

*Legal Supplement Part C to the "Trinidad and Tobago Gazette", Vol. 47,
No. 7, 18th January, 2008*

No. 2 of 2008

First Session Ninth Parliament Republic of
Trinidad and Tobago

SENATE

BILL

AN ACT to provide for the implementation by the Government of the Republic of Trinidad and Tobago of the Agreement Establishing the Seat of the Caribbean Court of Justice and the Offices of the Regional Judicial and Legal Services Commission between the Government of Trinidad and Tobago and the Caribbean Court of Justice and the Regional Judicial and Legal Services Commission

THE CARIBBEAN COURT OF JUSTICE (HEADQUARTERS)
BILL, 2008

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The Caribbean Court of Justice (Headquarters) Bill, 2008 would provide for the implementation of the Agreement Establishing the Seat of the Caribbean Court of Justice and the Offices of the Regional Judicial and Legal Services Commission between the Government of Trinidad and Tobago and the Caribbean Court of Justice and the Regional Judicial and Legal Services Commission (“the Headquarters Agreement”).

Clause 3 would provide for the costs related to Trinidad and Tobago’s obligations under the Headquarters Agreement to be a charge on the Consolidated Fund.

Clause 4 would give the Headquarters Agreement the force of law in Trinidad and Tobago.

Clause 5 would provide for amendment of the Schedule in accordance with any amendment to the Headquarters Agreement itself.

BILL

AN ACT to provide for the implementation by the Government of the Republic of Trinidad and Tobago of the Agreement Establishing the Seat of the Caribbean Court of Justice and the Offices of the Regional Judicial and Legal Services Commission between the Government of Trinidad and Tobago and the Caribbean Court of Justice and the Regional Judicial and Legal Services Commission

[, 2008]

| | |
|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Enactment | ENACTED by the Parliament of Trinidad and Tobago as follows:— |
| Short title | 1. This Act may be cited as the Caribbean Court of Justice (Headquarters) Act, 2008. |
| Interpretation | <p>2. In this Act—</p> <p>“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 Judicial Personality and Legal Capacity of the Court, signed at Montego Bay, Jamaica on the 4th day of July, 2003 and the Protocol to the Agreement Establishing the Caribbean Court of Justice Relating to the Tenure of Judges, Rules of Court, Financial Arrangements and Withdrawal from Agreement as well as the relationship between Provisions on the Original Jurisdiction of the Caribbean Court of Justice and the Constitutions of States Parties done at Paramaribo, Suriname on the 17th day of February, 2005;</p> <p>“Court” means the Caribbean Court of Justice established by Article III of the Agreement;</p> <p>“Government” means the Government of the Republic of Trinidad and Tobago;</p> <p>“Headquarters Agreement” means the Agreement Establishing the Seat of the Caribbean Court of Justice and the Offices of the Regional Judicial and Legal Services Commission between the Government of</p> |

Trinidad and Tobago and the Caribbean Court of Justice and the Regional Judicial and Legal Services Commission signed by the Government and the Caribbean Court of Justice and the Regional Judicial and Legal Services Commission on the 23rd day of February, 2005 the text of which is set out in the Schedule;

“Offices of the Commission” has the meaning assigned to it in Article I of the Headquarters Schedule Agreement;

“Minister” means the Minister to whom responsibility for Caribbean Community Affairs has been assigned; and

“Seat of the Court” has the meaning assigned to it in Article I of the Headquarters Agreement.

3. (1) All sums required to be paid by the Government of Trinidad and Tobago for the purpose of meeting the Financial provisions for giving effect to the Headquarters Agreement obligations of Trinidad and Tobago under the Headquarters Agreement shall be a charge on the Consolidated Fund.

(2) Any sums received by the Government of Trinidad and Tobago from the Caribbean Court of Justice and the Regional Judicial and Legal Services Commission shall be paid into the Consolidated Fund.

4. Notwithstanding any other written law, the Agreement shall have the force of law in Trinidad and Headquarters Agreement given the force of law in Trinidad and Tobago Tobago.

5. The Minister may, by Order, amend the Schedule for the purpose of bringing the Headquarters Agreement Amendment of Schedule into accord with any amendments made thereto under Article XIV:2.

SCHEDULE

(section 2)

AGREEMENT ESTABLISHING THE SEAT OF THE
CARIBBEAN COURT OF JUSTICE AND THE OFFICES
OF THE REGIONAL JUDICIAL AND LEGAL SERVICES
COMMISSION BETWEEN THE GOVERNMENT OF
TRINIDAD AND TOBAGO AND THE CARIBBEAN
COURT OF JUSTICE AND THE REGIONAL JUDICIAL
AND LEGAL SERVICES COMMISSION

PREAMBLE

WHEREAS paragraph 3 of Article III of the Agreement Establishing the Caribbean Court of Justice (hereinafter called "The Agreement") provides that the Seat of the Court shall be in the territory of a Contracting Party as determined from time to time by a qualified majority of the Contracting Parties

Whereas paragraph 4 of Article III of the Agreement provides *inter alia* that the Contracting Party in whose territory the Seat of the Court is situated shall conclude with the Court and the Commission an agreement relating to the Seat of the Court and the offices of the Commission and

Whereas the Contracting Parties to the Agreement have determined that the Seat of the Court shall be in Trinidad and Tobago

The Parties hereto have agreed as follows:

ARTICLE I

USE OF TERMS

In this Agreement, unless the context otherwise requires:

"Archives of the Court or Commission" includes the records, correspondence, documents, manuscripts, photographs, slides, films, sound recordings and electronic storage devices belonging to or held by the Court or Commission;

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

"Competent Authorities" means national, regional or local authorities of Trinidad and Tobago as may be appropriate in the context and in the laws of Trinidad and Tobago;

"Conference" means the Conference of Heads of Government of Member States of the Caribbean Community;

“Counsel” means a person qualified to appear in proceedings before the Court on behalf of another;

“Court” means the Caribbean Court of Justice established by Article III of the Agreement;

“the Government” means the Government of Trinidad and Tobago;

“offices of the Commission” means the offices provided by the Government in accordance with paragraph 4 of Article III of the Agreement and occupied by the Commission for its official use;

“officers of the Court” means the Court Executive Administrator, the Registrar and Deputy Registrar and such other officials of the Court as may be designated from time to time by the President;

“President” means the President of the Court;

“Property” means all forms of property including funds and assets belonging to or held or administered by the Court or the Commission and all income accruing to the Court or the Commission;

“Seat of the Court” means the premises provided by the Government in accordance with paragraph 4 of Article III of the Agreement and occupied by the Court for its official use.

ARTICLE II

STATUS OF THE COURT AND COMMISSION

1. The Court and the Commission shall possess full juridical personality and, in particular, full capacity to:

- (a) contract;
- (b) acquire and dispose of immovable and movable property;
- (c) institute legal proceedings.

2. In all legal proceedings, the Court and the Commission shall be represented by the Registrar.

ARTICLE III

THE SEAT OF THE COURT AND OFFICES OF THE COMMISSION

1. The Seat of the Court and offices of the Commission shall be the premises defined in Article I of this Agreement.

2. The President shall have the power to make regulations operative within the Seat of the Court and offices of the Commission for the purpose of establishing therein conditions necessary for the full execution of their functions which shall be carried out through the Court Executive Administrator and the Registrar.

3. The Seat of the Court and offices of the Commission shall be inviolable and shall be under the authority of the President as provided for in this Agreement.

4. Officials of the Government, whether administrative, judicial, military or police, shall not enter the Seat of the Court or the offices of the Commission to perform any official duties therein except with the consent of and under conditions agreed by either the Court Executive Administrator or the Registrar. However, in the case of fire or other emergency requiring prompt protective action, or in the event that officials of the Government have reasonable cause to believe that such an emergency has occurred, the consent of the Court Executive Administrator or the Registrar to entry in the Seat of the Court and offices of the Commission by the officials of the Government shall be presumed if neither the Court Executive Administrator nor the Registrar can be reached in time.

5. The service of legal process, including the seizure of private property, may take place within the Seat of the Court or the offices of the Commission only with the consent of and under the conditions approved by the Registrar.

6. The President shall not permit the Seat of the Court or the offices of the Commission to become a refuge either for fugitives from justice or for persons who are endeavouring to avoid service of legal process or judicial proceedings under the laws of Trinidad and Tobago or against whom an order of extradition or deportation has been made by the competent authorities.

7. The Court Executive Administrator may expel or exclude persons from the Seat of the Court or the offices of the Commission for violation of its regulations or for any other reasonable cause.

ARTICLE IV

PROPERTY, FUNDS AND ASSETS OF THE COURT AND COMMISSION

1. The Court, Commission and their property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case the President has expressly waived their immunity. No waiver of immunity shall extend to any measure of execution.

2. Save as otherwise provided in paragraph 1 of this Article, the property of the Court and the Commission, wherever located or by whomsoever held, shall be immune from search, acquisition, confiscation, expropriation and any other form of interference, whether by legislative, executive, administrative or judicial action.

3. Nothing in this Article shall be construed as preventing the Government from taking appropriate action in connection with the investigation into accidents involving motor vehicles belonging to or operated on behalf of the Court or the Commission.

ARTICLE V

ARCHIVES OF THE COURT AND COMMISSION

The archives of the Court and the Commission and in general all documents held by them shall be inviolable wherever located.

ARTICLE VI

EXEMPTION FROM FOREIGN EXCHANGE CONTROLS

1. Without being restricted by financial controls, regulations or moratoria of any kind, the Court and the Commission shall be entitled for its official use only:

- (a) to purchase from authorized dealers, hold and make use of negotiable currencies, operate foreign currency and external accounts and purchase through authorized dealers, hold and make use of funds and securities;
- (b) freely transfer its funds, securities and foreign currencies to or from Trinidad and Tobago or within Trinidad and Tobago and to convert any currency held by it into other currency.

2. The Court and the Commission in executing their respective rights under paragraph 1 of this Article, shall pay due regard to any representation made by the Government and shall give effect to such representation to the extent that such representation may be taken into account without detriment to the interests of the Court or the Commission as the case may be.

ARTICLE VII

EXEMPTION FROM TAXES, CUSTOMS DUTIES AND IMPORT OR EXPORT DUTIES

1. The property of the Court and the Commission shall be exempt from:

- (a) any form of direct or indirect taxation but the Court and the Commission will not claim exemption from taxes which are, in fact, no more than charges for public utility services;
- (b) customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported for their official use, subject to the condition that articles imported under such exemption shall not be sold within Trinidad and Tobago except under conditions agreed to between the President and the Government;
- (c) customs duties and other levies and prohibitions and restrictions in respect of the import, sale and export of their publications.

2. For the purpose of this Article, indirect taxation includes airport departure tax or travel tax, travel ticket tax, hotel and restaurant tax, customs and excise duties, consumption tax, stamp duties, withholding tax on interest, value added tax, finance charges and imposts with equivalent effect.

ARTICLE VIII

FACILITIES IN RESPECT OF COMMUNICATIONS

1. The Court and Commission shall enjoy in the territory of Trinidad and Tobago, freedom of communication for their official communications.

2. The official correspondence and all other forms of official communications of the Court and Commission shall be inviolable.

3. The Court and Commission shall have the right to use codes and to dispatch and receive correspondence by courier in sealed bags, which shall not be searched or detained unless the competent authorities have serious reason to believe that the sealed bags contain something other than correspondence, documents or articles for the official use of the Court or the Commission exclusively, in which case the bag shall be opened only in the presence of an officer of the Court.

4. Nothing in this Article shall be construed so as to preclude the adoption of measures necessary to protect the security of Trinidad and Tobago.

ARTICLE IX

JUDGES AND OFFICERS OF THE COURT

1. Judges and officers of the Court and members of the Commission, when engaged on the business of the Court or Commission, as the case may be, in Trinidad and Tobago, shall enjoy:

- (a) immunity from legal process in respect of words spoken or written and all acts done by them in their official capacity, such immunity shall continue notwithstanding that the persons concerned have ceased to exercise their functions with the Court or the Commission;
- (b) immunity from personal arrest or detention in relation to acts performed by them in their official capacity;
- (c) inviolability of all papers, documents and materials related to the work of the Court or the Commission;
- (d) exemption from immigration restrictions, alien registration requirements and national service obligations;
- (e) the same protection and repatriation facilities in times of international crisis as are accorded representatives of foreign governments of comparable rank;
- (f) the right, for the purpose of all communications with the Court or the Commission, to use codes to dispatch or receive papers, correspondence or other official material by courier or in sealed bags;
- (g) the same privileges and facilities in respect of currency and exchange restrictions as are accorded to representatives of foreign governments of comparable rank;

- (h) immunity from inspection and seizure of personal and official baggage, except in cases of *flagrante delicto*. In such cases, the competent authorities shall immediately inform the Court Executive Administrator. Inspection of personal baggage shall be conducted in the presence of the person concerned or his authorized representative and, in the case of official baggage, in the presence of a duly authorized representative of the Court Executive Administrator;
- (i) exemption from any form of direct taxation of salaries, remuneration and allowances paid by the Court or the Commission and from customs duties on imports in respect of articles imported for personal use, subject to the condition that articles imported under such exemption shall not be sold within Trinidad and Tobago except under conditions determined by the Government.

2. The privileges, immunities and exemptions mentioned in sub-paragraphs (a), (b), (c), (d), (e), (g), (h) and (i) of paragraph 1 of this Article shall also be enjoyed by such senior employees of the Court or Commission as may be designated from time to time by the President in writing to the Government when such officers are engaged on the business of the Court or Commission as the case may be in Trinidad and Tobago.

3. All employees of the Court or Commission shall enjoy exemption from income tax in respect of salaries, remuneration and allowances paid to them by the Court or Commission as the case may be.

ARTICLE X

COUNSEL APPEARING IN PROCEEDINGS BEFORE THE COURT

1. Counsel appearing in proceedings before the Court while present in Trinidad and Tobago shall, in the performance of their functions connected with such proceedings, enjoy:

- (a) inviolability of all papers, documents and materials relating to the proceedings before the Court;
- (b) immunity from personal arrest or detention in relation to words spoken or written or acts performed by them in relation to proceedings before the Court;

- (c) exemption from immigration restrictions, alien registration requirements and national service obligations;
- (d) the same privileges and facilities in respect of currency and exchange restrictions in relation to their appearance in proceedings before the Court as are accorded to representatives of Government on temporary official missions.

2. Counsel mentioned in paragraph 1 of this Article shall enjoy, in respect of words written or spoken and all acts done by them in the conduct of proceedings before the Court, immunity from legal process. The immunity shall continue although the person entitled is no longer conducting proceedings before the Court.

3. The privileges, immunities and facilities mentioned in this Article are only intended to assist counsel in the efficient representation of clients in proceedings before the Court and shall not be employed to circumvent applicable laws and regulations of Trinidad and Tobago.

ARTICLE XI

CO-OPERATION WITH COMPETENT AUTHORITIES

1. Privileges and immunities are recognised and granted by this Agreement in the interest of the Court and Commission and not for the personal benefit of persons entitled thereto. The Conference, in the case of the President, and the President, in the case of other persons entitled thereto, shall have the right to waive such privileges and immunities whenever in their opinion the enjoyment of the privileges and immunities would impede the course of justice and could be waived without prejudice to the interests of the Court or Commission.

2. The President, the Court Executive Administrator and the Registrar, as the case may be, shall co-operate at all times with the competent authorities in order to facilitate the proper administration of justice, secure the observance of the laws and regulations of Trinidad and Tobago and avoid the occurrence of any abuse in connection with the privileges, immunities and facilities recognised and granted by this Agreement.

3. Without prejudice to the privileges and immunities recognised and granted by this Agreement, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of Trinidad and Tobago.

4. If the Government considers that an abuse has occurred in the enjoyment of any privilege or immunity conferred by this Agreement, the Court Executive Administrator shall, at the request of the Government, consult with the competent authorities to determine whether such an abuse has occurred. If such consultations fail to achieve results satisfactory to the Court Executive Administrator and the Government, the issues shall be settled in accordance with the procedure laid down in Article XIII.

ARTICLE XII

FACILITATION OF TRAVEL

1. Subject to the laws or regulations restricting entry or movement for reasons of national security, the Government shall extend all facilities for the uninterrupted passage within Trinidad and Tobago as well as for the entry and departure therefrom of the categories of persons indicated below:

- (a) judges of the Court and members of their families forming part of their household;
- (b) members of the Commission;
- (c) officers of the Court and members of their families forming part of their household;
- (d) parties to and applicants in proceedings before the Court and counsel appearing representing them in such proceedings;
- (e) persons other than officers of the Court performing missions for the Court and members of their families forming part of their household; and
- (f) other persons invited to the Seat of the Court or offices of the Commission on official business.

2. The Court Executive Administrator shall communicate to the Government the names of the persons mentioned in paragraph 1 of this Article.

3. This Article shall not be applicable in case of a general interruption of transportation and shall not impede the effective application of laws in force nor waive reasonable application of quarantine and health regulations.

4. Visas required by persons referred to in paragraph 1 of this Article shall be granted expeditiously and free of charge.

ARTICLE XIII

SETTLEMENT OF DISPUTES

1. The President shall make appropriate provisions for the settlement of:

- (a) disputes arising out of contracts and other disputes of a private law character to which the Court or Commission is a party;
- (b) disputes involving any judge or officer of the Court or Counsel conducting proceedings before the Court enjoying immunity if such immunity has not been waived by the persons empowered in that behalf.

2. Any difference between the Government and the Court or the Commission arising out of the interpretation or application of this Agreement and which is not settled by negotiation or other agreed mode of settlement shall be referred for final decision to a Tribunal of three arbitrators at the instance of either party: one to be appointed by the Government, one to be appointed by the President, and the third, who shall be the Chairman of the Tribunal, to be chosen by the first two arbitrators. If either of the parties fails to appoint an arbitrator within six weeks of the decision to resort to arbitration, an arbitrator or arbitrators, as the case may be, shall be appointed for such purposes by the Secretary General of the Caribbean Community. If the first two arbitrators within three weeks of their appointment fail to agree upon the third, the Government or the President shall request the Secretary General to choose the third arbitrator. The arbitral Tribunal shall make a determination within six months from the date of its constitution. A majority vote of the arbitrators shall be sufficient to reach a decision, which shall be final and binding. The Chairman shall be empowered to settle all questions of procedure in any case where there is disagreement between the other arbitrators in respect thereto.

ARTICLE XIV

ENTRY INTO FORCE

1. This Agreement and any agreement supplementary thereto shall enter into force immediately upon signature.

2. Consultations in respect of any amendment to this Agreement may be initiated by either the Government or the President.

3. The Government shall take such action as is necessary for the purpose of incorporating the provisions of this Agreement in the law of Trinidad and Tobago and shall inform the President of the action taken.

ARTICLE XV

TERMINATION

This Agreement and any amendment thereof shall cease to have effect five years after either of the Parties hereto has given notice in writing to the other of its decision to terminate this Agreement.

IN WITNESS WHEREOF the representative of the Government and the President of the Caribbean Court of Justice and Chairman of the Regional Judicial and Legal Services Commission being duly authorised in that behalf have executed this Agreement.

Done at Port-of-Spain, Trinidad and Tobago on the 23rd day of February, 2005.

For the Government of Trinidad and Tobago

Knowlson Gift
Minister of Foreign Affairs

For the Caribbean Court of Justice and the Regional Judicial and Legal Services Commission

Michael de La Bastide
President of the Caribbean Court of Justice and
Chairman of the Regional Judicial and Legal
Services Commission

Passed in the Senate this day of , 2008.

Clerk of the Senate

I confirm the above.

President of the Senate

Passed in the House of Representatives this day
of , 2008.

Clerk of the House

I confirm the above.

Speaker

No. 2 of 2008

FIRST SESSION
NINTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to provide for the implementation by the Government of the Republic of Trinidad and Tobago of the Agreement Establishing the Seat of the Caribbean Court of Justice and the Offices of the Regional Judicial and Legal Services Commission between the Government of Trinidad and Tobago and the Caribbean Court of Justice and the Regional Judicial and Legal Services Commission

Received and read the

First time

Second time

Third time