****

**DRAFT POLICY DOCUMENT**

**THIRD PARTY BUSINESSES APPLYING UNDER THE RIGHT OF ESTABLISHMENT AND THE RIGHT TO PROVIDE A SERVICE**

**CARICOM Single Market and Economy (CSME) Unit**

**CARICOM and Caribbean Affairs Division**

**Ministry of Foreign and CARICOM Affairs**

1. **Purpose**

The Policy Document regarding Third Party Businesses applying under the Right of Establishment and the Right to Provide a Service is necessary to establish unambiguous and comprehensive principles governing the process of a Third Party Business applying to the Ministry of Foreign and CARICOM Affairs under the Right of Establishment and the Right to Provide a Service on behalf of a CARICOM national. In this regard, the CARICOM national’s application is permitted under Chapter III of the *Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy 2001.* For all intents and purposes of the Policy Document, a Third Party Business is defined as, “an individual or an entity that is involved in a transaction but is not one of the principals and, thus, has a lesser interest in the transaction.[[1]](#footnote-1)”

1. **Aim~~s~~**

The Policy Document regarding Third Party Businesses applying under the Right of Establishment and the Right to Provide a Service aims to:

1. Ensure that a Third Party Business applying on behalf of a CARICOM national operates in accordance with the Laws of the Republic of Trinidad and Tobago;
2. Ensure that the information on the application presented to the Ministry of Foreign and CARICOM Affairs is factual and in accordance with the *Revised* *Treaty* *of* *Chaguaramas*; and
3. Protect all applicants from unethical business practices.
4. **The Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy 2001: Chapter III**

The provisions of Chapter III as stipulated in Articles 32[[2]](#footnote-2), 33[[3]](#footnote-3) and 34[[4]](#footnote-4); allows CARICOM nationals the right to work as self-employed persons in the CARICOM Single Market and Economy and thus, CARICOM nationals can move to another Member State to establish a business. This is generally referred to as **the Right of Establishment**, which includes the following rights:

1. To engage in any non-wage-earning activities of a commercial, industrial, agricultural, professional or artisanal nature;
2. To create and manage economic enterprises, which includes any type of organization for the production of, or trade in goods, or the provision of services owned or controlled by a national of a Member State; and
3. Companies have the right to bring in managerial, supervisory and technical staff in order to further their business.

Further, the provisions of Chapter III as stipulated in Articles 36[[5]](#footnote-5) and 37[[6]](#footnote-6); allows CARICOM nationals the right to work as self-employed persons in order to provide services against remuneration other than wages in any approved sector. The Articles on the provision of services allows a person to supply services to a CARICOM Country by being in a country temporarily for short periods of time. This is generally referred to as the **Right to Provide a Service**, which includes the right to the supply of services:

1. From the territory of one Member State into the territory of another Member State (persons do not move);
2. In the territory of one Member State to the consumer of another Member State, who desires the service (consumers must move);
3. By a service supplier of one Member State through commercial presence in the territory of another Member State; and
4. By a service supplier of one Member State through the presence of natural persons of a Member State in the territory of another Member State.
5. **Background**

**D. (i) Introduction**

The Ministry of Foreign and CARICOM Affairs is the Competent Authority for accepting and processing applications from CARICOM nationals in regard to the Right of Establishment and the Right to Provide a Service. Notwithstanding this, there are instances where CARICOM nationals may outsource a company to make this application, granting them the authority to submit the requisite documents to the Ministry on their behalf. Accordingly, the Third Party Business having been authorized, are paid by the CARICOM national to offer guidance on best practice for the consideration of the Ministry of Foreign and CARICOM Affairs Committee. The relevant documentation which includes, but is not limited to; the national’s signed application form, Business Incorporation Certificate, Board of Inland Revenue Certificate, Bank Statement, Tenancy Agreement and proof of tax payments, form part of the application. Thereafter, the Third Party Business represents the national at appointments with the Ministry for the receiving and vetting of documents.

1. **(ii) Problem**

Over the past ten (10) years the Ministry has encountered various challenges when accepting applications from Third Party Businesses on behalf of CARICOM nationals. The challenges include the proffering of false documentation, such as academic certificates, resumes, Skills Certificates, tenancy agreements and references. It also includes submitting falsely written information on the application form such as stating the national is currently living in the sending State, when in fact, the national may be residing illegally in the Republic of Trinidad and Tobago.

As an example, applications have revealed inconsistencies such as the failure to present current work permits, while, the curriculum vitae and/ or work contract(s) of the national suggests that he/she is in fact employed in the country. Thus, many nationals have been found to be working illegally in the country in contradiction to the information submitted on the application form.

Furthermore, the Ministry has uncovered that the Third Party Businesses applying on behalf of CARICOM nationals, are also operating in the country illegitimately, that is, without being registered and/or without paying taxes. This has been determined by the CSME Unit undertaking due diligence searches of the Companies Registry of the Ministry of Legal Affairs and the Board of Inland Revenue.

1. **(iii) Implications**

Therefore, it can be concluded that there have been instances where Third Party Businesses:

1. Do not operate as a legal entity in the Republic of Trinidad and Tobago, thereby, breaching the *Companies* *Act* *Chapter* *81:01*, as stipulated in Part III, [[7]](#footnote-7) and other relevant Sections;
2. Do not pay taxes to the Board of Inland Revenue, thereby breaching the *Income* *Tax* *Act* *Chapter* *75:01,* as stipulated primarily in Sections 5A, 78[[8]](#footnote-8) and any other relevant sections and the Corporation Tax Act, section 3 primarily and any other relevant sections;
3. Have willingly and wrongfully engaged in a contractual agreement that has solicited money from CARICOM nationals, unbeknownst to the national that the Business is not a legitimate business entity; and
4. Have willingly and wrongfully proffered false documentation and information to the Ministry of Foreign and CARICOM Affairs, thereby aiding and abetting in the illegal movement of CARICOM nationals, thereby breaching section 40 (i) of the *Immigration* *Act* *Chapter* *18:01,* and other relevant Laws.
5. **Resolution**

Taking into consideration the foregoing, the Ministry of Foreign and CARICOM Affairs has developed this Policy Document titled; ‘Third Party Businesses Applying Under the Right of Establishment and the Right to Provide a Service,’ as a means to enforce the following requirements:

That Third Party Businesses applying on behalf of a CARICOM national shall:

1. In an effort to overcome the implication as stated in Section D (iii) (a), submit to the Ministry the Third Party’s Business Incorporation Certificate and list of Directors;
2. In an effort to overcome the implication as stated in D (iii) (b), submit to the Ministry the Third Party’s Board of Inland Revenue Certificate and show proof of tax payments;
3. In an effort to overcome the implication as stated in D (iii) (d), submit to the Ministry a signed Third Party Statutory Declaration;
4. Provide a copy of a contract/retention letter between the third party business and the applicant; and
5. In an effort to maintain updated records, Third Party Businesses must submit the aforementioned documents to the Ministry every three (3) years.

These requirements are necessary in order to ensure that the relevant Laws of Trinidad and Tobago are observed, that members of the public are protected, and to effectuate the abolition of the implication as stated in D (iii) (c) and all existing challenges previously identified in this document.

1. **Penalties**

Where the aforementioned requirements are not met, the Ministry of Foreign and CARICOM Affairs will implemented the following penalties:

1. In the first instance, Third Party Businesses would be given a timeframe of two (2) weeks to submit to the Ministry all outstanding documentation;
2. Thereafter, if the outstanding documents are not submitted, the Third Party Business will be barred from acting on behalf of an applicant for the purposes of obtaining a skills certificate, the Right of Establishment or Right to provide a service; and
3. In an instance where the application knowingly includes fraudulent documentation and false information, the Third Party Business and CARICOM national will be placed on a blacklist and barred from submitting applications to the Ministry of Foreign and CARICOM Affairs. A report will be forwarded to the Permanent Secretary, Ministry of National Security, and copied to the Chief Immigration officer for necessary action.
4. **Miscellaneous**

**G (i) Right of Establishment Forms**

The Right of Establishment, Right to Provide a Service, Managerial, Supervisory and Technical Staff and Extension forms have been updated to include the aforementioned requirements. These forms are located at the reception desk at the Ministry of Foreign and CARICIOM Affairs and on the following website link: <https://foreign.gov.tt/services/csme>

**G (ii) Third Party Statutory Declaration**

The Third Party Statutory Declaration has been developed by the CSME Unit, Ministry of Foreign and CARICOM Affairs in accordance with the *Statutory Declaration Act Chapter 7:4[[9]](#footnote-9).* The Third Party Statutory Declaration Form must be signed and stamped by the Commissioner of Affidavits. The form is located on the Ministry of Foreign and CARICOM Affairs website as follows: <https://foreign.gov.tt/services/csme>

**G (iii) Note**

Please note that all Third Party Businesses **must** submit to the Ministry of Foreign and CARICOM Affairs the Statutory Declaration along with the application of the CARICOM national at the time of appointment and/or any time before or after as deemed fit by the Right of Establishment Officer and/ or Head of the CARICOM Single Market and Economy Unit.

Further, the requests made of the Third-Party Business does not in any way present obstruction or contravenes the Free Movement Regime pursuant to the CARICOM Act Chapter 81:11 and Immigration (Caribbean Community Skilled Nationals Act) Chapter 18:03.

**END**.

1. https://www.investopedia.com/terms/t/third-party.asp [↑](#footnote-ref-1)
2. [Article 32: Prohibition of New Restrictions on the Right of Establishment – Revised Treaty of Chaguaramas (caricom.org)](https://treaty.caricom.org/article-32-prohibition-of-new-restrictions-on-the-right-of-establishment/) [↑](#footnote-ref-2)
3. [Article 33: Removal of Restrictions on the Right of Establishment – Revised Treaty of Chaguaramas (caricom.org)](https://treaty.caricom.org/article-33-removal-of-restrictions-on-the-right-of-establishment/) [↑](#footnote-ref-3)
4. [Article 34: Management of Removal of Restrictions on the Right of Establishment – Revised Treaty of Chaguaramas (caricom.org)](https://treaty.caricom.org/article-34-management-of-removal-of-restrictions-on-the-right-of-establishment/) [↑](#footnote-ref-4)
5. [Article 36: Prohibition of New Restrictions on the Provision of Services – Revised Treaty of Chaguaramas (caricom.org)](https://treaty.caricom.org/article-36-prohibition-of-new-restrictions-on-the-provision-of-services/) [↑](#footnote-ref-5)
6. [Article 37: Removal of Restrictions on Provision of Services – Revised Treaty of Chaguaramas (caricom.org)](https://treaty.caricom.org/article-37-removal-of-restrictions-on-provision-of-services/) [↑](#footnote-ref-6)
7. https://rgd.legalaffairs.gov.tt/laws2/Alphabetical\_List/lawspdfs/81.01.pdf [↑](#footnote-ref-7)
8. https://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\_List/lawspdfs/75.01.pdf [↑](#footnote-ref-8)
9. https://rgd.legalaffairs.gov.tt/laws2/Alphabetical\_List/lawspdfs/7.04.pdf#:~:text=CHAPTER%20%207:04.%20STATUTORY%20%20DECLARATIONS%20%20ACT.,voluntarily%20desires%20to%20make%20a%20statutory%20declaration, [↑](#footnote-ref-9)