



Caribbean Court of Justice



MANUAL for REFERRAL PROCEEDINGS

Article 214 of the Revised Treaty of Chaguaramas

Revised October 2022



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INTRODUCTION

1. The Caribbean Court of Justice (CCJ), in its Original Jurisdiction, has compulsory and exclusive jurisdiction to hear and determine disputes concerning the interpretation and application of the Revised Treaty of Chaguaramas (referred to in this document as the “RTC¹” or simply “the Treaty”). Article 211 indicates that such disputes may arise a) between Member States parties to the Treaty, or b) between those Member States and the Caribbean Community (“the Community”), or c) from applications by persons in accordance with Article 222 of the Treaty or d) between litigants appearing before national courts or tribunals of Member States. Where such a dispute arises between litigants before national courts or tribunals, the RTC makes provision for the local court or tribunal to engage the CCJ to determine the particular issue that concerns the interpretation or application of the Treaty.
2. National courts and tribunals are, therefore, key partners charged with ensuring that CARICOM law, that is, the RTC, decisions of competent Organs taken under the RTC² and judgments of the CCJ in its Original Jurisdiction³, take full effect and that the rights which the Treaty confers on natural and juridical persons are adequately protected. Article 214 of the RTC mirrors Article XIV of the Agreement Establishing the Caribbean Court of Justice (“the CCJ Agreement”) and imposes a duty on national courts and tribunals to prepare a preliminary ruling reference (a “referral”) if interpretation of CARICOM law is needed to resolve a dispute

1. Article 211 of the RTC.
2. Article 240 of the RTC.
3. Article 221 of the RTC.



INTRODUCTION *(continued)*

before the national court or tribunal⁴. Article 214 imposes a further obligation on national courts and tribunals to apply the interpretation of CARICOM law received from the CCJ in making their final decision on the dispute. These duties are reinforced by Article 9 of the RTC, which requires that the Member States, including their national courts and tribunals, take all appropriate measures, whether general or particular, to ensure the carrying out of obligations arising out of CARICOM law.

3. A referral from a national court or tribunal is a request for interpretive assistance. It is not an appeal from a national court or tribunal to the CCJ. The referral procedure establishes a close co-operation between national courts and tribunals of CARICOM Member States on the one hand and the CCJ on the other in the further development of CARICOM law. Thus, if a national court or tribunal refers a question of interpretation to the CCJ, that national court or tribunal will stay/adjourn/suspend the national proceedings and await a response from the CCJ to the referred question.
4. The judgment given by the CCJ is called a ruling⁵ and it is a judgment specifically confined to the question of interpretation referred to it by the national court or tribunal. Once the CCJ has given its ruling, the proceedings are resumed by the referring court or tribunal. The latter will then apply the ruling to the facts of the dispute pending before it and deliver judgment in that dispute.

4. Section 3 of the Jamaican Caribbean Court of Justice Act excludes Article XIV of the Agreement from having the force of law in Jamaica. However, Section 7 provides for a court or tribunal to request that a designated authority refer such a question to the CCJ for an advisory opinion (See Annex IV). Also, see Independent Jamaica Council for Human Rights (1998) *Ltd v Marshall-Burnett & Anor* (Jamaica) [2005] UKPC 3.

5. Rule 10A.2(12) of the OJR.



INTRODUCTION *(continued)*

5. The referral provision satisfies two objectives. Firstly, it ensures that national courts and tribunals, where relevant, are always guided by the RTC and, secondly, that there is uniformity in the interpretation and application of CARICOM law. Article 221 of the RTC states that judgments of the CCJ constitute legally binding precedents for parties in proceedings before the Court. As judgments include rulings, the latter are also legally binding precedents.
6. To ensure the effectiveness of the referral procedure, this Manual explains its essential features, and provides national courts and tribunals with practical information on how to initiate and draft a referral under Article 214 of the RTC. The Manual also constitutes an explanatory guide to the relevant provisions of the Caribbean Court of Justice (Original Jurisdiction) Rules 2021 (OJR). In particular, it explains Rule 10A.2, which makes provision for the form and content of a referral.
7. **This Manual is divided into two sections:**
 - (a) Section I outlines the essential features of the referral procedure.
 - (b) Section II provides step-by-step instructions to national courts and tribunals regarding the initiation of referral proceedings before the CCJ.



INTRODUCTION *(continued)*

8. The Manual also includes five annexes:

- (a) **Annex I** contains a sample referral request form.
- (b) **Annex II** gives an example of how a request for a referral should be drafted by a referring court or tribunal.
- (c) **Annex III** specifies the legal bases for the referral procedure in the national laws of the contracting parties to the RTC and to the CCJ Agreement.
- (d) **Annex IV** details a special note on the referral process in Jamaica.
- (e) **Annex V** explains key terms used in the Manual and provides a list of abbreviations.

9. A referral is made pursuant to the provisions of Article 214, which states:

Where a national court or tribunal of a Member State is seised of an issue whose resolution involves a question concerning the interpretation or application of this Treaty, the court or tribunal concerned shall, if it considers that a decision on the question is necessary to enable it to deliver judgment, refer the question to the Court for determination before delivering judgment.⁶

6. Article XIV of the CCJ Agreement provides: "Where a national court or tribunal of a Contracting Party is seised of an issue whose resolution involves a question concerning the interpretation or application of the Treaty, the court or tribunal concerned shall, if it considers that a decision on the question is necessary to enable it to deliver judgment, refer the question to the Court for determination before delivering judgment."



SECTION I

An outline of the essential features of the referral procedure

I. Decision to make a referral

10. Whether on its own motion, or on the urging of a party, the referral procedure is initiated by a national court or tribunal of a Member State of the RTC. National judicial officers ultimately must determine when to stay the proceedings and to refer interpretive questions to the CCJ. This means that national judges may decide to refer a case a) even if the litigating parties do not expressly ask for a reference and b) at any stage of the national proceedings. In deciding whether or not to make a referral to the CCJ, national judges may consult the parties to the proceedings. However, the final decision lies with the judge.

II. Subject matter of the referral

11. Referrals are most likely to arise when the national court or tribunal⁷:

- (a) is faced with a question concerning the interpretation or application of a provision of the RTC; or
- (b) has doubts about the validity, meaning or scope of a decision under the RTC taken by a CARICOM Organ or Body.

III. Form of the referral

12. In determining the form in which the national proceedings are stayed/adjourned/suspended for a referral to be made to the CCJ, the national courts or tribunals may refer to their respective domestic procedures.⁸

⁷ Section II of this manual contains additional information to guide national judges in their decision to initiate a referral.

⁸ That is, whether the decision to refer is made in the form of an Order, Interlocutory Judgment, etc.



SECTION I (*continued*)

IV. Content of the referral⁹

13. Under Rule 10A.2(3) of the OJR, the referral should:

- (a) state the question/s which the CCJ is asked to answer;
- (b) explain how the referred question is relevant to the issues in the proceedings before the national court;
- (c) identify the parties to those proceedings and give an address for service for each of them; and
- (d) give an account of the factual and legal background sufficient for a full understanding of what is provided under sub-paragraphs (a) and (b) above.

V. Ongoing Communication between the referring court or tribunal and the CCJ

14. After a referral has been sought, the spirit of co-operation which governs the relationship between the referring body and the CCJ requires that the CCJ be promptly informed of any procedural step that may affect the referral, including, for example:

- (a) the admission of any new parties to the national proceedings;

⁹ A more detailed account of the content is included in Section II of the Manual.



SECTION I (*continued*)

- (b) any discontinuance or withdrawal of the national proceedings; and
 - (c) any amicable settlement or any other event leading to the termination of the national proceedings or otherwise affecting the shape of those proceedings.
15. Timely and accurate exchanges of information between the referring court or tribunal and the CCJ are essential for the proper and effective management of the referral proceedings before the CCJ. The CCJ, through its Registry, will communicate with the referring court or tribunal throughout the referral proceedings. The CCJ's Registry may request, on behalf of the CCJ, any additional information or clarification necessary for rendering a ruling.

VI: Joinder of referrals

16. In a situation where the same question/s concerning CARICOM law has/have been raised in more than one case pending before the referring court or tribunal, that court or tribunal may make a single referral to the CCJ in respect of those cases or simultaneously make separate referrals. If the court or tribunal decides to make a single referral, it may complete Sections 1-3 of the Sample Referral Form¹⁰ for each case consecutively before completing Section 4.

¹⁰. See Annex I.



SECTION I (*continued*)

17. Likewise, where the same or similar question/s have been referred by multiple national courts or tribunals, including instances where such referrals have come from more than one Contracting Party, the CCJ may join or consolidate those referrals if it considers such a course to be expedient.¹¹

VII. Costs of referral proceedings

18. Referral proceedings before the CCJ do not attract costs.

¹¹. See Rule 8.2.



SECTION II

Step-by-step instructions concerning the process for and content of referral proceedings before the Caribbean Court of Justice

I. Initiation of the referral process

19. Once an order has been made by a national court or tribunal to refer one or more questions to the CCJ, the national proceedings will be stayed/adjourned/suspended¹² and the referring court or tribunal will follow the steps set out here and in Annex I to obtain the referral ruling.

II. Content of the referral

20. The referral should:

- (a) clearly identify the referring court or tribunal and, where appropriate, the chamber, division or formation of the referring court or tribunal;
- (b) contain the contact details of the referring court or tribunal;
- (c) specify the person to whom all communication from the CCJ should be addressed and provide the contact details of that person;
- (d) identify the parties to the national proceedings¹³, and their legal representatives, if any; and

12. Notwithstanding this, the referring court or tribunal retains jurisdiction over the proceedings pending before it, and thus may take any procedural measures available under national law, in particular protective measures to safeguard the interests of the parties to the national proceedings, or other persons concerned by the dispute in the national proceedings.

13. Note Paragraph 24.



SECTION II (continued)

- (e) provide an address for service for each of the parties to the national proceedings. If a party changes its legal representative during the proceedings before the CCJ, that party must immediately notify the CCJ.
21. When a referral has been made, the contents of the referral are matters to which the general public may have access. Thus, if any information relating to the personal data of the parties or those concerned by the dispute is considered sensitive, the referring court or tribunal may take appropriate steps to protect such information and request that the CCJ omit such information from the copies served, pursuant to Rule 10A.2(5), and any official publication¹⁴. The Court may, therefore, use an anonymised version of the request for such purposes.
22. In keeping with Rule 10A.2(3)(a), (b) and (d) of the OJR, the referral should also contain the following information:
- (a) **Factual Background of the case** – a brief description of the subject matter of the dispute, an account of the facts that are essential for a full understanding of the referred question and its relevance to the dispute pending before it.¹⁵ If some facts are still in dispute, the referring court or tribunal may provide a synopsis of the respective positions of the parties in relation to those facts.
- (b) **Legal Background of the case** – a brief description of the legal background of the dispute pending before the referring court or tribunal and an indication as to why it requires the particular interpretation of

14. See Rule 8.1(1)(z).

15. There is no need to give an account of the evidence which has led to the determination of facts as described.



SECTION II (continued)

CARICOM law. This should include a brief indication of the provisions of national law relevant to the question being referred, as well as any provisions of CARICOM law thought to be relevant.

- (c) **Referred Question/s** – a referral should clearly state the question/s which the CCJ is being asked to answer. There is no limit to the number of questions that may be asked, provided a) they are relevant to the resolution of the dispute pending before the referring court or tribunal and b) they concern the interpretation or application of the RTC, or the interpretation, application or validity of a decision taken by a CARICOM Organ or Body.

NB: The referred question/s should be formulated as an abstract question/s concerning the interpretation or application of the RTC or the validity of a decision of a CARICOM Organ or Body. Ideally, the referred question/s will be self-explanatory and self-contained, so as to be understandable on its own.

- (d) **Signature** – the referral must be dated and signed by the Registrar of the referring court or tribunal or by a person authorised under national law to sign the referral (Rule 10A.2(2)).
- (e) **Accompanying Documents** – the referral must be accompanied by the documents relevant to the question being referred. In particular, it should contain all relevant material from the case file in the national proceedings, unless the CCJ requests the entire file.¹⁶¹⁷

16. Rule 10A.2(4).

17. Subject to the indication of the referring court that part of the file should not be given to persons listed in Rule 10A.2(5).



SECTION II (*continued*)

- (f) **Additional Information** – the CCJ may request additional information from the referring court or tribunal and give directions to the referring court or tribunal concerning the conduct of the proceedings.
23. A referral should be written simply, clearly and precisely. Excluding the accompanying documents, it should generally contain no more than 10 to 12 typewritten pages formatted in accordance with the OJR. Each page and each paragraph should be numbered. When drafting a referral, the referring court or tribunal should keep in mind that its referral serves as the basis of the proceedings before the CCJ and will be served on the persons specified in Rule 10A.2(5) of the OJR who are entitled to make submissions to the CCJ on the referred question/s.
24. The referral should be filed electronically using the CCJ’s e-filing platform.

III. Procedure after the referral is filed¹⁸

25. When a referral is filed, copies of the referral will be served on all Member States, the Secretary General of the Community and the parties to the proceedings before the national court or tribunal¹⁹.
26. Where, upon being served with copies of the Referral, the Community or any Member State wishes to be heard on the question/s referred, it shall so indicate within six weeks of such service unless the CCJ otherwise

¹⁸. The procedure for the CCJ to deal with the referral is provided in Rule 10A.2(4) – (12) of the OJR 2021.

Rule 10A.2(4).

¹⁹. Rule 10A.2(4).



SECTION II (*continued*)

determines²⁰. Following any such notice of a desire to be heard, the CCJ will give an opportunity for submissions to be made either orally, in writing or both²¹.

27. The CCJ will then give directions for the further conduct of the matter.²²

28. On the basis of information provided in the referral and the submissions made, the CCJ will first determine whether it has jurisdiction under Article 214 of the RTC to deal with the referral. Where the CCJ determines that:

- (a) It does have jurisdiction to deal with the referral, it will proceed to answer the questions/s referred and give its ruling.
- (b) It does not have jurisdiction to deal with the referral, the CCJ will inform the national court or tribunal, and those served pursuant to Rule 10A.2(5), of this determination in writing and provide brief reasons for this determination.

20. Rule 10A.2(6).

21. Rule 10A.2(7).

22. Rule 10A.2(9).



SECTION II (*continued*)

IV. Conclusion of the referral process

29. After the CCJ has determined the answer/s to the question/s referred, it shall give its ruling in writing. The Registrar shall send the ruling to the person who signed the referral, the parties to the proceedings before the national court and any body which made submissions to the CCJ on the referral. The referral judgment will then be published by the Court for public access.²³

V. Epilogue to the referral process

30. The referring court or tribunal shall apply the ruling to the facts of the dispute pending before it and deliver judgment in that dispute. Upon delivery of that judgment, the referring court or tribunal shall send to the Registrar of the CCJ a copy of the judgment.

²³. Rule 10A.2(12).



ANNEX I

A SAMPLE REFERRAL FORM

A Referral to the Caribbean Court of Justice Original Jurisdiction

To: The Caribbean Court of Justice (CCJ)

From: _____

[The name and address of the referring court or tribunal, including where appropriate the chamber, division or formation of the referring court or tribunal must be inserted above.]

[The referring court or tribunal must specify above the name, contact details, and position of the person to whom all communications from the CCJ should be sent.]

SECTION 1: Parties to the proceedings before the referring court or tribunal

Claimant/s: _____

[The name and address of the Claimant/s should be inserted above. This address will be used for service upon it/them.]

Represented by: _____

[The name and address of the legal representative/s of the Claimant/s should be inserted above.]

Defendant/s: _____

[If not a Member State, the name and the address of the Defendants should be inserted above. The address will be used for service upon it/them.]



ANNEX I - Sample referral form (continued)

Represented by: _____

[The name and address of the legal representative/s of the Defendant/s should be inserted above.]

The [name of the referring court or tribunal] hereby makes a referral to the CCJ pursuant to Article 214 of the Revised Treaty of Chaguaramas. Accordingly, the [name of the referring court or tribunal] having suspended the proceedings pending before it in [the name of the case should be inserted here] awaits a determination from the CCJ of the questions contained herein.

SECTION 2: Factual Background

SECTION 3: Legal Background

SECTION 4: Referred Question/s

Dated day of ... 20...

Signed _____

[The name of the person authorised to sign the referral and that person's contact details should be inserted above.]

The referral should be sent by electronic means to the Registrar of the CCJ.

The e-mail address of the Registry is efile@ccj.org.



ANNEX II

A SAMPLE REFERRAL FORM²⁴

A Referral to the Caribbean Court of Justice Original Jurisdiction

To: The Caribbean Court of Justice (CCJ)
From: The High Court of Justice of Antigua and Barbuda, Civil Division
Parliament Drive, St John's, Antigua and Barbuda
Liaison to the CCJ: Ms Sheryl Reifer
Registrar, Civil Division
Tel. 264 462 0649
Email: sreifer@gmail.com

SECTION 1: Parties to the proceedings before the referring court or tribunal:

Claimant: **ABE WASHINGTON**
123 Penn Street
Barb Avenue
Antigua and Barbuda

Represented by: Mr. John Smith
12 Smith Street
Square Circle
Antigua and Barbuda

24. This sample is based on the case *Lennox Linton v The Attorney General of Antigua and Barbuda*, Claim No. ANUHCV2007/0354, with some modifications to simulate what would happen if a referral were made in that case.



ANNEX II (continued)

Defendant: **THE ATTORNEY GENERAL OF ANTIGUA AND BARBUDA**
118 Parliament Drive
St. John's
Antigua and Barbuda

Represented by: Ms. Karen DeFreitas-Rait, Deputy Solicitor General
118 Parliament Drive
St. John's
Antigua and Barbuda

The **High Court of Justice of Antigua and Barbuda** hereby makes a referral to the CCJ pursuant to Article 214 of the Revised Treaty of Chaguaramas. Accordingly, the **High Court of Justice of Antigua and Barbuda**, having suspended the proceedings pending before it in the case of **Abe Washington v The Attorney General of Antigua and Barbuda**, awaits a determination from the CCJ of the questions contained herein.

SECTION 2: Factual Background

The following is a summary of the facts alleged by the respective parties.

Claim

- [1] The Claimant is a CARICOM national who possesses a Caribbean Community Skilled Certificate issued to him by the Government of the Commonwealth of Dominica, which certifies him as a media worker and lists his qualifications as “Leadership and Management experience in print and broadcast”.
- [2] The Claimant came to Antigua and Barbuda to seek employment based on the legitimate expectation which he held as a result of



ANNEX II (continued)

statements made by Government Officials. The statements were to the effect that qualified skilled CARICOM nationals would be entitled to come to Antigua and Barbuda to work.

- [3] The Claimant presented the Certificate to the then Chief Immigration Officer and was given permission to remain in Antigua for six months. However, before that time had expired, the Claimant says that this permission was unlawfully revoked, and he was placed on a flight back to the Commonwealth of Dominica.
- [4] This breached the rights granted to him as a skilled CARICOM national, pursuant to the RTC. This conduct also breached the CARICOM Skilled Nationals Act Cap No.3 of 1997 Laws of Antigua and Barbuda and the Immigration and Passport Act Cap 208 Laws of Antigua and Barbuda (IP Act).

Defence

- [5] General statements, if any, which were made by any government official, did not and could not create a legitimate expectation. The RTC is not part of the domestic law of Antigua and Barbuda and cannot therefore give rise to any such rights or expectation.
- [6] The Claimant was not entitled to remain in Antigua and Barbuda. The Claimant was given permission to remain until August 2007, but this permission was lawfully revoked.
- [7] The Immigration Authorities had no authority to grant the Claimant permission to remain in Antigua and Barbuda for six months, as the Claimant's Caribbean Community Skilled Certificate did not entitle him to remain there for any extended period of time.
- [8] The Claimant did not satisfy the qualification requirements under Section 8(1) of the Caribbean Community Skilled Nationals Act, thus he was not qualified to receive an Antigua and Barbuda Certificate, which would have entitled him to an indefinite stay. Without that certificate, the Claimant had no right to remain in Antigua and Barbuda.
- [9] It was for that reason that the Claimant's permission was revoked. Once his permission was lawfully revoked, the authorities were entitled to request him to leave Antigua.
- [10] The Defendant did not force the Claimant to leave Antigua and Barbuda.



ANNEX II (continued)

[11] The Claimant was never arrested or forced to leave Antigua.

SECTION 3: Legal Background

[12] The Claimant filed judicial review proceedings against the Defendant and seeks damages and declarations. He also requests an order of certiorari to quash the decision to revoke his permission to stay in Antigua on the basis that it was unlawful, irrational and in excess of jurisdiction. Also, he seeks a declaration that he was expelled from Antigua and that his expulsion was unlawful.

[13] The Claimant complains that this was in breach of his constitutional right and violated the provisions of the Caribbean Community Skilled Nationals Act No.3 of 1997, the Caribbean Community Act No.9 of 2004 and the IP Act. Further, he says that he was deported in clear breach of his legitimate expectation that he could remain in Antigua. In addition, he seeks damages on the basis that he was wrongfully deported.

[14] The relevant provisions of national legislation are as follows:

(a) The Caribbean Community Skilled Nationals Act No. 3 of 1997

Sections 4, 5, 7, 8, 10, 12, 14 and 16

(b) The Caribbean Community Act No. 9 of 2004

Sections 1, 3 and 5

(c) The Immigration and Passport Act Cap 208

Sections 14 and 21-23

[15] The provisions of CARICOM Law that have been identified as relevant are Articles 45 and 46.



ANNEX II (continued)

SECTION 4: Referred Question/s

- [16] Having regard to the above background, the High Court asks for clarifications from the CCJ regarding the correct interpretation of CARICOM law concerning the following issues, all of which are relevant to resolution of the dispute in *Washington v Attorney General of Antigua and Barbuda* pending before it:
- (i) Whether Article 46 of the Revised Treaty of Chaguaramas gives a legitimate expectation that the categories of persons identified in paragraph 1 of that Article will be granted permission to enter any Member State to seek employment;
 - (ii) Whether, if Article 46 is capable of giving rise to a legitimate expectation to the categories of persons identified in Article 46(1), such a legitimate expectation is dependent on the entry into force of legislation incorporating the RTC into the domestic law of a Member State;
 - (iii) Whether a person certified as a Skilled Community National by one Member State must be recognised and treated as such by other Member States;
 - (iv) Whether the provisions of Articles 45 and 46 guarantee that permission granted to the categories of persons identified in Article 46(1) will not be revoked by the Member State.

Dated day of ... 20...

Signed _____

[The name of the person authorised to sign the referral and that person's contact details should be inserted above.]

The referral should be sent by electronic means to the Registrar of the CCJ.

The e-mail address of the Registry is efile@ccj.org.



ANNEX III

THE LEGAL BASES FOR THE REFERRAL PROCEDURE

The legal bases for the referral procedure are set out in Article 214 RTC and Article IX of the Agreement Establishing the Caribbean Court of Justice. Those provisions are reproduced below.

1. Article 214 of the Revised Treaty of Chaguaramas

Article 214 RTC entitled “Referral to the Court” states:

“Where a national court or tribunal of a Member State is seized of an issue whose resolution involves a question concerning the interpretation or application of this Treaty, the court or tribunal concerned shall, if it considers that a decision on the question is necessary to enable it to deliver judgment, refer the question to the Court for determination before delivering judgment”.

The RTC has been enacted into the national law of 13 Member States of the Caribbean Community. These States are: Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and Grenadines, Trinidad and Tobago, and Suriname. The relevant national legislation is:

- Caribbean Community Act 2004 (No. 9) (Antigua and Barbuda)
- Caribbean Community Act 2005 (No. 8) (Barbados)
- Caribbean Community Act 2000 (Belize)
- Caribbean Community Act 2005 (No. 22) (Dominica)
- Revised Treaty of Chaguaramas Act 2006 (No. 10) (Grenada)
- Caribbean Community Act 2006 (No. 8) (Guyana)
- Decree Ratifying the Revised Treaty of Chaguaramas 2007(Haiti)



ANNEX III (continued)

- Caribbean Community Act 2004 (No. 15) (Jamaica)
- Caribbean Community Act 2005 (No. 27) (St. Kitts and Nevis)
- Caribbean Community Act 2004 (No. 12) (St. Lucia)
- Caribbean Community Act 2005 (No. 5) (St. Vincent and the Grenadines)
- Act of March 10, 2003 containing the approval of the “Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy” (No. 24) (Suriname)
- Caribbean Community Act 2005 (No. 3) (Trinidad and Tobago)

2. Article XIV of the Agreement Establishing the Caribbean Court of Justice

Article XIV entitled “Referral to the Court” states:

“Where a national court or tribunal of a Contracting Party is seised of an issue whose resolution involves a question concerning the interpretation or application of the Treaty, the court or tribunal concerned shall, if it considers that a decision on the question is necessary to enable it to deliver judgment, refer the question to the Court for determination before delivering judgment”.

The Agreement Establishing the CCJ has been enacted into the national law of 12 Member States of the Caribbean Community. The relevant national legislative acts are listed below:

- **Caribbean Court of Justice Act No. 10 of 2004 (Antigua and Barbuda)**

Sections 3 and 4 provide that:

3. The following shall have the force of law in Antigua and Barbuda:

(a) the Agreement (other than the provisions of the Agreement relating to the appellate jurisdiction of the



ANNEX III (continued)

Court provided for in Part III of the Agreement) and the relevant Rules of Court made thereunder; and
(b) the Second, Third and Fourth Schedules.

4. The Court shall have the original jurisdiction conferred on it by Part II of the Agreement.

• **Caribbean Court of Justice Act Cap 117 of 2007 (Barbados)**

Sections 3 and 4 provide that:

3. The Agreement shall have the force of law.

4. (1) The Court shall have

(a) original jurisdiction provided for in this Act as is conferred on it in accordance with the provisions of Part II of the Agreement;

(b) appellate jurisdiction provided for in this Act as is conferred on it in accordance with the provisions of Part III of the Agreement; and

(c) jurisdiction in respect of any matter concerning the removal from office of a judge of the Supreme Court, upon a referral of the matter to the Court by the Governor-General.

(2) The decisions of the Court shall be final.

• **Caribbean Court of Justice Act No. 5 of 2010 (Belize)**

Sections 3 and 4 provide that:

3. The Agreement and the Protocols shall have the force of law in Belize.

4. (1) The Court shall have,

(a) original jurisdiction provided for in this Act as is conferred on it in accordance with the provisions of



ANNEX III (continued)

Part II of the Agreement; and

(b) appellate jurisdiction provided for in this Act as is conferred on it in accordance with the provisions of Part III of the Agreement.

(2) The decisions of the Court shall be final.

• **Caribbean Court of Justice (Original Jurisdiction) Act No. 23 of 2005 (Dominica)**

Sections 3 and 5 provide that:

3. The instruments specified in this section (the text of which is set out in the First Schedule and Second Schedule) shall have the force of law in the Commonwealth of Dominica, that is to say-

- (a) The Agreement, other than the provisions relating to the appellate jurisdiction of the Court provided for in Part III of the Agreement;
- (b) The Protocol to the Agreement;
- (c) The Protocol on the Privileges and Immunities of the Caribbean Court of Justice and the Regional Judicial and Services Commission;

5. The Court shall have -

- (a) original jurisdiction in accordance with the provisions of Part II of the Agreement.

• **Caribbean Court of Justice Act No. 3 of 2005 (Grenada)**

Sections 3 and 4 provide that:

3. The provisions of the Agreement relating to the original jurisdiction of the Court shall have the force of law.



ANNEX III (continued)

4. (1) The Court shall have original jurisdiction provided for in this Act as is conferred on it in accordance with Part II of the Agreement.
 - (2) The judgments of the Court shall be final and constitute legally binding precedents for parties in proceedings before the Court.
- **Caribbean Court of Justice Act No. 16 of 2004 (Guyana)**
Sections 3 and 4 provide that:
 3. The Agreement and the Rules of Court made thereunder shall have the force of law.
 4. (1) The Court shall have -
 - (a) original jurisdiction provided for in this Act as is conferred on it in accordance with Part II of the Agreement; and
 - (b) appellate jurisdiction provided for in this Act as is conferred on it in accordance with the provisions of Part III of the Agreement.
 - (2) The decisions of the Court shall, subject to sections 9(5), 11(5) and 12, be final.
 - (3) Nothing in this Act shall confer jurisdiction on the Court to hear matters in relation to any decision of the Court of Appeal which at the time of entry into force of this Act was declared to be final by any law.
 - **Caribbean Court of Justice Act No. 17 of 2005 (Jamaica)**
Section 7 provides that:
 7. (1) Where a court or tribunal is seised of an issue whose resolution involves a question concerning the interpretation or application of the Treaty, the court or tribunal concerned may, before delivery of its



ANNEX III (continued)

judgment in the matter, in writing request the designated authority to refer the question to the Court for an advisory opinion to be given.

(2) In this section –

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

• **Caribbean Court of Justice (Original Jurisdiction) Act No. 7 of 2004 (St. Kitts and Nevis)**

3. (1) The instruments specified in this subsection (the text of which is set out in the First Schedule, Second Schedule, Third Schedule, and Fourth Schedule, respectively,) shall have the force of law in St. Kitts and Nevis, that is to say,
 - (a) the Agreement, other than the provisions relating to the appellate jurisdiction of the Court provided for in Part III of the Agreement;
 - (b) the Protocol to the Agreement;
 - (c) the Protocol on the Privileges and Immunities of the Caribbean Court of Justice and the Regional Judicial and Services Commission; and
 - (d) the Agreement establishing the Caribbean Court of Justice Trust Fund.
- (2) Where an amendment to any instrument referred to in subsection (1) becomes effective in accordance with its provisions, the Minister shall, by Order, amend the relevant Schedule for the purpose of including the amendment.



ANNEX III (continued)

4. (1) The Court shall have such original jurisdiction as is conferred on it in accordance with the provisions of Part II of the Agreement.
- **Caribbean Court of Justice (Agreement) Act No. 34 of 2003 (St. Lucia)**
Sections 3 and 4 provide that:
 3. The Agreement and the Rules of Court made thereunder shall, in accordance with this Act, have the force of law in St. Lucia.
 4. (1) The Court shall have original jurisdiction provided for in this Act as is conferred on it in accordance with the provisions of Part II of the Agreement.
- **Caribbean Court of Justice Act No. 32 of 2004 (St. Vincent and the Grenadines)**
 3. The provisions of the Agreement relating to the original jurisdiction of the Court shall have the force of law.
 4. (1) The Court shall have original jurisdiction provided for in this Act as is conferred on it in accordance with Part II of the Agreement.
 - (2) The judgments of the Court shall be final and constitute legally binding precedents for parties in proceedings before the Court.
- **Caribbean Court of Justice Act No. 8 of 2005 (Trinidad and Tobago)**
Sections 3 and 4 provide that:
 3. The articles of the Agreement in so far as they relate to access to the Court and related proceedings and Rules of Court, shall have the force of law in Trinidad and Tobago.



ANNEX III (continued)

4. The Court shall exercise the original jurisdiction conferred on it by this Act in accordance with Part II of the Agreement.
 - (2) Subject to section 5(3) and section 8, decisions of the Court shall be final.
 - (3) The seal of the Court shall bear the inscription “The Caribbean Court of Justice” and shall be affixed to such documents as occasion may require.
- **Act of March 10, 2003 containing the approval of the Agreement with regard to the Establishment of the Caribbean Court of Justice Act No. 22 of 2003 (Suriname).**
Articles 1 and 2 provide that:
 - Article 1**
The Agreement with respect to the Establishment of the Caribbean Court of Justice is approved.
 - Article 2**
 - (1) This Act is promulgated in the Gazette of the Republic of Suriname.
 - (2) It comes into force on the day following its promulgation.
 - (3) The Minister of Justice and Police is responsible for the implementation of this Act.



ANNEX IV

SPECIAL NOTE ON THE REFERRAL PROCESS IN JAMAICA

In common with other Member States of CARICOM participating in the CSME, Jamaica has ratified both the RTC and the CCJ Agreement. The RTC was incorporated into the domestic law of Jamaica by the Caribbean Community Act (No. 15 of 2004) which gives the RTC the force of law in Jamaica. That Act provided for referrals to the CCJ where in any legal proceedings, a Jamaican court or tribunal considered that referral on any question concerning— (a) the interpretation or application of the RTC; or (b) the validity, meaning or application of instruments made under the RTC to be necessary for it to deliver judgment.

Following the handing down of the decision by the Privy Council in *IJCHR (1998) Ltd v Marshall-Burnett*,^[1] the legislature in Jamaica enacted the Caribbean Court of Justice (Original Jurisdiction) Act (No 17 of 2005) with the intention of revising the referral provisions to conform with the Privy Council’s decision. To this end, section 7 of this Act states:

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

- (2) *In this section –*

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



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ANNEX IV *(continued)*

By virtue of this section, referrals are not made to the CCJ by the judicial officer presiding over the matter in which the question of the interpretation or application of provision in the RTC arises in the domestic court or tribunal. Rather, the referral is made by the designated authority as defined in the Act. Of note, too, the section also provides that the referral seeks ‘an advisory opinion’ from the CCJ.

Footnote:

[2005] UKPC 3.



ANNEX V

KEY TERMS	
National proceedings	Proceedings before a national court or tribunal of the Contracting Party to the RTC during which a preliminary question arises
Preliminary question	A question raised in national proceedings concerning the interpretation or application of CARICOM law, or the validity of a decision taken by a CARICOM Organ or Body, the answer to which a national court or tribunal considers necessary in order to deliver judgment in a case pending before it
Preliminary/referral judgment	A judgment delivered by the CCJ under Article 214 RTC
Request for a referral	A request for a preliminary/referral judgment



ANNEX V (continued)

LIST OF ABBREVIATIONS

CARICOM - The Caribbean Community established by Article 1 of the Treaty Establishing the Caribbean Community and Common Market signed at Chaguaramas on 4 July 1973 which includes the CSME established by the provisions of the RTC

CARICOM S-G - The Secretary-General of CARICOM

CCJ - The Caribbean Court of Justice

CCJ Agreement - Agreement Establishing the Caribbean Court of Justice

CSME - The regime established by the provisions of the RTC replacing Chapters Three through Seven of the Annex to the Treaty Establishing the Caribbean Community and Common Market signed at Chaguaramas on 4 July 1973

OJR - CCJ Original Jurisdiction Rules

Member State - A State which is a contracting party to the RTC

RTC - The Revised Treaty of Chaguaramas



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Article 214 of the Revised Treaty of Chaguaramas

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