chairman of the Board and the Executive Officer.

ARTICLE X 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 XI

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 moveable 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 XII
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 facilities 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 opinion, 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 XIII

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 Depository") has received the approval of three-quarters of the Members.

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**ARTICLE XIV
SIGNATURE**

This Agreement shall be open for signature **until 31st March 2004**, by the States and Territories listed in the Annex hereto.

**ARTICLE XV
ENTRY INTO FORCE**

This Agreement shall enter into force upon signature by **any ten (10)** of the States or Territories listed in the Annex hereto.

**ARTICLE XVI
RESERVATIONS**

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

**ARTICLE XVII
ANNEX**

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

ARTICLE XVIII**ACCESSION**

1. Any Member State of the Caribbean Community or any State or Territory invited by Conference 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 State or Territory on the thirtieth day following the date on which its instrument of accession was deposited with the Depository.

2. Where a State or Territory, other than a State or Territory to which paragraph 3(b) of Article IV applies, accedes to this Agreement and undertakes to discharge its financial obligations to the Trust Fund the Annex shall be amended accordingly.

ARTICLE XIX**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 XX**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.

DONE at Monterrey, Mexico this 12 day of January, two thousand and four, in a single copy, in the English Language.

Signed by _____ for the Government of Antigua and Barbuda on the _____ day of _____ 2004 at _____

Signed by _____ for the Government of Barbados on the 13 day of January 2004 at Monterrey, Mexico


Signed by _____ for the Government of Belize on the 12 day of January 2004 at Monterrey, Mexico

Signed by _____ for the Government of the Commonwealth of Dominica on the 16th day of February 2004 at Roseau, Commonwealth of Dominica

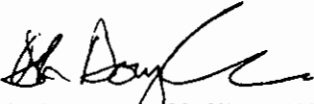
Signed by _____ for the Government of Grenada on the 1 day of January 2004 at Roseau, Commonwealth of Dominica

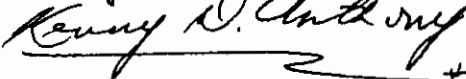
Signed by _____ for the Government of the Co-operative Republic of Guyana on the 27 day of January 2004 at Georgetown, Guyana

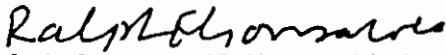
Signed by _____ for the Government of the Republic of Haiti on the _____ day
of _____ 2004 at _____

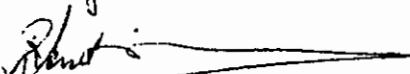
Signed by  for the Government of Jamaica on the 13th day
of January 2004 at Monterrey, Mexico

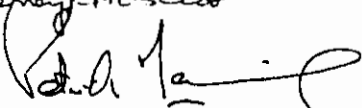
Signed by _____ for the Government of Montserrat on the _____ day
of _____ 2004 at _____

Signed by  for the Government of St. Kitts and Nevis on the 13th day
of January 2004 at Monterrey, Mexico

Signed by  for the Government of Saint Lucia on the 17th day
of January 2004 at Roseau, Commonwealth of Dominica

Signed by  for the Government of St. Vincent and the Grenadines on the 13th day
of January 2004 at Monterrey, Mexico

Signed by  for the Government of the Republic of Suriname on the 13th day
of January 2004 at Monterrey, Mexico

Signed by  for the Government of the Republic of Trinidad and Tobago on the
day of January 2004 at Roseau, The Bahamas

CONTRIBUTION OF THE MEMBERS OF THE TRUST FUND

| <u>MEMBERS</u> | <u>PER CENT SHARE</u> |
|--------------------------------|------------------------------|
| Antigua and Barbuda | 2.11 |
| Barbados | 12.77 |
| Belize | 3.44 |
| 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 |

EXPLANATORY MEMORANDUM

This Bill seeks to enable the implementation by Guyana of the Revised Agreement for the establishment of the Caribbean Court of Justice Trust Fund (the Agreement). The purposes of the Fund shall be to provide the resources necessary to finance the biennial capital and operating budget of the Caribbean Court of Justice and the Commission in perpetuity; the judges of the Court will be paid from the Trust Fund.

Clause 2(2) of the Bill mentions that in view of the possession of full juridical personality by Fund, the Fund is a body corporate.

Clause 3 provides that payments to be made by Guyana to the Fund shall be made out of the Consolidated Fund.

Clause 4 provides that Article XII of the Agreement shall have the force of law in Guyana. This is the Article dealing with privileges and immunities. The Fund shall enjoy immunity from legal process; its archives shall be inviolable; it shall be exempt from taxation. No tax shall be levied on salaries paid by the Fund to members of the Board of Trustees of the Fund. All officers of the Fund shall, except one who is a national of Guyana, be exempt from income tax. The trustees of the Fund shall be immune from all legal process and shall be accorded immunities from immigration restrictions.

The Board of Trustees may however waive the immunities, exemptions and privileges where it would be appropriate in the best interest of the Fund. The Executive Officer of the Fund may also waive any immunity, exemption or privilege so as not to impede the course of justice.

Clause 5 provides that the certificate of the Minister as to the entitlement of the Fund to immunities and privileges under the Agreement shall be conclusive evidence of the fact.

Clause 6 sets out the procedure for the amendment of the Agreement in the Schedule and clause 7 gives the Minister power to make regulations.



Attorney General and Minister of Legal Affairs.

