

SAINT LUCIA

No. 21 of 2006

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No. 21] *Caribbean Community (Movement of Factors) Act* [2006.

I ASSENT

[L.S.]

PEARLETTE LOUISY,
Governor-General.

20th March, 2006.

SAINT LUCIA

No. 21 of 2006

AN ACT to give effect to the provisions of the CARICOM Treaty relating to rights of nationals of Member States to establish themselves, provide services and move capital.

[27th March, 2006]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same as follows:

PART I
PRELIMINARY

Short title

1. This Act may be cited as the Caribbean Community (Movement of Factors) Act 2006.

Interpretation

2. — (1) In this Act —

“CARICOM Treaty” means the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy signed at Nassau, The Bahamas, on 5th July 2001 the text of which is set out in the Schedule of the Caribbean Community Act 2004, No.12;

“Community” means the Caribbean Community including the CARICOM Single Market and Economy established by the CARICOM Treaty;

“Conference” means the organ of the Community so named in article 10(1)(a) of the CARICOM Treaty;

“Council for Finance and Planning” means the organ of the Community so named in article 10(2)(a) of the CARICOM Treaty;

“economic enterprise” includes —

(a) any type of organization for the production of, or the trade in, goods or the provision of services, other than a non-profit organization, owned or controlled by a national of a Member State;

(b) an agency, branch or a subsidiary of such enterprise of a national of a Member State;

“Member State” means a Member State of the Community listed in the First Schedule;

“Minister” means a Minister responsible for CARICOM Affairs;

“national” means a person who —

(a) is a citizen of a Member State;

(b) has a connection with a Member State of a kind which entitles that person to be regarded as belonging to or, if it be so

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expressed, as being a native or resident of that Member State for the purposes of the laws of that Member State relating to immigration; or

- (c) is a company or other legal entity constituted in a Member State in accordance with the laws of that Member State and which that Member State regards as belonging to it, if that 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).

(2) For the purposes of the definition of “national”, a company or other legal entity is —

- (i) substantially owned if more than fifty percent of the equity interest in the company or entity is beneficially owned by a person mentioned in paragraphs (a) and (b);
- (ii) effectively controlled if the persons mentioned in paragraphs (a) and (b) have the power to name a majority of its directors or otherwise legally to direct its actions;

“right of establishment” includes the right to —

- (a) engage in self-employment; or
- (b) create and manage an economic enterprise.

Application

3.— (1) This Act shall not apply to —

- (a) an activity involving the exercise of governmental authority in Saint Lucia that is not conducted on a commercial basis and not conducted in competition with one or more economic enterprises;
- (b) an activity conducted by the Eastern Caribbean Central Bank pursuant to monetary or exchange rate policies;
- (c) an activity forming part of a statutory system of social security or public retirement plans;
- (d) an activity forming part of a system of national security or for the establishment or maintenance of public order;

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- (e) any other activity conducted by a public entity for the account of, or with the guarantee or using financial resources of, the Government of Saint Lucia.

Necessity of obtaining permission

4.— (1) The enjoyment of the right of establishment, right to provide a service or the right to move capital does not have the effect of dispensing with the necessity of obtaining permission where such permission is required pursuant to any law in force in Saint Lucia.

(2) For the purposes of this section “permission” includes a licence or an approval.

PART II

RIGHT OF ESTABLISHMENT

Right of establishment

5. Subject to this Act, a national of a Member State shall enjoy the right of establishment in Saint Lucia without discrimination on the ground of nationality.

Exclusion or restriction in industry

6.— (1) Notwithstanding any provision to the contrary in this Act, Cabinet may determine that the public interest requires the exclusion or restriction of the right of establishment in an industry or a particular section of an industry and may by Order published in the *Gazette* specify the exclusion or restriction.

(2) An Order pursuant to this section may specify conditions for the operation of any Government or private sector monopoly created by the exclusion or restriction in the Order.

PART III

RIGHT TO PROVIDE SERVICES

Right to provide service

7. Subject to this Act, a national of a Member State shall enjoy the right to provide a service in Saint Lucia, without discrimination on the ground of nationality.

Exclusion of certain financial services

8. Cabinet may by Order published in the *Gazette*, after consultation with the appropriate Organs of the Community exclude certain financial services from the application of this Act.

PART IV
RIGHT TO MOVE CAPITAL

Right to move capital

9.— (1) Subject to this Act, a national of a Member State shall enjoy the right to move capital into and within Saint Lucia and out of Saint Lucia to another Member State, without discrimination on the ground of nationality.

(2) For the purposes of this section “move capital” includes —

- (a) the transfer of equity and portfolio investments;
- (b) short term bank and credit transactions;
- (c) payment of interest on loans and amortizations;
- (d) dividends and other income on investments and taxes;
- (e) repatriation of proceeds from the sale of assets; and
- (f) other transfers and payments relating to investment flows.

PART V
RESTRICTIONS

Removal of restrictions

10. The enactments specified in Column 1 of the Second Schedule are amended to the extent specified in Column 2 of the Second Schedule for the purposes of removing restrictions in relation to a national of a Member State in their exercise of the right of establishment, or the right to provide a service or move capital in accordance with this Act.

Restrictions to safeguard balance of payments etc.

11. Subject to article 43 of the CARICOM Treaty set out in the Third Schedule, where Cabinet is satisfied that there are serious

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balance of payments or external financial difficulties or threats of the same, Cabinet, may in order to address those difficulties, by Order published in the *Gazette*, adopt or maintain —

- (a) restrictions on the rights conferred on a national of a Member State pursuant to this Act; or
- (b) quantitative restrictions on imports.

Restrictions to resolve difficulties or hardships arising from exercise of rights

12. Subject to article 47 of the CARICOM Treaty set out in the Fourth Schedule, where Cabinet is satisfied that the exercise of rights conferred on a national of a member State pursuant to this Act creates serious difficulties in any sector of the economy of Saint Lucia or results in economic hardships or any part of Saint Lucia, Cabinet may, by Order published in the *Gazette*, apply such restrictions on the exercise of rights as Cabinet considers it appropriate to resolve the difficulties or alleviate the hardships.

PART VI
MISCELLANEOUS

Regulations

13. The Minister may make Regulations generally for the purpose of giving effect to the provisions of this Act.

Offence

14.— (1) A person shall not knowingly obstruct or otherwise impede a national of a Member State in the lawful enjoyment of a right conferred pursuant to this Act.

(2) A person who contravenes subsection (1) commits an offence and upon summary conviction is liable to a fine not exceeding five thousand dollars.

FIRST SCHEDULE

MEMBER STATES

(Section 2)

1. Antigua and Barbuda
2. Barbados
3. Belize
4. Commonwealth of Dominica
5. Grenada
6. Guyana
7. Jamaica
8. Saint Christopher and Nevis
9. Saint Vincent and the Grenadines
10. Suriname
11. Trinidad and Tobago

SECOND SCHEDULE*(Section 10)***Column 1****Column 2**Aliens (Licensing) Act 2002,
No. 20

In section 2:

- (a) delete paragraph (a) in the definition of “alien” and substitute the following:
 - “(a) a person who is not a citizen of Saint Lucia or a national of a Member State;” and
- (b) insert the following definition in its appropriate alphabetical order:
 - “national of a Member State” means a person who:
 - (a) is a citizen of a Member State;
 - (b) has a connection with a Member State of a kind which entitles that person to be regarded as belonging to or, if it be so expressed, as being a native or resident of that Member State for the purposes of the laws thereof relating to immigration; or
- (c) is a company or other legal entity constituted in a Member State in conformity with the laws of the Member State and which that Member State 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 Member State and which is substantially owned and effectively controlled by persons mentioned in paragraphs (a) and (b);

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and for the purposes of this definition a company or other legal entity is:

- (i) substantially owned if more than fifty percent of the equity interest of the company is beneficially owned by nationals mentioned in paragraphs (a) or (b);
- (ii) effectively controlled if the nationals mentioned in this definition have the power to name a majority of its directors or otherwise legally to direct its actions.”

In section 19:

- (a) in subsection (1) delete paragraph (c) and substitute the following:
 - “(c) the alien is trading on the Eastern Caribbean Securities Exchange Limited or any other recognized securities exchange in a Member State;
- (b) repeal subsection (3).

Caribbean Community Skilled Nationals Act 1996, No. 18

In subsection (1) of section 5 delete the following words “sections 14 and” where they appear in that subsection and substitute the word “section”.

In section 6, delete the words and “subject to section 14” where they appear in that section.

In subsection (1) of section 7, delete the words “and section 14” where they appear in that subsection.

In subsection (1) and (2) of section 10, delete the words “sections 14 and” where they appear in those subsections and substitute the word “section”.

In subsections (1) and (2) of section 11, delete the words “sections 14 and”

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where they appear in those subsections and substitute the word “section”.

In section 12, delete the words “sections 14 and” where they appear in that section and substitute the word “section”.

Repeal section 14.

Civil Aviation Act 2005, No. 7

In section 2 insert the following definition in its appropriate alphabetical order:

“national” means a person who –

- (a) is a citizen of a Member State;
- (b) has a connection with a Member State of a kind which entitles that person to be regarded as belonging to or, if it be so expressed, as being a native or resident of that Member State for the purposes of the laws of that Member State relating to immigration; or
- (c) is a company or other legal entity constituted in a Member State in accordance with the laws of that Member State and which that Member State regards as belonging to it, if that 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 Member State and is substantially owned and effectively controlled by persons mentioned in paragraphs (a) and (b);

and for the purposes of this definition, a company or other legal entity is –

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- (i) substantially owned if more than fifty percent of the equity interest in the company or entity is beneficially owned by a person mentioned in paragraphs (a) and (b);
- (ii) effectively controlled if the persons mentioned in paragraphs (a) and (b) have the power to name a majority of its directors or otherwise legally to direct its actions;”.

In paragraphs (a) and (b) of section 18, insert between the words “Saint Lucia” and “a” the words “national of”.

Companies Act 1996,
No. 19

In section 543:

- (a) in the definition of the words “external company” insert the words “or a Member State and is not a national of a Member State” after the words “Saint Lucia”; and
- (b) insert the following definitions in their appropriate alphabetical order:

“Member State” means a Member State of the Caribbean Community or the Organisation of Eastern Caribbean States listed in the First Schedule;

“national” means a company or other legal entity constituted in a Member State in accordance with the laws of that Member State and which that Member State regards as belonging to it, if that 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 Member State and is substantially owned and effectively controlled by a person who:

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- (a) is a citizen of that Member State; or
- (b) has a connection with that Member State of a kind which entitles him or her to be regarded as belonging to or, if it be so expressed, as being a native or resident of that Member State for the purposes of the laws relating to immigration;

and for the purposes of this definition, a company or other legal entity is:

- (i) substantially owned if more than fifty percent of the equity interest in the company or entity is beneficially owned by a person mentioned in paragraphs (a) and (b);
- (ii) effectively controlled if the persons mentioned in paragraphs (a) and (b) have the power to name a majority of its directors or otherwise legally to direct its actions;”.

Insert the following section 551 and Schedule immediately after section 550:

“Amendment of Schedule

551. The Minister may by Order subject to affirmative resolution amend the Schedule.

SCHEDULE

(Section 2)

Member States

- (a) Antigua and Barbuda
- (b) Barbados
- (c) Belize
- (d) Commonwealth of Dominica
- (e) Grenada
- (f) Guyana
- (g) Jamaica

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- (h) Saint Christopher and Nevis
- (i) Saint Vincent and the Grenadines
- (j) Suriname
- (k) Trinidad and Tobago.”.

Insurance Act 1994, No. 6 of 1995

In section 2:

- (a) insert the following definitions in their appropriate alphabetical order:

“Member State” means a Member State of the Caribbean Community or the Organisation of Eastern Caribbean States listed in the Sixth Schedule;

“national of a Member State” means a company or other legal entity constituted in a Member State and which that Member State regards as belonging to it, if that 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 Member State and is substantially owned and effectively controlled by a person who:

- (a) is a citizen of a Member State;
- (b) has a connection with a Member State of a kind which entitles that person to be regarded as belonging to or, if it be so expressed, as being a native or resident of that

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Member State for the purposes of the laws of that Member State relating to immigration; and for the purposes of this definition, a company or other legal entity is:

- (i) substantially owned if more than fifty percent of the equity interest in the company or entity is beneficially owned by a person mentioned in paragraphs (a) and (b);
 - (ii) effectively controlled if the persons mentioned in paragraphs (a) and (b) have the power to name a majority of its directors or otherwise legally to direct its actions;”.
- (b) in the definition of “local company” delete paragraph (a) and substitute the following:
- “(a) a company incorporated in Saint Lucia or a Member State with not less than fifty one percent of its issued share capital held by citizens of Saint Lucia or nationals of Member States;”.

Insert immediately after the Fifth Schedule the following:

“SIXTH SCHEDULE

(Section 2)

Member States

- (a) Antigua and Barbuda
- (b) Barbados
- (c) Belize

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- (d) Commonwealth of Dominica
- (e) Grenada
- (f) Guyana
- (g) Jamaica
- (h) Saint Christopher and Nevis
- (i) Saint Vincent and the Grenadines
- (j) Suriname
- (k) Trinidad and Tobago.”.

Insurance Premium Tax Act 1980,
No. 5

In section 2:

- (a) insert the following definitions in their appropriate alphabetical order:

“Member State” means a Member State of the Caribbean Community or the Organisation of Eastern Caribbean States listed in the Schedule;

“national of a Member State” means a company or other legal entity constituted in a Member State in accordance with the laws of that Member State and which that Member State regards as belonging to it, if that 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 Member State and is substantially owned and effectively controlled by a person who:

- (a) is a citizen of a Member State;
- (b) has a connection with a Member State of a kind which

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entitles that person to be regarded as belonging to or, if it be so expressed, as being native or resident of that Member State for the purposes of the laws of that Member State relating to immigration;

and for the purposes of this definition, a company or other legal entity is:

- (i) substantially owned if more than fifty percent of the equity interest in the company or entity is beneficially owned by a person mentioned in paragraphs (a) and (b);
 - (ii) effectively controlled if the persons mentioned in paragraphs (a) and (b) have the power to name a majority of its directors or otherwise legally to direct its actions;”.
- (b) delete the definition of the words “resident insurance company” and substitute the following:

“resident insurance company” means in relation to the payment of tax on premium income by a company carrying on life insurance business, a company that is registered or incorporated in Saint Lucia or a member State with not less than fifty one percent of its paid up capital owned by persons resident in Saint Lucia or persons who are nationals of Member State;

Insert the following Schedule:

“SCHEDULE

(Section 2)

Member States

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- (a) Antigua and Barbuda
- (b) Barbados
- (c) Belize
- (d) Commonwealth of Dominica
- (e) Grenada
- (f) Guyana
- (g) Jamaica
- (h) Saint Christopher and Nevis
- (i) Saint Vincent and the Grenadines
- (j) Suriname
- (k) Trinidad and Tobago.”.

Micro and Small Scale Business 1998, In section 2:
No. 19

- (a) in subsection (1), insert the following definitions in their appropriate alphabetical order:

“Member State” means a Member State of the Caribbean Community or the Organisation of Eastern Caribbean States listed in the Schedule;

“national” includes a company or other legal entity constituted in a Member State in accordance with the laws of that Member State and which that Member State regards as belonging to it, if that 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 Member State and is substantially owned and effectively controlled by a person who:

- (a) is a citizen of a Member State;
- (b) has a connection with a Member State of a kind which

entitles that person to be regarded as belonging to or, if it be so expressed, as being a native or resident of that Member State for the purposes of the laws of that Member State relating to immigration;

and for the purposes of this definition, a company or other legal entity is:

- (i) substantially owned if more than fifty percent of the equity interest in the company or entity is beneficially owned by a person mentioned in paragraphs (a) and (b);
- (ii) effectively controlled if the persons mentioned in paragraphs (a) and (b) have the power to name a majority of its directors or otherwise legally to direct its actions;" and

(b) delete subsection (2) and substitute the following :

“For the purposes of subsection (1), a locally owned business enterprise means a company which is not an alien company within the meaning of the Aliens Licensing Act 2002, No. 20 or which is a national of a Member State.”.

Insert the following immediately after section 17:

“Rights of a national of a Member State

18. (1) subject to subsection (3), a national of a Member State shall not require a work permit or a visa to enter Saint Lucia for the purpose of conducting a business that had been declared to be a micro or small-scale business enterprise under this Act.

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- (2) Subsection (1) applies notwithstanding anything to the contrary in any other law.
- (3) Subsection (1) shall not be construed to apply to any officer, servant, agent or employee of a national of a Member State if that officer, servant, agent or employee is not also a national of a Member State.”.

Insert the following as the Schedule:

“SCHEDULE

(Section 2)

Member States

- (a) Antigua and Barbuda
- (b) Barbados
- (c) Belize
- (d) Commonwealth of Dominica
- (e) Grenada
- (f) Guyana
- (g) Jamaica
- (h) Saint Christopher and Nevis
- (i) Saint Vincent and the Grenadines
- (j) Suriname
- (k) Trinidad and Tobago.”.

Tourist (Duty-Free Shopping System)
Act 1986, No. 23

In section 2, insert the following definitions in their appropriate alphabetical order:

“Member State” means a Member State of the Caribbean Community or the Organisation of Eastern Caribbean States listed in the Fourth Schedule;

“national of a Member State” means a person who:

- (a) is a citizen of a Member State;
- (b) has a connection with a Member State of a kind which entitles that person to be regarded as belonging to or, if it be so expressed, as being a native or resident of that Member State for the purposes of the laws thereof relating to immigration; or
- (c) is a company or other legal entity constituted in a Member State in conformity with the laws of the Member State and which that Member State 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 Member State and which is substantially owned and effectively controlled by persons mentioned in paragraphs (a) and (b);

and for the purposes of this definition a company or other legal entity is:

- (i) substantially owned if more than fifty percent of the equity interest of the company is beneficially owned by nationals mentioned in paragraphs (a) or (b);
- (ii) effectively controlled if the nationals mentioned in this definition have the power to name a majority of its directors or otherwise legally to direct its actions.”

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In section 8(1):

- (a) insert the words “or a Member State” after the words “Saint Lucia” in paragraph (b);
- (b) delete the word “or” at the end of paragraph (e);
- (c) delete the full stop at the end of paragraph (f) and substitute the words “;or”; and
- (d) insert the following after paragraph (f): “;or
“(g) is not a national of a Member State.”.

Insert the following immediately after section 8:

“Rights of a national of a Member State

- 8A (1) Subject to subsection (3), national of a Member State who has been granted a licence or permit under this Act, shall not require a work permit or a visa to enter Saint Lucia for the purpose of conducting business pursuant to this Act.
- (2) Subsection (1) applies notwithstanding anything to the contrary in any other law.
 - (3) Subsection (1) shall not be construed to apply to any officer, servant, agent or employee of a national of a Member State if that officer, servant, agent or employee is not also a national of a Member State.”.

Insert the following immediately after the Third Schedule:

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“FOURTH SCHEDULE

(Section 2)

Member States

- (a) Antigua and Barbuda
- (b) Barbados
- (c) Belize
- (d) Commonwealth of Dominica
- (e) Grenada
- (f) Guyana
- (g) Jamaica
- (h) Saint Christopher and Nevis
- (i) Saint Vincent and the Grenadines
- (j) Suriname
- (k) Trinidad and Tobago.”.

Trade Licences Act 1985,
No. 5

In section 2, insert the following definitions in their appropriate alphabetical order:

“Member State” means a Member State of the Organisation of Eastern Caribbean States or Caribbean Community listed in the Second Schedule;

“national” means a person who:

- (a) is a citizen of a Member State;
- (b) has a connection with a Member State of a kind which entitles that person to be regarded as belonging to or, if it be so expressed, as being a native or resident of that Member State for the purposes of the laws of that Member State relating to immigration; or
- (c) is a company or other legal entity constituted in a Member State in accordance with the laws of that Member State and which that Member State regards as belonging

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to it, if that 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 Member State and is substantially owned and effectively controlled by persons mentioned in paragraphs (a) and (b);

and for the purposes of this definition, a company or other legal entity is:

- (i) substantially owned if more than fifty percent of the equity interest in the company or entity is beneficially owned by a person mentioned in paragraphs (a) and (b);
- (ii) effectively controlled if the persons mentioned in paragraphs (a) and (b) have the power to name a majority of its directors or otherwise legally to direct its actions;”.

In section 3:

- (a) in subsection (2), delete the full stop occurring at the end of paragraph (b) and insert the following:
 - “; and
 - (c) to a national of a Member State;”;
- (b) in subsection (3), delete the full stop occurring at the end of paragraph (b) and insert the following:
 - “; or
 - (c) a person who is not a national of a Member State.”.

Veterinary Surgeons Ordinance
1957, No. 10

In section 2, insert the following definitions in their appropriate alphabetical order:

“Member State” means a Member State of the Caribbean Community or the Organisation of Eastern

Caribbean States listed in the Second Schedule;

“national” means a person who:

- (a) is a citizen of a Member State;
- (b) has a connection with a Member State of a kind which entitles that person to be regarded as belonging to or, if it be so expressed, as being a native or resident of that Member State for the purposes of the laws of that Member State relating to immigration; or
- (c) is a company or other legal entity constituted in a Member State in accordance with the laws of that Member State and which that Member State regards as belonging to it, if that 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 Member State and is substantially owned and effectively controlled by persons mentioned in paragraphs (a) and (b);

and for the purposes of this definition, a company or other legal entity is:

- (i) substantially owned if more than fifty percent of the equity interest in the company or entity is beneficially owned by a person mentioned in paragraphs (a) and (b);
- (ii) effectively controlled if the persons mentioned in paragraphs (a) and (b) have the power to name a majority of its directors or otherwise legally to direct its actions;”.

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In section 6 insert:

- (a) in paragraph (a), the words “or in a Member State” after the words “United Kingdom”; and
- (b) in paragraph (b), the words “, a Member State,” after the word “Commonwealth”.

Insert immediately after section 14:

“Rights of a national of a Member State

- 15. (1) A national of a Member State who is registered as a Veterinary Surgeon under this Act, shall not require a work permit or a visa to enter Saint Lucia for the purpose of practicing as a Veterinary Surgeon.
 - (2) Subsection (1) applies notwithstanding anything to the contrary in any other law.

Equal application of Act to a national of a Member State

- 16. Notwithstanding anything to the contrary in any other law, the provisions of this Act shall apply equally and without discrimination to a citizen of Saint Lucia and a national of a Member State.”

Insert:

- (a) the word “First” before “Schedule” wherever it occurs, and
- (b) the following immediately after the First Schedule:

“SECOND SCHEDULE
(Section 2)

Member States

- (a) Antigua and Barbuda
- (b) Barbados
- (c) Belize
- (d) Commonwealth of Dominica
- (e) Grenada
- (f) Guyana
- (g) Jamaica
- (h) Saint Christopher and Nevis
- (i) Saint Vincent and the
Grenadines
- (j) Suriname
- (k) Trinidad and Tobago.”

THIRD SCHEDULE*(Section 11)***CARICOM TREATY****Article 43****RESTRICTIONS TO SAFEGUARD BALANCE OF PAYMENTS**

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a Member State may, consistently with its international obligations and subject to paragraph 5 of this Article, adopt or maintain restrictions to address such difficulties.
2. The restrictions which may be adopted or maintained pursuant to paragraph 1 of this Article may include quantitative restrictions on imports, restrictions on the right of establishment, restrictions on the right to provide services, restrictions on the right to move capital or on payments and transfers for transactions connected therewith. However, such restrictions:
 - (a) shall, subject to the provisions of this Treaty, not discriminate among Member States in favour of third States;
 - (b) shall at all times seek to minimize damage to the commercial, economic or financial interests of any other Member State;
 - (c) shall not exceed those necessary to deal with the circumstances described in paragraph 1 of this Article; and
 - (d) shall be temporary but in any event not longer than a period of eighteen (18) months and be phased out progressively as the situation described in paragraph 1 improves.
3. In determining the incidence of such restrictions, the Member State concerned may accord priority to activities which are essential to its economic stability. Such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector in contravention of the relevant provisions of this Treaty, due regard being paid in either case to any special factors which may be affecting the reserves of such Member State or its need for reserves.
4. Restrictions adopted or maintained pursuant to paragraph 1 of this Article, or any changes therein, shall be promptly notified within three (3) working days to COFAP and to COTED, and, in any event, the Member State concerned shall immediately consult with the competent Organ if and when requested.
5. COFAP shall establish procedures for periodic consultations including, where possible and desirable, prior consultations with the objective of making recommendations to the Member State concerned for the removal of the restrictions.

No. 21] *Caribbean Community (Movement of Factors) Act* [2006.

6. The consultations referred to in paragraph 5 of this Article shall:
 - (a) be designed to assist the Member State concerned to overcome its balance of payments and external financial difficulties;
 - (b) assess the balance of payments situation of the Member State concerned and the restrictions adopted or maintained under this Article, taking into account, inter alia:
 - (i) the nature and extent of the balance of payments and the external financial difficulties;
 - (ii) the external economic and trading environment of the Member State applying the restrictions; and
 - (iii) alternative corrective measures which may be available.
7. The consultations shall address the compliance of any restrictions with paragraph 2 of this Article and, in particular, the progressive phase-out of restrictions in accordance with paragraph 2(d).
8. In such consultations, all finding of statistical and other facts presented by the Committee of Central Bank Governors relating to foreign exchange, monetary reserves and balance of payments, shall be accepted and conclusions shall be based on the assessments by the Committee of the balance of payments and the external financial situation of the Member State concerned.

**FOURTH SCHEDULE
CARICOM TREATY**

(*Section 12*)

Article 47

**RESTRICTIONS TO RESOLVE DIFFICULTIES OR
HARDSHIPS ARISING FROM THE EXERCISE OF RIGHTS**

1. Where the exercise of rights granted under this Chapter creates serious difficulties in any sector of the economy of a Member State or occasions economic hardships in a region of the Community, a Member State adversely affected thereby may, subject to the provisions of this Article, apply such restrictions on the exercise of the rights as it considers appropriate in order to resolve the difficulties or alleviate the hardships.
2. Where a Member State:
 - (a) intends to apply restrictions in accordance with paragraph 1 of this Article, it shall, prior to applying those restrictions, notify the competent Organ of that intention and the nature of the restrictions;
 - (b) is unable to comply with sub-paragraph (a) of this paragraph, it shall, upon applying the restrictions in accordance with paragraph 1, immediately notify the competent Organ of the application and nature of the restrictions.
3. The Member State shall, at the time of application of the restrictions mentioned in paragraph 1, submit to COTED or COFAP, as the case may require, a programme setting out the measures to be taken by that Member State to resolve the difficulties or to alleviate the hardships.
4. The competent Organ shall give its earliest consideration to the programme, and:
 - (a) make a determination in respect of the appropriateness of the restrictions and whether they shall be continued; and
 - (b) where it decides that the restrictions shall be continued, determine:
 - (i) the adequacy of the programme; and
 - (ii) the period for which the restrictions should continue.

The competent Organ, in making a determination under sub-paragraph(b) of this paragraph, may impose such conditions as it considers necessary.
5. Restrictions applied by a Member State pursuant to paragraph 1 of this Article shall be confined to those necessary:

No. 21] *Caribbean Community (Movement of Factors) Act* [2006.

- (a) to resolve the difficulties in the affected sectors;
 - (b) to alleviate economic hardships in a particular region.
6. In applying restrictions mentioned in paragraph 5, Member States shall:
- (a) minimise damage to the commercial or economic interests of any other Member State; or
 - (b) prevent the unreasonable exercise of the rights granted under this Chapter, the exclusion of which could impair the development of the CSME.
7. The Member States, in applying restrictions pursuant to paragraph 1 of this Article, shall not discriminate and:
- (a) shall progressively relax them as relevant conditions improve;
 - (b) may maintain them only to the extent that conditions mentioned in paragraph 1 of this Article continue to justify their application.
8. If COTED or COFAP, as the case may require, is not satisfied that Member States applying restrictions are acting in accordance with the provisions of paragraph 6 of this Article, it may recommend to the Member States adversely affected thereby alternative arrangements to the same end.

Passed in the House of Assembly this 7th day of February, 2006.

J. BADEN ALLAIN,
Speaker of the House of Assembly.

Passed in the Senate this 2nd day of March, 2006.

HILFORD DETERVILLE,
President of the Senate.