

INSDIP

AGREEMENT FOR THE ESTABLISHMENT OF A REGIME FOR CARICOM ENTERPRISES

The Governments of the Member States of the Caribbean Common Market:

HAVING REGARD to the provisions of the Common Market Annex of the Treaty Establishing the Caribbean Community and, in particular, to -

- (a) Article 3 on the "Objectives of the Common Market";
- (b) Article 35 on "Establishment" and Article 37 on "Movement of Capital";
- (c) Article 42 on the "Harmonisation of Laws", with respect to Company Law;
- (d) Article 44 on "Ownership and Control of Regional Resources";
- (e) Article 45 on the "Coordination of National Development Planning"; Article 46 on "Common Market Industrial Programming"; Article 47 on "Joint Development of Natural Resources"; and Article 49 on "Rationalisation of Agricultural Production"; and
- (f) Article 59 on "Financial Assistance from the More Developed Countries" to Less Developed Countries;

COGNISANT of the urgent need to develop economic activities in the Common Market on the basis of joint enterprises between national investors (as hereinafter defined in Article 1);

CONSCIOUS of the continuing need to develop and give further scope for national and regional entrepreneurship, management and technological capacity in the production of goods and services on a regional basis for both the regional and extraregional markets;

MINDFUL of the need to pool human, financial and natural resources of the Region for the implementation of high priority regional projects designed to benefit the people of the Region;

EMPHASISING the need for the creation of machinery whereby the movement of investment capital between Member States, particularly from the More Developed Countries to the Less Developed Countries may be expeditiously effected in the interests of the development of the Region;

AWARE of the crucial role which the private sector, on its own or in partnership with the Region's public sector or suitable foreign investors, can play in the economic development of the Region;

AGREE TO THE ESTABLISHMENT OF THE FOLLOWING REGIME:

ARTICLE 1 DEFINITIONS

1. In this Agreement:

"Authority" means the Body established by Article 8 of this Agreement.

"CARICOM Enterprise" means, subject to this Agreement, a regionally-owned and controlled company which -

(a) within such areas specified in Article 46, 47 and 49 of the Treaty as the Council may from time to time prescribe, engages in the production of Common Market Origin goods; or

(b) provides services -

(i) in areas specified in Articles 48 and 50 of the Treaty; or

(ii) in those sectors of the regional economy specified in the Annex to this Agreement and in such other sectors of the regional economy as the Council may, from time to time, determine;

"Common Market Origin" has the same meaning as that referred to in paragraphs 1, 2 and 3 of Article 14 of the Annex to the Treaty.

"company" means a company incorporated under the general statutes of any Member State relating to the formation of such a legal company.

"Council" means the Caribbean Common Market Council of Ministers established by the Treaty.

"Less Developed Country" means Antigua and Barbuda, Belize, Dominica, Grenada, Montserrat, Saint Christopher and Nevis, Saint Lucia or Saint Vincent and the Grenadines.

"Member State" means a Member State which is a Member of the Caribbean Common Market established by the Annex to the Treaty and a Party to this Agreement.

"More Developed Country" means Barbados, Guyana, Jamaica or Trinidad and Tobago.

"national" subject to paragraph 2 of this Article, has the same meaning as that set out in paragraph 6 (a) of Article 35 of the Annex to the Treaty and includes companies controlled by such persons or by companies so controlled as specified in the definition of "regionally-owned and controlled".

"National Investor" means, subject to paragraph 2 of this Article, a Member State or a national of a Member State holding equity share capital of a Company.

"regionally-owned and controlled" in relation to a company means that the company is one in which in the opinion of the Authority nationals of at least two Member States exercise management and control by beneficially owning shares carrying between them directly or indirectly -

(a) the right to exercise more than one-half of the voting power in that company; and

(b) the right to receive more than one-half of any dividends that might be paid by that company; and

(c) the right to receive more than one-half of any capital distribution in the event of the winding-up or of a reduction in share capital of that company;

or such greater proportion than is specified in paragraph (a) to (c) above as the Council may, from time to time, determine in relation to any sector of the regional economy.

"Registrar" in relation to a Member State, means the officer responsible for the registration of companies.

"Treaty" means the Treaty Establishing the Caribbean Community and Common Market done at Chaguaramas on the 4th July, 1973.

2. (1) The Caribbean Development Bank and the Caribbean Food Corporation and other similar bodies that hold equity share capital in a company shall, for the purposes of this Agreement, be deemed to be National Investors as well as nationals of the Member State which is to be the Headquarters State.

(2) Nothing in this Agreement shall be construed as derogating from any rights, privileges and immunities conferred on or accorded the Caribbean Development Bank and the Caribbean Food Corporation by virtue of the respective Agreements establishing them.

3. Nothing in this Agreement and, in particular, the definition of CARICOM Enterprise shall entitle an Enterprise to be registered as a CARICOM Enterprise unless it is approved as such by the Authority in accordance with this Agreement.

ARTICLE 2 ESTABLISHMENT OF A REGIME

Member States undertake to establish a Regime for the incorporation and registration, operation, management, winding-up and dissolution of a form of business Enterprise to be known as a CARICOM Enterprise, for the legal organisation, purposes and scope of operation as is hereinafter specified.

ARTICLE 3 PURPOSES AND FUNCTIONS OF A CARICOM ENTERPRISE

A CARICOM Enterprise may be established for such purposes within the areas specified in Articles 46-50 of the Annex to the Treaty and such other sectors of the regional economy as are specified in the Annex to this Agreement and shall perform such functions as are by its Memorandum of Association and the provisions of this agreement specified; the Council shall keep the Annex under review and may impose any conditions under which CARICOM Enterprises may operate.

ARTICLE 4
FORMAL ORGANISATION OF A CARICOM ENTERPRISE

1. The formal organisation of a CARICOM Enterprise shall be that of a company which has been established in accordance with this Regime.
2. The name of the Member State in which the central management and control of the CARICOM Enterprise will be situated (hereinafter called "the Headquarters State") shall be stated in the Memorandum of Association.
3. The shares shall be registered in the name of the holder.
4. A CARICOM Enterprise shall be incorporated and registered in the Headquarters State.

ARTICLE 5
**LAW OF INCORPORATION, REGISTRATION,
OPERATION, MANAGEMENT, WINDING-UP AND
DISSOLUTION OF A CARICOM ENTERPRISE**

The incorporation, registration operation, management, winding-up and dissolution of a CARICOM Enterprise shall be governed by the provisions of this Agreement as well as the company law and other relevant laws of the Headquarters State and those other Member States in which the CARICOM Enterprise is registered.

ARTICLE 6
FORMATION OF A CARICOM ENTERPRISE

1. The status of a CARICOM Enterprise may be conferred on a company formed for the purpose and in the manner provided by this Article. However, a Company not so formed for the purpose may acquire the status of a CARICOM Enterprise if it is qualified therefor and its objects are confined to those of such an Enterprise.
2. The Memorandum of Association, Articles of Association and other constituent documents that are required for the incorporation of a Company (hereinafter referred to as "the constituent documents"), together with programmes of activities of a proposed CARICOM Enterprise for the first five years of its operation, shall be submitted to the Authority for its approval in writing and any material alteration of any such programme shall be submitted to the Authority forthwith for its approval.
3. In the case of a Company not formed for the purpose of becoming a CARICOM Enterprise that desires to obtain such status, the programme of activities together with certified copies of its registration certificate and its constituent documents must similarly be submitted to the Authority for its approval in writing.
4. The written approval for the registration of the Company as a CARICOM Enterprise, upon its incorporation or otherwise, shall be attached to duly authenticated copies of the constituent documents and submitted to the Registrars of the headquarters State and such other Member States as voted under paragraph 4(a) of Article 8 of this Agreement for conferment of the status of a CARICOM Enterprise on the Company, for

incorporation, if necessary, of the Company in the Headquarters State and its registration as a CARICOM Enterprise in the Headquarters State and those other Member States.

5. The Registrars of the Headquarters State and those other States referred to in paragraph 4 of this Article upon receipt of the constituent documents together with the written approval of the Authority shall register the Company as a CARICOM Enterprise in the Headquarters State and in those other Member States, respectively.

6. Any proposed alteration of the objects of a registered CARICOM Enterprise shall similarly be submitted to the Authority for its approval and dealt with in the manner provided by paragraphs 4 and 5 of this Article.

7. Within fourteen days of the registration of the CARICOM Enterprise in the Headquarters State, the Registrar of the Headquarters State shall notify the Registrars of each member State, other than those referred to in paragraph 4 of this Article, of the registration of the CARICOM Enterprise.

8. The Registrar of each Member State, other than those referred to in paragraph 4 of this Article, may without payment of any fee enter the name of the CARICOM Enterprise in a special record kept for the purpose.

9. Where a Company is registered as a CARICOM Enterprise by any Member State under this Agreement, it shall pay such fees, levies and other dues, if any, as are prescribed by the laws of the Member State concerned.

ARTICLE 7 EFFECT OF REGISTRATION

1. Registration of a Company as a CARICOM Enterprise under paragraphs 4 to 6 of Article 6 of this Agreement shall confer the status of a CARICOM Enterprise on such Company and entitle the CARICOM Enterprise to the benefits provided for by this Agreement.

2. Where pursuant to paragraph 8 of Article 6 of this Agreement the name of a CARICOM Enterprise is entered in the special record of a Member State, such Enterprise may at any time thereafter apply to be registered as a CARICOM Enterprise in that Member State, and on such application the Registrar of such Member State may on the receipt of the constituent documents and payment of any prescribed fee, register such CARICOM Enterprise accordingly, whereupon the provisions of paragraph 1 of this Article shall apply.

ARTICLE 8 ESTABLISHMENT, VOTING, MEETING AND PROCEDURE OF THE CARICOM ENTERPRISE AUTHORITY

1. For the purposes of this Agreement, there shall be a CARICOM Enterprise Authority which shall comprise one representative of each Member State, one official of the Caribbean Community Secretariat, one official of the Caribbean Development Bank and one representative of the body or institution representing the private sector designated

as a member of the Joint Consultative Group of the Common Market Council of Ministers.

2. Each Member of the Authority, other than the official of the Caribbean Community Secretariat, the official of the Caribbean Development Bank, and the representative of the private sector referred to in paragraph 1, shall have one vote.

3. Except as otherwise provided for in this Agreement, a decision of the Authority shall be by a simple majority vote of the Members of the Authority present and voting.

4. (a) In considering an application for the approval of the establishment of a CARICOM Enterprise, only the representative of the Headquarters State, the representatives of Member States in which the CARICOM Enterprise is to be registered and the representatives of those member States, the nationals of which are members of the Enterprise, shall vote. A decision of the Authority on any such application shall be by unanimous vote.

(b) In exercising any of the powers set out in Article 10 (d) (ii) of this Agreement, the affirmative vote of least two-thirds of the representatives entitled to vote under subparagraph (a) of this paragraph shall be necessary.

5. The Authority shall meet in any Member State it considers convenient from time to time and as often as it is necessary for the conduct of its business and, without prejudice to the foregoing, at least on two occasions in each calendar year.

6. The quorum for meetings to decide all matters shall be one-third of the Members of the Authority.

7. The Members of the Authority shall elect a Chairman from among their number.

8. The Authority may establish sub-committees and may co-opt any expert for the use of such of his services as it may require for the purpose of performing its functions under this Agreement.

ARTICLE 9 MANAGEMENT OF A CARICOM ENTERPRISE

A CARICOM Enterprise shall normally be managed in its day-to-day operations by nationals of the Member States of the Caribbean Common Market but where it is not possible to secure the services of such nationals, the CARICOM Enterprise may secure the services of other nationals provided the Authority is notified and approves of their engagement.

ARTICLE 10 FUNCTIONS AND POWERS OF THE AUTHORITY

1. The Authority:

(a) shall receive -

(i) applications accompanied by other constituent documents for approval as are set out in Article 6, paragraph 2, of this Agreement;

(ii) such information as may, from time to time, be sent to it from any Member State for the purpose of ensuring that a CARICOM Enterprise is owned and controlled by nationals or for deciding whether a CARICOM Enterprise is in gross or persistent violation of the provisions of this Agreement;

(iii) such information as shall be submitted to it, at its request, by a CARICOM Enterprise for the purpose of determining whether the operations of that CARICOM Enterprise are within the purposes and scope of the Regime;

(iv) such other information as may be submitted to it by any Member State or CARICOM Enterprise and which may be of use to it for the effective performance of its functions and exercise of its powers;

(b) shall grant or refuse applications for approval to proceed to registration of a CARICOM Enterprise as set out in Article 8 of this Agreement;

(c) may require from a CARICOM Enterprise, immediately upon its registration, that it shall provide the Authority with information on such matters as its current shareholdings, loan agreements, management contracts, consultancy contracts, and assets, if any, held outside the Caribbean Community. Such a request may stipulate a period or regular periods within which the information shall be supplied;

(d) may determine -

(i) whether the operations of a CARICOM Enterprise are within the purpose and scope of this Agreement and may make reports to any Member State or the CARICOM Enterprise affected and recommendations based thereon;

(ii) whether a CARICOM Enterprise has been carrying on business in gross or persistent violation of this Agreement and shall state its findings and at the same time make a report on them to the Headquarters State and the CARICOM Enterprise affected; Provided that the Authority shall afford the CARICOM Enterprise an opportunity to make representations before making a determination under this provision of this subparagraph;

(e) shall take all necessary steps to ensure that a CARICOM Enterprise is, as far as possible, managed by nationals of the Member States of the Caribbean Common Market only, except to such extent as the Authority has allowed.

2. Notwithstanding anything in this Article, the Authority may make such other reports and recommendations to Member States and submit copies thereof to the CARICOM EnterpriseS concerned as it considers necessary for the purpose of ensuring that CARICOM EnterpriseS comply with the provisions of this Agreement.

ARTICLE 11 SUPERVISION OF THE CARICOM ENTERPRISE

1. The supervision of a CARICOM Enterprise shall be undertaken by the Authority and the Registrars of Member States (performing their statutory functions) or such other body or person as each Member State may designate for the purpose.

2. Member States undertake to assist the Authority by taking such action as may be necessary to ensure -

(a) that CARICOM Enterprises carry on their business within the purposes and scope of the Regime;

(b) that, subject to Article 9, all CARICOM Enterprises are managed and controlled by nationals of Member States;

(c) that CARICOM Enterprises are not in gross or persistent violation of the provisions of the Regime.

3. The Headquarters State shall, upon a finding by the Authority that a CARICOM Enterprise has been carrying on its business in gross or persistent violation of this Agreement, strike off the name of the CARICOM Enterprise from its register of CARICOM Enterprises. Such a CARICOM Enterprise shall immediately cease to enjoy all the benefits provided for in Article 12 of this Agreement.

4. The Registrar of the Headquarters State shall forthwith inform all Member States in which the CARICOM Enterprise is registered that its name has been so struck off the register and every such Member State shall thereupon remove the name from its register or its special record, as the case may be.

5. A CARICOM Enterprise which has been struck off from the CARICOM Enterprise register may operate as a company under the national laws of the Headquarters State. Its name may be restored not earlier than twelve months after its name has been struck off the register of CARICOM Enterprises if it successfully applies to the Authority for reinstatement.

ARTICLE 12 BENEFITS TO BE ENJOYED BY CARICOM ENTERPRISES

1. A CARICOM Enterprise shall have full legal personality in every Member State in which it is registered as such, as if it were a company incorporated and registered under the general statutes relating to the incorporation, registration and management of companies.

2. In the exercise of its legal personality in any Member State in which it is registered, a CARICOM Enterprise shall not be regarded as having a separate personality from that which it enjoys in another Member State in which it is also registered, and accordingly Member States will provide -

(a) that the public documents of a CARICOM Enterprise must reflect the indivisibility of the legal personality of the Enterprise and any rights and obligations acquired by or imposed on the Enterprise; and

(b) that the appropriate courts of any Member State in which the CARICOM Enterprise is registered shall have full and concurrent jurisdiction over the affairs and all the assets of the Enterprise wherever situated in those Member States; and

(c) that the judgements and orders of any such courts will be enforced in accordance with a common procedure.

3. Each Member State shall in accordance with the Exchange Control laws in force in its State permit a CARICOM Enterprise registered as such in its State to:

(a) keep such foreign accounts including portfolio securities in another Member State in which the CARICOM Enterprise is registered, as are required for the fulfilment of its objects;

(b) subject to any exchange control considerations, remit dividends and repatriate -

(i) assets on a winding-up; or

(ii) capital on reduction of its share capital, on no less favourable terms than those accorded to any investor in that State who is not a national.

4. Each Member State undertakes to:

(a) grant to a CARICOM Enterprise registered in its territory on terms no less favourable than is accorded to any other similar Enterprise of that Member State all licenses and permissions necessary for the proper conduct of the affairs of any CARICOM Enterprise registered as such in its State;

(b) grant to a CARICOM Enterprise registered in its territory treatment no less favourable than is accorded to any other similar Enterprise of a Member State in respect of State purchase or use of goods and services;

(c) allow to a CARICOM Enterprise in the Member States in which it operates, access to long-, medium- and short-term credit which is relevant to its operations on terms no less favourable than is accorded to any other similar Enterprise of a Member State.

(d) treat a CARICOM Enterprise, if necessary, as if it had been incorporated in its territory for the purpose of the conferment of benefits under the Scheme for the Harmonisation of Fiscal Incentives to Industry as set out in Article 3 of that Agreement;

(e) accord preferential treatment to a CARICOM Enterprise as against a non-regional Enterprise when granting incentives under the Scheme for the Harmonisation of Fiscal Incentives to Industry;

(f) consider a CARICOM Enterprise for the granting of such fiscal incentives as the Member State may think fit in respect of agriculture, tourism and forestry that are mutually agreed by Member States;

(g) consider the product of a CARICOM Enterprise for protection by quantitative restrictions or other forms of protection imposed at a uniform level by the Member States against imports from third countries on terms no less favourable than those which may be accorded to the product of any other similar Enterprise.

ARTICLE 13 TAXATION OF CARICOM ENTERPRISES

1. The corporate profits of a CARICOM Enterprise shall be subject to tax except that where the equity capital is wholly-owned by Governments of Member States those Governments may agree otherwise.
2. Dividends and other distributions paid by a CARICOM Enterprise in respect of equity capital owned by Governments of any of the Member States shall not be subject to tax.
3. Governments of participating States may, by mutual agreement, waive the taxes on profits made by CARICOM Enterprises that engage solely in the business of intra- or extra-regional transport and communications.
4. Nothing in this Agreement shall prevent a CARICOM Enterprise from being eligible for fiscal incentives under the Scheme for the Harmonisation of Fiscal Incentives to Industry.

ARTICLE 14 NAME OF CARICOM ENTERPRISE

The name of a CARICOM Enterprise shall contain the letters (C.E.) At the end thereof.

ARTICLE 15 UNDERTAKING AS TO IMPLEMENTATION

Member States undertake to introduce measures including the amendment of their municipal legislation so as to conform to this Agreement and enable this Regime to be established as soon as practicable.

ARTICLE 16 SETTLEMENT OF DISPUTES

Disputes of an international character arising under this Agreement shall be settled under and in accordance with the procedure set out in Articles 11 and 12 of the Common Market Annex to the Treaty.

ARTICLE 17 SIGNATURE OF AGREEMENT

This Agreement is open for signature by any Member State.

ARTICLE 18 RATIFICATION

This Agreement and any amendments thereto, shall be subject to ratification by Member States in accordance with their respective constitutional procedures. Instruments of Ratification shall be deposited with the Secretary-General of the Caribbean Community (hereinafter referred to as "the Secretary-General") who shall transmit certified copies to the Government of each Member State.

ARTICLE 19 ENTRY INTO FORCE

This Agreement shall enter into force upon the deposit of the fourth Instrument of Ratification in accordance with Article 18 of this Agreement.

ARTICLE 20 AMENDMENTS

1. This Agreement may be amended by three-fourths of the Member States including two of the More Developed Countries.
2. Any such amendment shall come into force upon deposit with the Secretary-General of the last of the Instruments of Ratification required in accordance with this Agreement and paragraph 1 of this Article.
3. The Secretary-General shall notify other Member States of the entry into force of any such amendment.

ARTICLE 21 ACCESSION

Any new Member or Associate Member of the Common Market or any Member of the Caribbean Community may accede to this Agreement on the terms and conditions determined by the Conference of Heads of Government of the Caribbean Community.

ARTICLE 22 WITHDRAWAL

1. A Member State that withdraws from membership or associate membership of the Common Market in accordance with Article 69 thereof shall, of a Party to this Agreement, be deemed to have withdrawn from this Agreement with effect from the expiration of the time limited by the said Article 69.
2. Without prejudice to paragraph 1 of this Article, a Party to this Agreement may withdraw from this Agreement by giving notice in writing to the Authority which shall promptly notify the other Parties to this Agreement; such withdrawal shall take effect twelve months after receipt of the notice by the Authority.
3. A Party to this Agreement undertakes to honour any financial obligations duly assumed while it continues to be a Party to this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have affixed their signatures to this Agreement.

Done in a single copy which is deposited with the Secretary-General of the Caribbean Community who shall transmit certified copies to all Parties to this Agreement.

Signed by Hugh Marshall
For the Government of Antigua and Barbuda on 1st July 1988
at St. John's, Antigua

Signed by E. Evelyn Greaves
For the Government of Barbados on 6th February 1988
at Dover Convention Centre, Barbados

Signed by
For the Government of Belize on
at

Signed by
for the Government of Dominica on 3rd March 1988
at Georgetown, Guyana

Signed by
For the Government of Grenada on 6th February 1988
at Dover Convention Centre, Barbados

Signed by Carl B. Greenidge
For the Government of Guyana on 22nd December 1987
at Georgetown, Guyana

Signed by
For the Government of Jamaica on 28th January 1988
at Georgetown, Guyana

Signed by
For the Government of Montserrat on 5th July 1988
at Deep Bay, Antigua

Signed by
For the Government of Saint Christopher and Nevis on 14th March 1988
at Basseterre, St. Kitts/Nevis

Signed by
For the Government of Saint Lucia on 3rd March 1988
at Georgetown, Guyana

Signed by
For the Government of Saint Vincent and the Grenadines on 6th February 1988
at Dover Convention Centre, Barbados

Signed by Sahadeo Basdeo
For the Government of Trinidad and Tobago on 8th June 1988
at Port-of-Spain, Trinidad and Tobago