



Services Regulation in the Caribbean

Professional Services

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Abstract

CARIFORUM States have generally taken a cautious approach in adopting commitments under the Economic Partnership Agreement by having them reflect their World Trade Organization commitments, excluding sensitive subsectors, and inscribing broad horizontal reservations. This report assesses the regulatory framework for trade and investment in five areas – horizontal measures, information and communications technologies, transport services, professional services, and tourism services in Barbados, Belize, Guyana, Jamaica, and Trinidad and Tobago under the CARIFORUM – European Union Economic Partnership Agreement. The analysis concludes that of the five areas reviewed, adjustments are recommended principally to legislation covering information and communications technologies, professional services, and transport services.

The report is part of the series: SERVICES REGULATION IN THE CARIBBEAN, which includes the present technical note of Professional Services as well as a Summary Report and 4 technical notes. To access them, you may either go to the web page www.iadb.org/publications or use the links below:

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PROFESSIONAL SERVICES

Professional services are classified under Section 1.A of the WTO Services Sectorial Classification List, MTN.GNS/W/120 (hereinafter “W/120”).¹ The category covers certain business services and health and social services falling within divisions 86 and 93 of the CPC Provisional Code. However, it excludes certain vocations that would seem to warrant such classification. The term “professional services”, in fact, is very broad and heterogeneous and includes a rapidly growing group of service suppliers. Technological innovation has promoted cross-border trade in professional services; such as VoIP, webcasting, and other vehicles of communication facilitated by the Internet. The necessary legislative framework is being developed to support this, as evidenced, for instance, by laws giving legal effect to, and confirming the validity and enforceability of, electronic records.²

The expansion of trade in professional services, however, has been checked by restrictive domestic regulations that often pose an effective barrier to the entry of foreign service suppliers. The limitations most often identified include nationality and residence requirements, local qualification requirements, local language requirements, conditions linked to membership of local professional associations, and discriminatory licensing criteria that are unrelated to the ability of the supplier to provide the service. Nevertheless, many of these measures may be

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² E.g., Electronic Transaction Act CAP 308B of Barbados, sections 5-12 and 18 - providing that a contract offer and acceptance can be expressed by means of electronic records. The act provides that information may not be denied legal effect, validity, admissibility, or enforceability solely on the ground that it is in the form of an electronic record or is referred to in an electronic record; and where the law requires information to be in writing that requirement is met by an electronic record if the information contained in the electronic record is accessible and is capable of retention for subsequent reference. Additionally, in any legal proceedings, electronic records may not be ruled inadmissible into evidence solely on the ground that it is an electronic record. See also Electronic Transactions Act CAP 209.01 of Belize; Electronic Transactions Act, 2006 of Jamaica; and Electronic Transactions Act 2011 of Trinidad and Tobago.

legitimately applied in the exercise of a State's right to regulate, depending on the nature of the specific commitments that have been undertaken.

The introductory notes to Annex IV.F of the EPA explain that although measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures, such as the need to obtain a license, register with the registrar of companies, conform to universal service obligations, obtain recognition of qualifications in regulated sectors, and pass specific examinations (including language examinations) may not be listed in the annex, they may nevertheless apply to foreign service suppliers once they do not constitute a market access or a national treatment limitation within the meaning of Articles 67 and 68, and 76 and 77 of the EPA.³ As such, the introductory notes to Annex IV.F call attention to the circumstance that although certain requirements may be portrayed as trade barriers, they may nonetheless be lawful measures that may be imposed even where reservations are not inscribed in a State's schedule.

Almost all of the countries reviewed impose horizontal licensing measures requiring the registration of anyone wishing to commence a trade or business that is generally defined as including a profession.⁴ These measures typically operate in addition to the specific licensing requirements of a particular vocation or calling.⁵ As such, obtaining a general license to commence business will not entitle a person to do anything that would otherwise be unlawful, such as engaging in any profession without appropriate certification by the relevant professional body. The converse equally applies, so that a duly certified professional would not be entitled to claim remuneration for services rendered during any period for which he/she did not possess a general license.⁶

³ See EPA, Annex IV.F, paragraph 10.

⁴ E.g., Profession, Trade and Business Registration Act CAP 373 of Barbados; Trade Licensing Act CAP 66 of Belize; and Licenses on Trades and Business Act, 1908, of Jamaica.

⁵ E.g., Tax Act CAP 80:01 of Guyana, section 37, which imposes a requirement on any person practicing any covered profession to obtain a practice certificate, notwithstanding the provisions of any other law entitling such person to practice.

⁶ Note that certain exceptions may apply; for example, the Tax Act CAP 80:01 of Guyana provides that persons employed by the State or in a business that does not comprise the rendering of services of the nature of such practice (e.g., an in-house attorney) would not require a business or trade license. The professions covered by the Tax Act include accountants, architects, auditors, dentists, engineers, legal practitioners, medical practitioners, optometrists, pharmacists, physiotherapists, surveyors, and veterinary surgeons. The fees imposed vary depending on the profession and length of practice; where a person practices more than one listed profession, he/she need only pay the highest of the applicable fees.

Accreditation Councils

Appropriate certification by a professional body will generally depend on the recognition of an individual's qualifications. The recognition of the qualifications of service suppliers is a prerequisite to trade in professional services in a regulated environment. A major concern in implementing the EPA is that the export potential of CARIFORUM professionals will be impeded as the qualifications gained in their home countries are not recognized in many other countries. This concern applies equally to importation of professional services, particularly from countries outside of the UK and Ireland, where professional qualifications may not be as readily recognized in the English-speaking Caribbean.

Article 85 of the EPA on "mutual recognition" imposes the obligation on the parties to encourage the joint development of criteria for the authorization, licensing, operation and certification of investors and service suppliers, in particular, in the professional services sector.⁷ The provision in the EPA builds on Article VIII of the GATS which provides for members to enter into recognition arrangements for the purpose of the fulfilment, in whole or in part, of their standards or criteria for the authorization, licensing or certification of services suppliers; a member may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country.⁸

The negotiation of mutual recognition agreements (MRAs) allows for qualifications accepted in a person's home country to be recognized in the host country and removes the necessity for re-qualification of competent professionals, which poses a significant barrier to market entry.⁹ The establishment of national and regional accreditation councils is seen as a first step towards the negotiation of MRAs.

Accreditation agencies, which are relatively new in the region, have an important role to play in facilitating trade in professional services by promoting the registration and negotiation of recognition arrangements. All five countries reviewed appear to have legislation establishing national accreditation councils.¹⁰ In the case of Belize the relevant legislation, the Belize

⁷ See EPA, Article 85(2).

⁸ See GATS, Article VIII, which further provides that members must afford other Members not party to such arrangements, an adequate opportunity to negotiate their accession.

⁹ See also "Preparation of prospects for the negotiations of Mutual Recognition Agreements (MRA) of professional qualifications for engineers between EU and CARIFORUM" (Project No. AOR.166-P175, funded by the European Union).

¹⁰ See National Accreditation Council Act of Guyana, 2004, section 4; University Council of Jamaica Act, sections 4 and 5; Trinidad and Tobago Accreditation Council of Trinidad and Tobago Act, sections 8 and 9; Barbados

Education and Training Act, 2010, suggests that the National Council for Technical and Vocational Education and Training (“TVET Council”) will advise and assist in developing policies and procedures for granting recognition and accreditation in Belize of technical and vocational education and training qualifications granted in other countries.¹¹ However no accreditation council or process appears to have been established.¹²

Reference may also be made to the UNESCO Regional Conventions on the Recognition of Studies, Diplomas and Degrees in Higher Education which promote the recognition of tertiary institutions and the degrees they provide. However, none of the countries reviewed (indeed, no CARICOM member State) has acceded to the relevant UNESCO regional treaty, the 1974 Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Latin America and the Caribbean.¹³ Additionally, given the limited regional scope of the convention, it will not likely facilitate trade in professional services with Europe or Canada, where CARICOM either has in place or is negotiating trade liberalization agreements. However, with increased trade with Latin America, the UNESCO treaty will undoubtedly gain greater significance.

Differential professional licensing fees

The practice of imposing higher fees on non-nationals seeking registration as professional service providers is more prevalent in some CARICOM countries than others and is generally restricted to certain disciplines. Such measures are not always scheduled as reservations in the EPA. It may be suggested that differential fees imposing higher charges on foreign service providers are a *de facto* subsidy and, as such, are beyond the scope of the EPA. It is equally persuasive to argue that such measures should have been scheduled as a limitation on the national treatment obligation. There is no universally agreed upon definition of a subsidy in relation to services. The extent to which the exclusion of subsidies on services from the scope of the EPA may provide a possible loophole for non-conforming measures akin to subsidies is unclear. Therefore, the treatment of differential fees and other similar measures is open to

Accreditation Council Act, 2004, sections 3, 4, 6, 21, and 23. Note also that an institution may be exempted from undergoing the accreditation process where an internal or independent assessment exercise is undertaken to the satisfaction of the council.

¹¹ See Belize Education and Training Act, 2010, sections 11, 13 and 57.

¹² See also www.moes.gov.bz

¹³ See <http://www.unesco.org/eri/la/convention.asp?KO=13512&language=E&order=chrono>.

debate. It may be suggested that they constitute “grey measures” in the context of the EPA which may merit review taking account of States’ GATS and CARICOM commitments as well as any other trading arrangements which may be negotiated and/or implemented in the future.¹⁴

Legal services

Trade in legal services has expanded with globalization and the preference of corporate clients to rely on a single trusted source for legal advice irrespective of the jurisdiction in which a branch or subsidiary may be established. Technological innovation has facilitated this as most activities involved in the supply of legal services,¹⁵ with the exception of court appearances, can be delivered electronically.¹⁶ As such, commercial presence is increasingly less important as a mode of delivery for legal services than for many other professions, such as accountancy.

Jamaica

The commitments undertaken by Jamaica with regard to legal services CPC 861 under the EPA are a mirror image of its commitments under the GATS. Jamaica has undertaken bound commitments on modes 1, 2, and 3 for legal services CPC861. Although affirming no reservations on market access on commercial presence, Jamaica inscribes in its schedule the following notation: “Local certificate required: Attorneys from other Jurisdictions cannot practice in JAM without acceptance by Jamaica General Legal Counsel.” Mode 4 is unbound except as indicated in the horizontal commitments. In Annex IV.F of the EPA another entry is found under “Legal services - consulting in Home Law of the Service Provider (CPC 86119**).” The commitment mirrors the entry for CPC 861, save for the additional specification that market access mode 4 is “subject to economic needs tests for CSS and IP.” It may be recalled that the introductory notes to Annex IV.F clarify that unless a specific commitment is made with regard

¹⁴ E.g., CARICOM-Canada Trade and Development Agreement; CARICOM-Dominican Republic Free Trade Agreement, signed August 22, 1998, entered into force December 1, 2001, with ongoing negotiations to enable full implementation of the agreement.

¹⁵ In the United Nations Provisional Central Product Classification (CPC Code) the entry “legal services” is subdivided in “legal advisory and representation services concerning criminal law” (86111), “legal advisory and representation services in judicial procedures concerning other fields of law” (86119), “legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc.” (86120), “legal documentation and certification services” (86130), and “other legal and advisory information” (8619).

¹⁶ See also “Legal Services”, Background Note by the Secretariat, WTO doc. S/C/W/43, July 6, 1998, paragraphs 22-29.

to contract service suppliers (CSS) and independent professionals (IP), a commitment on mode 4 should not be taken to extend to such service suppliers.¹⁷ The inclusion of any reference to CSS and IP would therefore suggest a greater commitment as regards home law legal consulting services (CPC 86119**) than for other legal services covered by CPC 861.

The Council of Legal Education Act facilitates the implementation of the Agreement for the Establishment of a Council of Legal Education for the Caribbean Region.¹⁸ All CARICOM States party to the agreement recognize holders of the Legal Education Certificate (L.E.C.) as fulfilling the requirements for institutional training and education for the practice of law in their territories. Additionally, it is provided that no person shall be admitted to practice without such certificate, subject to any reciprocal arrangements that may be made with any other country, and that States may impose additional qualifications as a condition of admission to practice.¹⁹ There appear to be no reciprocal arrangements between Jamaica and third countries that would allow persons to be admitted to practice without the L.E.C.

The Legal Profession Act establishes the General Legal Counsel with responsibility for, *inter alia*, the organization of legal education and upholding the standards of professional conduct. The council issues practicing certificates that are a prerequisite for enrolment. A person classified as an alien, i.e., not being a person who is a Commonwealth citizen, a British protected person or a citizen of the Republic of Ireland, is not eligible for enrolment.²⁰ A person who is not enrolled (and not working in the government service) may not use a name, title, or description implying that he/she is an attorney-at-law.²¹ No person other than an attorney or notary public may either directly or indirectly prepare any legal document except and to such extent as may be prescribed by law.²²

¹⁷ See EPA, Annex IV.F, paragraph 3.

¹⁸ See Council of Legal Education Act, section 3, which provides that Articles 1(2), 5, 6, and 9(6) have the force of law in Jamaica.

¹⁹ See Agreement for the Establishment of a Council of Legal Education, Article 5.

²⁰ See Legal Profession Act, sections 2 and 6; section 2, providing that the definition of the term “alien” is that assigned to it in the Jamaica Nationality Act. Note that the list of Commonwealth countries is included in the First Schedule to the Jamaica Nationality Act, and a “British protected person” means a person who is a British protected person for the purposes of the British Nationality Act, 1948, of the United Kingdom.

²¹ See Legal Profession Act, section 8.

²² See Legal Profession Act, section 31; see also *ibid* Act, section 2, which defines “legal document” as “any document conferring, transferring, altering, or extinguishing or purporting to confer, transfer, alter, or extinguish any right, title or interest in property, moveable or immovable, or any document (including a letter) indicating that legal proceedings may be brought against the person to whom it is addressed or any other person.”

An alien, being by virtue thereof ineligible for enrolment, is therefore precluded from providing such services. Nevertheless, the act seemingly would not preclude persons who are not enrolled from providing other legal services such as legal consultancy services in international law or home law of the service provider or general advisory or information services, so long as the service provider does not use a name, title, or description suggesting that he/she is recognized as a qualified attorney-at-law within the jurisdiction. Significantly, these are the legal services that would be generally provided cross-border.

In so far as the legislative framework precludes non-Commonwealth citizens (excluding persons from the Republic of Ireland) from being enrolled simply by virtue of their nationality, the framework is clearly discriminatory and precludes market access for services that may only be supplied by persons holding a practicing certificate. In this regard, the restriction may be equated with the application of a “zero-quota” with respect to the majority of States party to the EPA.²³ The qualification inscribed in the market access column indicating “local certificate required: ...” understates the nature of the condition, as it is impossible for certain nationalities to meet the requirements of the Legal Profession Act, and no reciprocal arrangements have been made to facilitate access under the Council of Legal Education Act.²⁴ There would seem to be a legitimate expectation that if bound liberalization commitments are undertaken, measures would be taken to facilitate market access.²⁵

It is recommended that the Legal Profession Act should be reviewed in light of Jamaica’s commitments under the EPA as well as the WTO.

²³ E.g., *US- Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/AB/R/Corr.1, paragraphs 227 and 236-238; see also the 1993 Scheduling Guidelines, MTN.GNS/W/164 of 3 September 1993, which provide the following example of the type of limitation that falls within the scope of sub-paragraph (a) of Article XVI:2 of the GATS (similar to EPA, Articles 67(2)(a) and 76(2)(a)): “nationality requirements for suppliers of services (equivalent to zero quota).” This example confirms the view that measures equivalent to a zero quota fall within the scope of GATS, Article XVI:2(a) and EPA, Articles 67(2)(a) and 76(2)(a).

²⁴ Note also that the reservation is limited to commercial presence and is not expressly extended to Jamaica’s commitment on cross-border supply. See also Annex IV.F, introductory notes, paragraph 10, clarifying that measures relating to qualification and licensing requirements and procedures which do not constitute a market access or a national treatment limitation within the meaning of Articles 67 and 68, and 76 and 77 of the EPA may, nevertheless, be legitimately imposed even though may not be listed in the annex.

²⁵ See also *Mexico – Measures Affecting Telecommunications Services*, WT/DS204/R at paragraphs 7.353-7.371, which suggest that even where a market access commitment is conditioned on the development of regulations, the absence of an appropriate regulatory framework may not be used for a prolonged period of time to prohibit access to foreign service providers. See also Eric H. Leroux “Eleven Years of GATS Case Law: What Have We Learned?” (2007) 10(4) J.I.E.L. 749 at p.770, which further argues that preventing market access in such circumstances could be the basis for a nullification and impairment (non-violation) complaint.

The Justices of the Peace (Appointment and Code of Conduct) Rules, 2006, provide for the appointment of justices of the peace by the governor general acting on the recommendation of the minister who receives recommendations from an advisory committee (established under the rules). The advisory committee takes into account the needs of the particular parish and each local community. The committee is mandated to ensure, *inter alia*, that its recommendations for appointments will not result in an excessive number of justices of the peace for a parish or any particular geographical area. Only a Jamaican citizen who is resident in Jamaica at the time of appointment and who is able to read and speak English fluently, and who is of unquestionable integrity and commands the respect and confidence of his/her local community where he/she has given good service, may be appointed as a justice of the peace. The Justices of the Peace Jurisdiction Act details the judicial powers conferred on justices of the peace under the law.²⁶ The role of a justice of the peace and other persons involved in the administration of justice (judges, clerks of court, prosecutors, etc.), though falling within a broad definition of legal services, are not covered by the GATS or the EPA because they are considered to be a “service supplied in the exercise of governmental authority.”

Trinidad and Tobago

Trinidad and Tobago has undertaken EPA commitments on legal documentation and certification, CPC 86130 (bound for modes 1, 2, and 3; unbound except as indicated in horizontal commitments for mode 4); legal services consultancy in international law, CPC 86119 (bound for modes 1, 2, 3, and as regards market access only for mode 4; unbound except as indicated in horizontal commitments for national treatment for mode 4); legal services – consulting in Home Law of the service provider, CPC 86119* (bound for modes 1, 2, and 3; unbound except as indicated in horizontal commitments for national treatment for mode 4, with the additional qualification on market access “Subject to economic needs tests for CSS and IP”); and legal advisory information services, CPC 86190 (bound for mode 2 and for mode 3 from January 1, 2010, unbound for mode 1 and for mode 4 except as indicated in horizontal commitments). The commitments made by Trinidad and Tobago under the EPA are broader than those undertaken in the GATS, where commitments are only inscribed for legal services consultancy in international

²⁶ See also the Justices of the Peace (Appeal) Act and Justices of the Peace (Official Seals) Act. See also the Notaries Public Act providing for the appointment of Notaries Public by the Governor General.

law, CPC 86119, although in the GATS (unlike the EPA) this commitment is bound without reservation for all modes of supply.

The extension of Trinidad and Tobago's commitment under the EPA is significant, particularly with respect to CPC 86130 covering the preparation, drawing up, and certification services of legal documents, such as the drawing up of wills, marriage contracts, commercial contracts, and business charters, and including a number of related legal services such as the provision of advice and the execution of various tasks necessary for the drawing up or certifying documents. Generally, these services may only be provided by persons admitted to practice within the jurisdiction, although there are exceptions.²⁷

The Legal Profession Act CAP 90:03 provides that an attorney-at-law who desires to practice law in Trinidad and Tobago must apply to the registrar for a practicing certificate.²⁸ The act establishes the Law Association of Trinidad and Tobago and provides that every attorney-at-law holding a practicing certificate is and must remain a member of the association as long as the practicing certificate has effect.²⁹ As such, membership is compulsory.³⁰ Eligibility to be admitted by the court to practice as an attorney-at-law is based on qualifications, good character, and citizenship. Commonwealth citizens and/or CARICOM nationals who have satisfied the requirements of the Council of Legal Education (CLE) are eligible for admission to practice.³¹ Special provision is also made for the minister, where he/she considers it appropriate and after consultation with the chief justice, to provide by order that a Commonwealth citizen who has been admitted to practice in a Commonwealth country for at least 10 years, is eligible to be admitted to practice law in Trinidad and Tobago on such terms and conditions as may be prescribed.³² Additional avenues are offered to Trinidad and Tobago nationals not meeting this

²⁷ See also Legal Profession Act, section 47, which makes it an offence to practice law or use any name, title or description implying that one is entitled to be recognized or to act as an attorney-at-law. But note that this prohibition does not extend to, *inter alia*, persons employed merely to engross any instrument or proceeding; or drawing or preparing a will or other testamentary instrument, an agreement under hand only, a letter or power of attorney, or a transfer of stock containing no trust or limitation thereof.

²⁸ See Legal Profession Act, section 23; see also *ibid*, sections 26 and 27, which provide that a "law officer", i.e., a person employed by the State on contract or holding an office in the Judicial and Legal Service which is declared by order to be a law officer, is deemed to be the holder of a valid practicing certificate and to be a practitioner member.

²⁹ See Legal Profession Act, sections 3 and 6; note also that an attorney-at-law who is not the holder of a practicing certificate may become a non-practitioner member of the association.

³⁰ See also Trinidad and Tobago Fair Trading Act CAP 81:13, section 3(1)(e), which provide that the act does not apply to activities of professional associations designed to develop or enforce professional standards of competition reasonably necessary for the protection of the public.

³¹ See Legal Profession Act, section 15(1). See also Agreement Establishing the Council of Legal Education.

³² See Legal Profession Act, section 15A.

criterion but who have passed the UK qualifying exams and worked in the chambers of a local practicing lawyer (with more than 10 years of experience) for a period of not less than six months to be admitted to practice in Trinidad and Tobago.³³

Nationality is therefore a significant consideration in determining eligibility for admission to practice law in Trinidad and Tobago. While Trinidad and Tobago citizens receive the most favourable treatment, CARICOM and Commonwealth nationals are generally more favourably treated than persons belonging to third States. However, admission to practice may also be conferred on grounds of reciprocity.³⁴ As such, individuals of any nationality may, in principle, be admitted to practice in Trinidad and Tobago. However, it should be noted that Trinidad and Tobago has not inscribed a reservation conditioning market access on reciprocity.

The emphasis placed on nationality as a defining criterion is fairly common in trade in legal services because of the growing importance of statute law and the domestic focus of legal administration and training in most tertiary institutions.³⁵ Nevertheless, nationality requirements for service suppliers may be equated with a “zero quota,” which is not a legitimate measure where market access commitments have been undertaken without reservation.³⁶ The Legal Profession Act, as such, merits closer review in light of Trinidad and Tobago’s EPA commitments.

The Notaries Public Act CAP 6:51 provides for the president, after consultations with the chief justice, to appoint any fit person, being an attorney-at-law of at least 15 years standing, to be a notary public where the number of notaries is insufficient.³⁷ The act provides that where an

³³ See Legal Profession Act, section 15(1A). Note that an appeal lies to the Court of Appeal from an Order of the High Court refusing an application for admission; see *ibid*, section 15(4).

³⁴ See Legal Profession Act, section 16.

³⁵ E.g., WTO Council for Trade in Services, Special Session, “Review of Progress in Legal Services,” Communication from Australia, JOB(07)/198, December 5, 2007, paragraph 12, which underscores that the legal services sector is difficult for many members because of the nationally focused nature of the law and the corresponding domestic focus of legal education and training; see also “Legal Services, Background Note by the Secretariat”, WTO doc. S/C/W/43, page 3, paragraph 11.

³⁶ E.g., *US- Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/AB/R/Corr.1, paragraphs 227 and 236-238. See also the 1993 Scheduling Guidelines, MTN.GNS/W/164 of 3 September 1993, which provide the following example of the type of limitation that falls within the scope of sub-paragraph (a) of Article XVI:2 of the GATS (similar to EPA, Articles 67(2)(a) and 76(2)(a)): “nationality requirements for suppliers of services (equivalent to zero quota).. This example confirms the view that measures equivalent to a zero quota fall within the scope of GATS, Article XVI:2(a) and EPA, Articles 67(2)(a) and 76(2)(a).

³⁷ But see Legal Profession Act, section 21, which prohibits a practicing attorney-at-law from holding an appointment as a justice of the peace; but note that this does not apply where an attorney-at-law holds any office by virtue of which he is *ex officio* a justice of the peace.

application for appointment as a notary is made to the president, the president may refuse the application without assigning any reasons. The president's decision to refuse an application is final and conclusive, though subject to judicial review.³⁸ The role of a notary in many respects is that of a public official and, in so far as this holds true, may be regarded as "services supplied in the exercise of governmental authority," similar to legal services provided in the administration of justice that fall outside of GATS and EPA disciplines. Notaries, however, are not civil servants, and in certain jurisdictions may supply their services "on a commercial basis." Where this occurs, notarial services may be subject to scheduling commitments. However, in general, as regards most jurisdictions, they have not been liberalized.³⁹

Barbados

Barbados has undertaken commitments for legal documentation and certification, CPC 86130 (bound for mode 3 with the market access reservation that only a natural person can practice law; unbound for modes 1 and 2 and for mode 4, except as indicated in the horizontal commitments); and legal services – consulting in the Home Law of the service provider, CPC 86119* (bound for modes 1 and 2 and for mode 3 as regards national treatment; unbound for mode 3 market access and for mode 4 except as indicated in the horizontal commitments and subject to economic needs tests for CSS and IP).

The Council of Legal Education Act CAP 366A implements the agreement establishing the Council of Legal Education, which is set out in the schedule to the act. By virtue of the agreement, the Government of Barbados undertakes to recognize any person holding a Legal Education Certificate (L.E.C.) as fulfilling requirements for practice in its territory in relation to institutional training and education, and that (subject to certain transitional provisions and any reciprocal arrangements that may be made) no one who does not hold an L.E.C. may be admitted to practice. The agreement permits a State to impose additional qualifications as a condition of admission to practice within the jurisdiction.⁴⁰

The Legal Profession Act CAP 370A provides for the admission to practice of qualified individuals who are citizens of Barbados or another CARICOM member or associated State (including British Overseas Territories in the Caribbean), and any other person treated by law as

³⁸ See Notaries Public Act, section 3; but see also the Judicial Review Act of Trinidad and Tobago.

³⁹ See "Legal Services, Background Note by the Secretariat," WTO doc. S/C/W/43, page 3, paragraph 13.

⁴⁰ See Agreement establishing the Council of Legal Education, Article 5 on "Admission to Practice."

belonging to such country. Provision is also made for the admission of persons to practice law on the basis of reciprocity,⁴¹ and as such, it may be argued that persons of any nationality may be admitted to practice. However, Barbados has not made its market access commitments conditional on reciprocity, though its EPA commitments on legal services are generally unbound and practically limited to cross-border trade (modes 1 and 2) in consulting in the Home Law of the service provider, which seemingly would not require admission to practice law in Barbados.⁴²

The Legal Profession Act provides that a person may not use the title attorney-at-law, pretend to be an attorney-at-law or practice law or recover any fee in relation to such practice, unless his/her name is entered on the roll.⁴³ It may be suggested that representations on the status of the law of a foreign jurisdiction by a person qualified to practice within that jurisdiction (i.e., an expert) is not the sort of legal advice prohibited by this provision.

A person whose name is entered by the registrar on the roll is treated as an officer of the Supreme Court, but is not entitled to practice law unless he/she is the holder of a valid practicing certificate. The registrar is authorized to issue a practicing certificate to a person whose name is on the roll upon payment of the prescribed annual registration fee in accordance with the Profession, Trade and Business Registration Act.⁴⁴ A person must also pay the annual subscription to the Bar Association established under the Barbados Bar Association Act CAP 363, as the Legal Profession Act makes membership of the Bar Association mandatory⁴⁵ and a

⁴¹ Note that this applies where the chief justice is satisfied that the law of another jurisdiction is such as to secure that legal practitioners possess suitable qualifications and competency, and persons called to the bar in Barbados would be entitled to admission in that jurisdiction on as favorable terms as would apply to the applicant on admission to practice in Barbados. An appeal lies to the Court of Appeal from an order of the High Court refusing an application for admission to practice; see Legal Profession Act CAP 370A, sections 2 and 5-7. Note also that the restrictions placed on persons entering, leaving, residing or working in Barbados still apply; see also *ibid*, section 8.

⁴² Note also that Barbados' commitment on legal documentation and certification, CPC 86130, which is bound only for mode 3, is substantially limited by the market access reservation that only a natural person can practice law.

⁴³ See Legal Profession Act CAP 370A, section 12. Note that this prohibition does not extend to a person employed merely to engross any instrument or proceeding; a person drawing or preparing a will or other testamentary instrument, an agreement under hand only, a letter or power of attorney, or a transfer of stock containing no trust or limitation thereof; or a public officer or an officer of a statutory board undertaking defined acts in the course of his/her duty.

⁴⁴ See Legal Profession Act CAP 370A, sections 2, 3, 10, and 11.

⁴⁵ Note that the Barbados Fair Competition Act does not apply to activities of professional associations designed to develop or enforce professional standards of competence reasonably necessary for the protection of the public. Provision is, however, made for the Fair Trading Commission (FTC), where it deems it to be in the public interest, to enquire into the practices of any professional association to ensure that such practices do not result in anticompetitive agreements that cause or are likely to cause the disruption or distortion of competition, or exclusionary agreements between competitors the effect of which is to restrict or limit the supply of services. Where

practicing certificate issued to an attorney-at-law is of no effect until the annual subscription to the Bar Association has been paid.⁴⁶

Belize

Belize has undertaken commitments in Annex IV.F of the EPA with regard to legal documentation and certification, CPC 86130, which mirror Barbados' commitments in this sub-sector (bound for mode 3 with a market access reservation that only a natural person can practice law; unbound for modes 1 and 2 and for mode 4, except as indicated in the horizontal commitments); legal services consultancy in international law, CPC 86119 (bound for modes 1 and 2; unbound for modes 3 and for mode 4 except as indicated in the horizontal commitments and subject to economic needs tests for CSS and IP); and legal services – consulting in Home Law of the service provider, CPC 86119* (bound for mode 2; unbound for modes 1 and 3, and for mode 4, except as indicated in the horizontal commitments).

The Legal Profession Act (CAP 320) requires that a person must have a valid practicing certificate to practice law.⁴⁷ Any person whose name has been entered on the roll is entitled to a practicing certificate issued by the registrar on payment of the prescribed fee.⁴⁸ Admission to practice law and have one's name entered on the roll by order of the court is not defined in terms of citizenship or residency criteria. A Belizean citizen who holds a Legal Education Certificate (L.E.C.) awarded by the Council of Legal Education may be called to the bar, as may any other person of good character who has obtained adequate training in the law and is suitably qualified and competent to practice law in Belize.⁴⁹ As such, although Belize is a party to the Agreement Establishing the Council of Legal Education, the requirements for admission to practice are not

the FTC pursues such an enquiry it must submit a report on the matter to the minister. See Fair Competition Act CAP 326C, sections 3, 5, 13, and 14.

⁴⁶ See Legal Profession Act CAP 370A, sections 2 and 44-46; note that a judge, magistrate, registrar, or deputy registrar is not required to be or become a member of the Bar Association or to pay any subscription to the association. Note also that the Legal Profession Act establishes a Compensation Fund to mitigate the consequences of dishonest practices and further requires that every attorney-at-law make an annual contribution to the fund; the act provides that the practicing certificate may not be issued to an attorney-at-law unless and until the annual contribution is paid; see Legal Profession Act CAP 370A, sections 47, 49, and 50. See also Trinidad and Tobago Legal Profession Act, sections 54-59, which make provision for a similar Compensation Fund.

⁴⁷ See Legal Profession Act, section 10(2); note that limited exceptions are made, for example, for holders of certain designed offices; see *ibid*, section 8.

⁴⁸ See Legal Profession Act, section 11(1).

⁴⁹ See also Legal Profession Act, section 6, which provides that any individual who is competent and qualified to practice law in another jurisdiction which is designated as having a sufficiently analogous system of laws may be admitted to practice law in Belize. Note that an aggrieved person may appeal to the Court of Appeal from the refusal by the Supreme Court of any application under section 6; see *ibid*, section 7.

limited in accordance with that agreement. The legal framework for admission to practice in Belize is more liberal than other countries reviewed and provides ostensibly far greater market access than suggested by Belize's bound EPA commitments.

Certain legal services may also be provided by persons who do not have a practicing certificate. A person need not have his/her name entered on the roll to undertake specific functions which have been ascribed by law;⁵⁰ or merely to engross any instrument or proceeding; or undertake minor tasks such as preparing a will or other testamentary instrument, or an instrument for his/her own use; or an agreement (not being for his/her own use) for a small sum (not exceeding \$5,000); or a letter, notice, or power of attorney.⁵¹ Some of these services are treated within the sub-category of legal certification and documentation (e.g., the drawing up of wills) and therefore in so far as Belize has undertaken commitments in this area the requirement of a practicing certificate does not apply.⁵²

The Legal Profession Act provides that entitlement to a practicing certificate or the ability to provide legal services without a practicing certificate does not dispense with other requirements as may be imposed under any other law. Reference may be made in particular to the Trade Licensing Act CAP 66 and, where relevant, the Immigration Act CAP 156.⁵³

The Justices of the Peace Act 2005 provides for the appointment of justices of the peace and senior justices of the peace. Appointments are primarily based on a person's character and the civic contributions made to his/her community.⁵⁴ Justices of the peace exercise many judicial functions, for example, they may issue summonses, warrants of arrest and search warrants, grant bail, and bind over parties and witnesses.⁵⁵ Significantly, the act provides that the office of the justice of the peace and senior justice of the peace is not an office of emolument.⁵⁶ It may be

⁵⁰ See Legal Profession Act, section 14(4), which refers to a public officer or person appointed under any law to act for another for the purposes of (i) drawing or preparing instruments or (ii) appearing for the complainant or plaintiff in a summary jurisdiction court or district court, if authorized by law to do so in the course of his duty.

⁵¹ See Legal Profession Act, section 14(4).

⁵² Note that Belize's commitment on legal documentation and certification, CPC 86130 (like that of Barbados) is bound only for mode 3 and is substantially limited by the market access reservation that only a natural person can practice law.

⁵³ See also Legal Profession Act, section 6(3).

⁵⁴ See Justices of the Peace Act, section 3; note that a senior justice of the peace is a justice of the peace with not less than 10 years of service and with knowledge of the Marriage Act.

⁵⁵ See Justices of the Peace Act, section 4.

⁵⁶ See Justices of the Peace Act, section 10.

recalled that the EPA does not cover services supplied or activities carried out neither on a commercial basis nor in competition with one or more economic operators.⁵⁷

The Notaries Public Act (1867) CAP 129 provides for the appointment and enrolment of notary publics by the prime minister, who may grant a commission or license under his hand. As noted with respect to the role of a justice of the peace, certain notarial activities, such as those involving the administration of justice similar to judges, clerks of court, and prosecutors, though falling within the definition of legal services, are not covered by the EPA in so far as they are considered to be activities carried out or services supplied in the exercise of governmental authority.⁵⁸

Guyana

Guyana has undertaken commitments on legal services, CPC 861 (bound for modes 1, 2, and 3; unbound except as indicated in horizontal commitments for mode 4 market access, and with regard to mode 4 national treatment the following is inscribed: “Non-CARICOM Commonwealth Nationals would be required to have their qualifications reviewed by the Council of Legal Education and also undergo a six-month period of training at one of the law schools. Non-Commonwealth nationals would be required to have their qualifications reviewed by the Council for Legal Education, which would determine the amount of retraining they would be required to undergo.”

The Legal Practitioners Act CAP 4:01 provides for the admission of any person to practice law who is a national of a State party to the Agreement Establishing the Council of Legal Education (i.e., most of the English-speaking member States of the Caribbean Community).⁵⁹ Nationals of other countries may also be eligible for admission to practice law in Guyana on the basis of reciprocity.⁶⁰ As such, it may be said that nationals of any country may, in principle, be admitted to practice in Guyana. A person who is admitted to practice law must be

⁵⁷ See EPA, Article 65(d) and 75(2)(b) and (c).

⁵⁸ See EPA, Article 65(d) and 75(2)(b) and (c).

⁵⁹ See Legal Practitioners Act CAP 4:01, sections 2 and 4.

⁶⁰ See Legal Practitioners Act CAP 4:01, section 5, which provides for admission of nationals from a particular country to practice where Guyanese attorneys-at-law would be entitled to practice law in that country on terms as favorable as those on which legal practitioners of that country would become entitled to admission to practice law in Guyana, and the law of the country is such as to ensure suitable qualifications and competence to practice in Guyana. Note that the determination is made by the minister after consultation with the chancellor of the judiciary. Similar provision for reciprocity is made for nationals of non-participating countries of the Council of Legal Education (CLE) who hold a Legal Education Certificate (LEC) granted by the council.

enrolled by the registrar on the court roll and is entitled to a certificate of enrolment as an attorney-at-law. A person whose name is not enrolled may not practice law in Guyana. As with other jurisdictions reviewed, certain activities are excluded from this prohibition, such as the preparation of a will or actions taken by a clerk of a magistrate's court in the preparation of a complaint may be undertaken by persons not enrolled as an attorney-at-law.⁶¹

Guyana, like Jamaica, has undertaken more extensive commitments on legal services. Indeed, Guyana has made no reservations on modes 1, 2, and 3; in particular it has not conditioned market access on the basis of reciprocity (which appears to be the only basis on which non-CARICOM nationals may be admitted to practice in Guyana). The restrictions imposed by the legislation may be equated with the application of a "zero-quota".⁶² The Legal Practitioners Act therefore merits further review in light of Guyana's EPA commitments.

The Public Notaries Act CAP 4:02 authorizes the president to appoint a legal practitioner of not less than 10 years standing to be a public notary. No person who is not a notary on the register may do, exercise, or perform any act appertaining to the office, function or practice of a notary.⁶³ The fees that a notary may charge are fixed by rules of court (under the High Court Act or any other law). The Justices of the Peace Act CAP 3:05 provides for the appointment of justices of the peace who may undertake certain judicial functions but need not be a legal practitioner (as required for public notaries).⁶⁴ As noted above, services provided by a justice of the peace or notary public which involve the administration of justice (similar to judges, clerks of court, etc.), though falling within a broad definition of legal services, are not covered by the

⁶¹ See Legal Practitioners Act CAP 4:01, sections 11, 12 and 20. Note that an appeal lies to the Court of Appeal from an order of the court refusing to admit any person to practice law in Guyana.

⁶² E.g., *US- Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/AB/R/Corr.1, paragraphs 227 and 236-238. See also the 1993 Scheduling Guidelines, MTN.GNS/W/164 of 3 September 1993, which provide the following example of the type of limitation that falls within the scope of sub-paragraph (a) of Article XVI:2 of the GATS (similar to EPA, Articles 67(2)(a) and 76(2)(a)): "nationality requirements for suppliers of services (equivalent to zero quota)." This example confirms the view that measures equivalent to a zero quota fall within the scope of GATS, Article XVI:2(a) and EPA, Articles 67(2)(a) and 76(2)(a).

⁶³ See Public Notaries Act CAP 4:02, sections 2, 5 and 7.

⁶⁴ The Justices of the Peace Act details the judicial powers conferred on Justices of the Peace under the law. Note that concerns have been expressed with regard to the lack of effective monitoring of justices of the peace in Guyana, and the Guyana Justices of the Peace and Commissioners of Oaths to Affidavits Association has called for the compulsory registration of all Justices of the Peace and Commissioners of Oaths to Affidavits in Guyana; e.g., "There should be compulsory registration of Justices of the Peace in the association for JPs," Hermon Bholaisingh, president, Guyana Justices of the Peace and Commissioners of Oaths to Affidavits Association, *Stabroek News*, April 29, 2010, viewed on line at: <http://www.stabroeknews.com/2010/opinion/letters/04/29/there-should-be-compulsory-registration-of-justices-of-the-peace-in-the-association-for-jps/>.

GATS or the EPA in so far as they are considered a “service supplied in the exercise of governmental authority.”⁶⁵

Accountancy services

The practice of accountancy is linked to many other services and is generally identified with financial regulation and supervision through the implementation and enforcement of prudential measures. As classified under the CPC Provisional Code, accounting and auditing services (CPC 8621) cover financial auditing services (i.e., reviewing the books of an organization to see whether its financial statements fairly present the position of that organization as at a given date and time in accordance with generally accepted accounting principles); accounting review services (where the scope of review is less than that of an audit and therefore the level of assurance provided is lower); compilation of financial statements services (where no assurances regarding accuracy are provided; this may include the preparation of business tax returns);⁶⁶ and other accounting services such as attestations, valuations, and preparation of *pro forma* statements. Bookkeeping services (CPC 8622 which excludes tax returns)⁶⁷ consist of classifying and recording business transactions in terms of money or some unit of measurement in the books of account.

The definition of “Accounting, auditing, and book-keeping services” is, in fact, narrower than the wide range of activities that may be undertaken by accountancy firms, including taxation and management consultancy. Consequently, it has been observed “that a distinction should be made, in certain cases, between accountancy services and services provided by accountancy firms. Others would argue that if a service is provided by an accountancy firm it is, by definition, an accountancy service”.⁶⁸ Taxation services (CPC 863) is a distinct class in the CPC Code and comprises business tax planning and consulting services, business tax preparation and review services, individual tax preparation and planning services, and other tax related services. For present purposes the commitments made under both CPC 862 and CPC 862 will be treated together, as these services are generally provided by accountants or affiliated persons.

⁶⁵ See EPA, Article 65(d) and 75(2)(b) and (c).

⁶⁶ Note that business tax preparation services, when provided as separate services, are classified in sub-class 86302 (business tax preparation and review services).

⁶⁷ Note that bookkeeping services related to tax returns are classified in subclass 86302 (Business tax preparation and review services).

⁶⁸ WTO doc. S/WPPS/W/2, 27 June 1995, p. 7.

In general domestic regulatory frameworks for accountancy services range from virtually no oversight or self-regulation to an environment where there are multiple regulators.⁶⁹ At the multilateral level there have been two significant developments in the accountancy sector which promote trade in services. The WTO Guidelines for Mutual Recognition Agreements or Arrangements in the Accountancy Sector were adopted in 1997. While the guidelines are voluntary, they provide the basis for the negotiation of mutual recognition agreements under Article 85 of the EPA (which places emphasis on the negotiation of arrangements in accounting, architecture, engineering and tourism).⁷⁰ Additionally, the WTO Disciplines on Domestic Regulation in the Accountancy Sector, which were adopted in December 1998 (though not yet legally in placed in effect) includes a “standstill provision,” which is effective immediately, under which all WTO Members, including those without GATS commitments in the accountancy sector, have agreed, consistent with their existing legislation, not to take new measures which would be in violation of the accountancy disciplines.⁷¹ A general undertaking of the Disciplines on Domestic Regulation in the Accountancy Sector is that “Members shall ensure that such measures are not more trade-restrictive than necessary to fulfil a legitimate objective. Legitimate objectives are, *inter alia*, the protection of consumers (which includes all users of accounting services and the public generally), the quality of the service, professional competence, and the integrity of the profession.”⁷² It may be recalled that the EPA similarly affirms the right to regulate and introduce new regulations to meet *legitimate policy objectives*,⁷³ and includes a standstill clause.⁷⁴

⁶⁹ See also “accountancy services” Background Note by the Secretariat, WTO doc. S/C/W/316, June 7, 2010, section IV.

⁷⁰ OECD literature highlights the fact that the creation of MRAs can be difficult, time-consuming, and expensive. To date, they have primarily been between the professional associations of developed countries; see OECD, *Service Providers on the Move: Mutual recognition agreements*, Working Party of the Trade Committee, 2003, TD/TC/WP(2003)48/FINAL. (Circulated as WTO document JOB(03)/28, February 13, 2003).

⁷¹ The Decision of the Council for Trade in Services adopting the Accountancy Disciplines (WTO document S/L/63, 15 December 1998) is composed of three elements: a statement that the disciplines are applicable to members who have scheduled specific commitments on accountancy; affirmation that members will continue their work on domestic regulation, aiming to develop general disciplines for professional services while retaining the possibility to develop additional sectoral disciplines; and the “standstill provision.” Note that before the end of the current round of services negotiations, which commenced in January 2000, all the disciplines developed by the Working Party on Domestic Regulations are to be integrated into the GATS and will then become legally binding; see also “Accountancy Services” Background Note by the Secretariat, WTO doc. S/C/W/316, June 7, 2010, paragraphs 28-34, and accompanying footnotes.

⁷² “Disciplines on Domestic Regulation in the Accountancy Sector, S/L/64, December 17, 1998, paragraph 2.

⁷³ See EPA, Article 60(4).

⁷⁴ See EPA, Annex IV.F, paragraph 9.

Jamaica

Jamaica has undertaken commitments in the EPA on accounting, auditing and book-keeping services (CPC 862), and taxation (CPC 863); these essentially mirror those found in its GATS schedule (which includes the notation that licensing is required for mode 3 market access). Jamaica has bound commitments on modes 1, 2, and 3 for both CPC 862 and 863, and left unbound its commitments on mode 4 except as indicated in the horizontal commitments.

The Public Accountancy Act establishes the Public Accountancy Board with responsibility for, *inter alia*, promoting acceptable standards of professional conduct among registered public accountants, registering qualified applicants as public accountants, and implementing and regulating a system of continuing professional education for registered public accountants.⁷⁵ The Institute of Chartered Accountants of Jamaica (ICAJ) was designated the sole official agent of the Public Accountancy Board by the Ministry of Finance on 7 March 2001.⁷⁶

In order to be registered as a public accountant a person (other than a body corporate) must be ordinarily resident in Jamaica and a member of the ICAJ or be entitled to practice accountancy in another jurisdiction by virtue of a qualification (whether a degree or diploma or membership of anybody or otherwise) that is approved by the minister.⁷⁷ A registered public accountant wishing to practice in Jamaica must also obtain a practicing certificate, which is issued on payment of the prescribed annual fee.⁷⁸

The Public Accountancy Act prohibits persons who are not registered and therefore not entitled to practice as a public accountant from using any designation, or title, name, initials, or description indicating or implying that he/she is a registered public accountant. For these

⁷⁵ See Public Accountancy Act, sections 3 and 4.

⁷⁶ See also Institute of Chartered Accountants of Jamaica on line at <http://www.icaaj.org/index.php/about-us/who-we-are/milestones>.

⁷⁷ See Public Accountancy Act, section 12; see also *ibid*, sections 16-25, which address the Institute of Chartered Accountants of Jamaica, including the criteria for membership and the use of designations and initials restricted to members of the institute. Membership of the ICAJ is open to citizens of Jamaica and other persons holding the requisite qualifications. Note also that in 2006 the ICAJ signed an agreement with the Certified General Accounts of Canada, which marked the introduction of the CGA program in Jamaica and acceptance of the CGA designation as an entry qualification for accounting students; see also <http://www.icaaj.org/index.php/members/membership/become-a-member>. Note that to be registered qualified applicants must be of good character and pay the prescribed fee; see Public Accountancy Act, section 11; see also Public Accountancy Regulations, 1970. Where the board refuses to register an applicant or exercises its disciplinary powers, a person aggrieved by the decision of the board may appeal to the Court of Appeal; see Public Accountancy Act, section 14.

⁷⁸ See Public Accountancy Act, section 14A.

purposes the practice of accountancy is defined as undertaking for reward the preparation or examination of financial, accounting, or related statements; or provision of any written opinion, report or certificate concerning any such statement, save for doing so only in the course of one's duties as an employee of any person; or engaging in limited book-keeping or cost accounting work.⁷⁹ As such, in order to provide many of the services covered by CPC 862 and 863, a person must be eligible for registration under the Public Accountancy Act. As already noted, no provision is made for the registration of a body corporate, and registration is limited to persons ordinarily resident in Jamaica. The former restriction would not necessarily preclude a supplier from establishing as a sole trader.⁸⁰ The latter restriction relating to residence effectively precludes mode 1 cross-border trade. The condition therefore merits review with a view to ensuring consistency with Jamaica's trade commitments.

Trinidad and Tobago

Trinidad and Tobago has undertaken bound commitments on accounting, auditing, and book-keeping services limited to CPC 86211-86213 and 86220, for modes 1, 2, and 3, and left unbound except as indicated in the horizontal commitments mode 4. The identified CPC codes relate to financial auditing services, accounting review services, compilation of financial statements services and book-keeping services, except tax returns. Trinidad and Tobago has excluded other accounting services, such as those relating to attestations, valuations, and the preparation services of pro forma statements. As regards taxation, CPC 863 (excluding CPC 86309, "Other tax related services," consisting of assisting enterprises in tax planning and control other than income tax and preparing all documentation required by law), Trinidad and Tobago has undertaken bound commitments on modes 1 and 2 and mode 3 as regards national treatment; market access for mode 3 is made subject to economic needs tests (the main criterion is the number of operators in the market). Mode 4 is unbound except as indicated in the horizontal commitments.

⁷⁹ See Public Accountancy Act, section 15.

⁸⁰ See also Companies Act, section 2, which excludes a sole trader from the definition of a body corporate for the purposes of that act; and Interpretation Act, section 28, which addresses the powers of a body corporate. Contrast, e.g., Chartered Accountants' Practising Regulations, 2011, of Trinidad and Tobago; Institute of Chartered Accountants (Public Practice) Regulations, and By-Laws of the Institute of Chartered Accountants of Barbados, which provide for the registration of a body corporate.

The Institute of Chartered Accountants of Trinidad and Tobago (ICATT) is established by the Institute of Chartered Accountants of Trinidad and Tobago (Incorporation) Act 1970. The ICATT functions similarly to other associations of chartered accountants in serving as the general regulatory body, addressing matters such as the ethics, discipline, professional conduct, and standards of its members and students. The act confers on ICATT the competency to establish rules concerning, *inter alia*, the admission and registration of members, the conditions (the standards and tests of competency, fitness and moral character) which must be met for registration as a student or member, annual subscription and other fees to be paid by members, and the use of designations and initials by members.⁸¹

The ICATT Rules and Regulations address the requirements for membership of the institute. These include having the requisite qualifications (successfully taking the prescribed exams or being a member of good standing of a registered society or other approved body), and meeting certain nationality criteria, i.e., a person may not be admitted to membership unless he/she is either a citizen or permanent resident of Trinidad and Tobago under the Immigration Act CAP 18:01 or a citizen of CARICOM (on condition that the CARICOM country of which he/she is a citizen has a locally incorporated accounting body of equivalent standing to that of the ICATT, or he/she has passed the prescribed exams).

Provision is also made for reciprocal membership where a person is a member of an accountancy body outside of Trinidad and Tobago that is deemed to be of equivalent standing to that of the ICATT and provided that the accountancy body grants reciprocal membership to ICATT members. The ICATT Rules and Regulations also allow for the grant of temporary membership to accountants working legally in Trinidad and Tobago, provided that their professional qualifications conform to the qualifications required for ICATT membership.⁸² The provision for temporary membership as well as reciprocal membership opens the door to professionals of other nationalities (non-CARICOM) to access the Trinidad and Tobago market.

In addition to being an ICATT member, individuals wishing to practice accountancy in Trinidad and Tobago must hold a practicing certificate in accordance with the Chartered Accountants' Practicing Regulations 2011. Where public practice is carried out in the name of a

⁸¹ See Institute of Chartered Accountants of Trinidad and Tobago (Incorporation) Act 1970, sections 3 and 4.

⁸² See ICATT Rules and Regulations, Rule 2. See also on line <http://waccounting.net/associations/institute-chartered-accountants-trinidad-tobago>.

firm (whether a sole practice, partnership or body corporate), the firm must hold an auditing certificate.⁸³

To be qualified to hold a practicing certificate an individual must be a fit and proper person and have professional indemnity insurance; made appropriate arrangements for the continuity of his/her practice; been a member of the ICATT, or registered society, or other approved society (with objects similar to the ICATT), continuously for a period of not less than two years; completed the requisite practical training; and passed the prescribed audit and assurance exam. Provision is made, in exceptional circumstances, for waiving the prescribed qualifications and imposition of alternative conditions for holding a practicing certificate. The requirements for an auditing certificate are similar to those for a practicing certificate. Notably, each of the individuals responsible for the firm's audit work must be a qualified person, and the firm must be controlled by such persons (in terms of their being partners or directors and shareholders and, where applicable, considerations relevant to their exercise of voting rights).⁸⁴

The Chartered Accountants Practising Regulations does not impose nationality conditions for the grant of a practicing certificate or auditing certificate and, as such, would not appear to preclude Foreign Service suppliers from obtaining the requisite certification.

Barbados

Barbados has undertaken bound commitments on accounting and auditing services, CPC 8621, on mode 3 and left unbound modes 1 and 2, and mode 4 except as indicated in the horizontal commitments; no commitment is made on book-keeping services. Barbados has undertaken bound commitments on taxation, CPC863, on modes 1, 2, and 3 and left unbound mode 4 except as indicated in the horizontal commitments.

The Institute of Chartered Accountants of Barbados (Incorporation) Act CAP 369A establishes the Institute of Chartered Accountants of Barbados which advances the interests of the profession in Barbados and throughout the region, maintaining appropriate links with regional bodies having objects similar to the institute. The institute is tasked with organizing the

⁸³ See Chartered Accountants' Practising Regulations 2011, regulations 3 and 4, which further define what constitutes public practice.

⁸⁴ See Chartered Accountants' Practising Regulations 2011, regulations 5-13.

courses, method of study, and examination of students; and making rules for, *inter alia*, prescribing the qualifications for admission of members.⁸⁵

The by-laws of the institute made pursuant to section 5 of the act provide that all admissions to membership are made by the Council of the Institute. The council may admit any applicant who is of good moral character and competent to pursue the profession of chartered accountancy. An applicant must have fulfilled all of the educational, practical experience, and examination requirements as prescribed by the council or be a member of one or more approved professional bodies, and have paid the admission fee and annual subscription fee.⁸⁶ The council is not obliged to give any reason for its decision on the admission of an applicant which is treated as final.⁸⁷

Members are entitled to engage in the practice of public accountancy and provide accountancy services including but not limited to preparing or advising upon accounts or financial information, auditing and financial reporting, taxation, and financial or management consultancy (where the principal activity pursued is related to accountancy). A member may practice as an individual sole practitioner or as a partner in a firm or as a director or manager of a body corporate providing such services to the public. Where a member practices through the vehicle of a body corporate, then not less than 75 per cent of the shareholders or members, and the directors, managers, or entities having responsibility for the governance and administration of the affairs of the body corporate, must be members of and hold a practicing certificate from the institute.

⁸⁵ See Institute of Chartered Accountants of Barbados (Inc) Act CAP 369A, sections 2-5, which further define an accountant as including a person who engages in investigating, giving opinions on, and certifying as to the accuracy of accounts for reward.

⁸⁶ See By-Laws of the Institute of Chartered Accountants of Barbados, by-laws 69, 75-77 and 87, and First Schedule, which provide a list of approved professional bodies from the United Kingdom, Ireland, Canada, Australia, New Zealand, and the US, in addition to any other body of accountants that may from time to time be so recognized by the council. The Institute of Chartered Accountants (Public Practice) Regulations made pursuant to section 5 of the Institute of Chartered Accountants of Barbados (Incorporation) Act provides that when applying for a practicing certificate, members must provide evidence of approved practical experience and training and continuing professional education; see Institute of Chartered Accountants (Public Practice) Regulations, regulations 6 and 8-10, which addresses the length of practical training and experience required. Regulations 2 and 3 define “approved training” as practical training and experience approved by the Council of the Institute and obtained in a training office in Barbados except that the Institute may by by-law provide that subject to terms and conditions set out in or pursuant to such by-law part of the period of approved training may be spent in a place other than Barbados and otherwise than in that training office. See also regulations 13-20 on the conditions for designation as a “Post-Qualification Training Office.”

⁸⁷ See By-Laws of the Institute of Chartered Accountants of Barbados, by-law 72.

The similarity between the regulatory framework in Barbados and Trinidad and Tobago is noteworthy. The by-laws of the Institute of Chartered Accountants provide the council with the absolute discretion to permit any member to occasionally provide accountancy services on the basis of a temporary practicing certificate where his/her fees for the work undertaken do not exceed a certain maximum sum established by the council and if he/she complies with any other conditions as may be prescribed.⁸⁸ Provision is also made for a member of the institute to engage in public practice in association with a non-member, whether by way of partnership or as a director, shareholder or member of a body corporate of which the non-member is also a director, shareholder or member, or by any other means. A member practicing in association with a non-member is responsible for ensuring that the non-member conforms to the ethical and technical standards and legal requirements of the institute. Where the non-member is a member of an approved professional body, in relation to services subject to the control and supervision of that professional body, the member of the institute must conform to the ethical and technical standards and legal requirements governing the provision of such services to the public.⁸⁹

The regulatory framework in Barbados is, in fact, far more liberal than may be expected given the limited nature of Barbados' EPA commitments.

Belize

Belize has undertaken bound commitments on accounting, auditing and book-keeping services limited to CPC 86211-86213 and 86220, for modes 1 and 2; market access for mode 3 is subject to the following condition: "Phase in 5 years after entry into force of the Agreement, joint venture, transfer of knowledge and technology required"; national treatment for mode 3 is unbound and for mode 4 except as indicated in the horizontal commitments; a notation on market access for mode 4 provides that it is subject to economic needs tests for CSS and IP. The specific codes on which Belize has undertaken commitments relate to financial auditing services, accounting review services, compilation of financial statements services and book-keeping services (except tax returns). As such, Belize has excluded other accounting services relating to matters such as attestations, valuations, and the preparation services of pro forma statements. As

⁸⁸ See By-Laws of the Institute of Chartered Accountants of Barbados, by-laws 90-93, which further provide for two classes of practicing certificates: a General Practising Certificate or a Specialty Practising Certificate; the latter restricting the member to practice in one or more fields or areas of accountancy. Note that a practicing certificate is valid for one year only and must be renewed; *ibid*, by-law 102.

⁸⁹ See By-Laws of the Institute of Chartered Accountants of Barbados, by-law 101.

regards taxation, CPC 863 (though excluding CPC 86309, i.e., “Other tax related services” concerning assistance with tax planning and control other than income tax and preparing the necessary documentation required by law), Belize has undertaken bound commitments on modes 1 and 2, and left unbound mode 3 and mode 4 except as indicated in the horizontal commitments.

The Accountancy Profession Act (CAP 305) of Belize establishes the Institute of Chartered Accountants to regulate the accountancy profession, including the certification, training, education, and examination of persons seeking to provide accountancy services. The institute is charged with promoting and fostering relations with other professional bodies in the furtherance of its objectives.⁹⁰ It is a member of Institute of Chartered Accountants of the Caribbean (as is true of the institutes of the four other countries reviewed)⁹¹ and should have a significant role to play in advancing mutual recognition arrangements in the accountancy field, which is identified as a priority area in the EPA.⁹²

The Accountancy Profession Act provides that only persons with a valid certificate issued by the Council of the Institute of Chartered Accountants of Belize may practice as a public accountant. An exception is made for persons earning less than \$5,000 from the practice of accountancy in any calendar year.⁹³ The act does not provide for the issuance of a practicing certificate to persons who are not members of the institute. Membership of the Institute of Chartered Accountants is open to any person possessing any qualification accepted by the council as sufficient to qualify the applicant to practice as an accountant in Belize.⁹⁴ An applicant must be proposed by two members of the institute willing to certify that the applicant is a fit and

⁹⁰ See Accountancy Profession Act CAP 305, sections 3 and 4.

⁹¹ The Institute of Chartered Accountants of the Caribbean (ICAC) has seven members, five affiliates, and one associate member. The institutes of The Bahamas, Barbados, Belize, Guyana, Jamaica, Trinidad and Tobago, and that of the Eastern Caribbean (OECS countries) are members; the American Institute of Certified Public Accountants, the Certified General Accountants of Canada, the Association of Chartered Certified Accountants, the Institute of Chartered Accountants in England and Wales, and the Certified Management Accountants of Nova Scotia, Bermuda and the Caribbean are affiliates; the Suriname Association of Accountants is an associate member.

⁹² See EPA, Article 85(3), which provides that the parties shall encourage the relevant professional bodies in their respective territories to start negotiations no later than three years after entry into force of the EPA in order to jointly develop and provide recommendations on mutual recognition, giving priority to the following disciplines: accounting, architecture, engineering, and tourism.

⁹³ Accountancy Profession Act, section 9. Note that a person practices as a public accountant if, for reward, he/she prepares or examines financial, accounting or related statements, or issues any written report or certificate concerning any such statements, but a person does not practice accountancy as aforesaid by reason only that he/she does so in the course of his/her duties as an employee.

⁹⁴ See Accountancy Profession Act CAP 305, section 10(a)(v). Note that the alternative bases for membership require residency in Belize and/or obtaining Belizean qualifications through the examinations conducted by the Institute or the Belize College of Arts, Science and Technology.

proper person to be a member.⁹⁵ A person who is not well known in the field or has few connections with the territory may find it more challenging, though not unreasonably so, to be admitted as a member. A member of the institute who has been in good standing for at least two years (either with the institute or another recognized accounting body) and who satisfies the council of his professional competence and pays the prescribed fee, is entitled to a practicing certificate.⁹⁶ Any person aggrieved by a decision of the council may appeal to an appeal committee, whose decision is final and binding on the parties.⁹⁷

The by-laws of the institute provide differential fees for resident and non-resident members with an additional practicing fee for members practicing as a public accountant.⁹⁸ Questions have earlier been raised as to the treatment of differential fees under the EPA given the non-application of EPA disciplines to subsidies in trade and investment in services. It may be argued that differential fees should have been scheduled as a reservation on national treatment. In that regard it may be recalled that Belize has left unbound modes 3 and 4 as regards national treatment of service suppliers in the sector, although mode 1 cross border trade, which may require appropriate certification within the jurisdiction, is bound without reservation.

Guyana

Guyana has undertaken bound commitments on accounting, auditing, and book-keeping services, CPC 862 on modes 1, 2, and 3, and left unbound mode 4 except as indicated in the horizontal commitments. Guyana has not undertaken any commitments on taxation CPC863.

The Institute of Chartered Accountants of Guyana Act CAP 39:14 continues the Institute of Chartered Accountants of Guyana (ICAG), previously incorporated under the Companies Act, as a body corporate of the same name. The tasks and objectives of the institute generally accord with those of other professional bodies. The ICAG regulates the accountancy profession in Guyana and, in so doing, provides for the training, education, and examination of persons in the profession; and maintains discipline and professional conduct and contacts with other recognized professional bodies in and outside of Guyana. The direction, control, and management of the

⁹⁵ See Accountancy Profession Act CAP 305, Schedule, Bye-Laws of the Institute, paragraph 19.

⁹⁶ See Accountancy Profession Act CAP 305, section 11(a).

⁹⁷ See Accountancy Profession Act, CAP 305, section 12.

⁹⁸ See Accountancy Profession Act, CAP 305, Schedule, Bye-Laws of the Institute, paragraph 22. See also *ibid*, section 8, which provides that no person in relation to the practice of accountancy in Belize may use certain designations or initials unless he/she is entitled to do so by virtue of his/her being a member of the institute or of a professional body outside Belize whose members are entitled to use such designations or initials.

affairs of the ICAG are vested in a council which may exercise all the powers of the Institute, except making by-laws.⁹⁹

The act sets out the conditions for membership of the institute and the requirements for obtaining a practice certificate. Any person who passes the qualifying examination set or designated by the council and satisfies any other requirements for membership provided for in the ICAG by-laws is eligible to be a member on payment of the required fee. Additionally, the council, at its discretion, may admit to membership of the institute any person who, though not otherwise eligible, is a member of a professional accountancy body approved by the council.¹⁰⁰

Where the council is satisfied that the applicant is eligible for registration, the council must register the person as a chartered accountant and furnish him/her with a certificate of registration. A person who is registered as a chartered accountant under the act is, by virtue thereof, a member of the institute.¹⁰¹ The designation “chartered accountant,” and the use of any title or initials implying that a person is entitled to use such designation, are prohibited unless a person is an ICAG member.¹⁰²

Membership in the institute does not of itself entitle a person to engage in the public practice of accountancy. The act prohibits any person from practicing as a chartered accountant in Guyana unless he/she is registered and holds a practice certificate.

The Institute of Chartered Accountants of Guyana Act provides that a practice certificate must be issued by the council to any member who, after becoming an ICAG member or a

⁹⁹ See Institute of Chartered Accountants of Guyana Act CAP 39:14, sections 3, 4 and 6. Note that the Institute may make by-laws concerning, *inter alia*, the admission of students into the Institute; the fees, subscriptions or other sums payable to the institute by members or registered students; the examination of candidates for admission as members of the institute and fees payable for such examination; the classification of members of the institute; prescribing requirements for membership of the institute; the issuance of practice certificates to members of the institute; the possible exemption of persons from courses of study, practical experience requirements, or examinations; disciplinary authority; the manner in which persons may cease to be members of the institute other than by the exercise of disciplinary authority; and professional conduct; see *ibid*, section 7.

¹⁰⁰ See Institute of Chartered Accountants of Guyana Act CAP 39:14, section 10.

¹⁰¹ See Institute of Chartered Accountants of Guyana Act CAP 39:14, sections 14 and 15. Note that an aggrieved applicant who has been refused registration as a Chartered Accountant by the council may appeal to the High Court; see *ibid*, section 28.

¹⁰² See Institute of Chartered Accountants of Guyana Act CAP 39:14, sections 18, 24 and 25, which further clarifies that a person practices as a chartered accountant if he/she holds him/herself out (whether expressly or by implication) as being a professionally qualified accountant or an expert in accountancy or auditing matters; a person practices accountancy if, for reward, he/she prepares or examines financial accounting or related statements, or issues any written opinion, report or certificate concerning any such statement; but a person does not practice accountancy as aforesaid by reason only that he/she does so in the course of his duties as an employee of any person, or he/she engages in bookkeeping or cost accounting, or the installation of a bookkeeping system, business or cost system, or in such work as may be prescribed by regulations.

member of any registered body or of any other body with objects similar to those of the ICAG and approved by the council, has served continuously for at least two years in the office(s) of one or more practicing member(s) of the ICAG or such other relevant body. The decision of the council on the issuance of a practice certificate is treated as final and conclusive.¹⁰³

The regulatory framework for the practice of the accountancy profession in Guyana allows persons of any nationality with the relevant qualifications and local experience to be registered and obtain a practice certificate that would entitle them to provide accountancy services in accordance with Guyana's EPA commitments.

Architectural, engineering, urban planning and landscape architectural services

The practice of architecture has common characteristics with other services relating to engineering, construction, and surveying. Architectural services (CPC code 8671) include advisory and pre-design architectural services;¹⁰⁴ architectural design services;¹⁰⁵ combined architectural design and contract administration services;¹⁰⁶ and other architectural services such as the preparation of as-built drawings and constant site representation during the construction phase. The category of engineering services (CPC 8672) mirror these architectural activities and cover advisory and consultative engineering services; engineering design services;¹⁰⁷ and other engineering services during the construction and installation phase. The Uruguay Round W/120 classification, which largely informs WTO and EPA commitments, also includes associated

¹⁰³ See Institute of Chartered Accountants of Guyana Act CAP 39:14, section 11. Note that the council may issue a practice certificate even where period of service or employment has not been continuous for reasons of ill-health or for other causes deemed proper by the council; and also that recourse may be subject to judicial review of council decisions.

¹⁰⁴ Advisory and pre-design architectural services include preliminary studies addressing issues such as site philosophy, intent of development, climatic and environmental concerns, occupancy requirements, cost constraints, site selection analysis, design and construction scheduling (related to new construction projects as well as renovation, restoration, etc).

¹⁰⁵ Architectural design services include schematic designs, design development, or final design services consisting of drawings and written specifications sufficiently detailed for tender submission and construction; contract administration services (i.e., advisory and technical assistance services to the client during the construction phase to ensure that the structure is being erected in conformity with the final drawings and specifications).

¹⁰⁶ Combined architectural design and contract administration services include post construction services, which consist of assessing deficiencies in construction and instructions regarding corrective measures to be taken during the 12-month period following the completion of the construction.

¹⁰⁷ Engineering design services may be applied to the construction of foundations and building structures, the construction of civil engineering works, mechanical and electrical installations for buildings, and industrial processes and production.

professional services such as integrated engineering services (CPC 8673)¹⁰⁸ and urban planning and landscape architectural services (CPC 8674).¹⁰⁹

Urban planning services and landscape architectural services (CPC code 8674) may be distinguished from architectural services. The profession of a landscape architect involves developing, designing, and overseeing the construction of landscape development, including golf courses, office complexes, and residential design. The profession is generally not subject to independent regulation within the region and, as such, the appropriateness of the service supplier's qualifications (education and experience) is determined by the client and the willingness of governments to grant work permits where required for the supply of the service. Likewise, there is generally a lack of regulation of urban planning as an occupation involving the development of plans and recommended policies for managing land use, physical facilities, and associated services for urban, rural, and remote regions.

The regulatory frameworks governing the engineering and architectural professions are generally similar. The peculiarities of different environments arguably demand some familiarity with local conditions in order to provide an appropriate standard of architectural or engineering service. As regards the former, the International Union of Architects, which represents architects from over 124 countries, has established an Accord on Recommended International Standards of Professionalism in Architectural Practice that includes a statement on "Policy on Practice in Host Nation." The policy states that "Architects providing architectural services on a project in a country in which they are not registered shall collaborate with a local architect to ensure that proper and effective understanding is given to legal, environmental, social, cultural, and heritage factors. The conditions of the association should be determined by the parties alone in accordance with UIA ethical standards and local statutes and laws."¹¹⁰ Additionally, at the UIA council meeting in Sydney (17-18 January 2010) the policy statement was amended by the approved insertion of the following qualification: "When practicing in a host nation, the foreign

¹⁰⁸ CPC 8673 covers integrated engineering services for transportation infrastructure turnkey projects, integrated engineering, and project management services for water supply and sanitation works turnkey projects, integrated engineering services for the construction of manufacturing turnkey projects, and for other turnkey projects.

¹⁰⁹ But note that engineering related scientific and technical consulting services (CPC 8675), are not included. This covers services such as surface surveying/land surveying (CPC 86753), which is a well regulated field in all five countries reviewed. These services are treated within the International Standard Industrial Classification of All Economic Activities ISIC Rev 4 code 711, which covers architectural and engineering activities and related technical consultancy. The ISIC Rev 4 was officially released on August 11, 2008. ISIC Rev. 3.1 is used in scheduling many of the CARIFORUM commitments in Annex IV.E relating to investment in non-services sectors.

¹¹⁰ See <http://www.aia.org/aiaucmp/groups/aia/documents/pdf/aia075164.pdf>

architect should either be registered in that country or should enter into a contractual relationship with an architect duly registered in the host country.” The UIA position appears to provide support for local registration and/or joint venture requirements in providing market access for trade in architectural services. Similar argumentation may be advanced with respect to engineering services.

Professional bodies of the State parties to the EPA are encouraged to jointly develop and provide recommendations on mutual recognition arrangements, particularly in the fields of architecture and engineering.¹¹¹ The Caribbean Accreditation Council for Engineering and Technology (CACET), which was established in November 2009 (and was endorsed by CARICOM ministers at the Twenty-Second Intersessional Meeting of Heads of Government in February 2011), has been recognized by CARICOM as the regional accreditation body for engineering and related technology academic programmes for 12 English-speaking nations.¹¹² Traditionally, the major professional engineering schools in the English-speaking Caribbean have sought recognition of their degree programmes through institutions in the UK and US. The endorsement of CACET is designed to facilitate the participation of CARICOM countries in the Washington Accord and thereby attain much broader recognition for Caribbean programmes.¹¹³ No similar regional architectural body exists, although there is increasingly greater collaboration between national associations within CARIFORUM on the development of mutual recognition arrangements in the context of the EPA.

Jamaica

Architectural services

Jamaica has undertaken bound commitments on architectural services CPC 8671 on modes 1 and 2 and for mode 3 save for the indication on market access that “Joint ventures preferred”; mode 4

¹¹¹ See EPA, Article 85.

¹¹² Note that other regional bodies are being established. The Regional Engineering Accreditation System for the Greater Caribbean (GCREAS) is an IDB-sponsored initiative with a similar objective to CACET. The project is being piloted in three countries: Jamaica, Dominican Republic, and Panama. The GCREAS Accreditation Council was launched in Jamaica in July 2010; see David Tither *et al*, “Regional Public Goods Initiative: Regional Engineering Accreditation System for the Greater Caribbean” IDB doc. RG-T1267, Plan of Operations, <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1276510>.

¹¹³ The Washington Accord is an international agreement between accreditation agencies for the mutual recognition of accredited degrees in engineering and technology. It was established in 1989 by the engineering accreditation bodies of the major English-speaking developed countries, namely Australia, Britain, Canada, Ireland, New Zealand, and the US.

is unbound except as indicated in the horizontal commitments. The commitments mirror those undertaken in the GATS save for the additional clarification on mode 3 market access that “Board examinations, registration, licensing required.” Jamaica’s commitments on Urban Planning and Landscape Architectural services (CPC 8674) in the EPA and the GATS are essentially the same as for architectural services, save that the indication of a preference for joint ventures is omitted.

The Architects Registration Act establishes the Architects Registration Board with the responsibility for regulating the practice of architecture in Jamaica, including the registration of architects and ensuring the maintenance of acceptable standards of professional conduct.¹¹⁴ The criteria for registration as an architect are based not only on a person’s education, training and character, but also on one’s nationality; in principle, a person should be a Jamaican or CARICOM national to qualify for registration. No organization may be registered under the act.¹¹⁵

The Architects Registration Act accommodates foreign (non-CARICOM) service suppliers through the facility for special registration and temporary registration. The Act provides for the special registration of persons in the government service undertaking certain responsibilities as well as persons on the permanent staff of an educational institution in Jamaica engaged in teaching and research. Non-CARICOM nationals temporarily visiting the Island to practice the profession of architecture as a teacher or research student or under a foreign assistance programme or in other circumstances as may be approved by the board qualify for temporary registration. As such, any person may qualify for temporary registration if he/she is of good character and reputation and has the requisite education and training. Temporary registration may be provided for a period not exceeding two years in the first instance and made subject to such terms and conditions as the board may decide. The board is entitled to extend the period and vary the terms and conditions. Significantly, the board has the power to cancel, without notice, any temporary certificate of registration.¹¹⁶ But any person dissatisfied with a

¹¹⁴ See Architects Registration Act, sections 3 and 4.

¹¹⁵ See Architects Registration Act, section 16. The term “organization” is not specifically defined for the purpose of the Act but the Jamaica Institute of Architects is defined as an “unincorporated organization”; see *ibid*, section 2. See also the Professional Engineers Registration Act, section 2, which provides that “organization” means a partnership, association of persons, or body corporate.

¹¹⁶ See Architects Registration Act, sections 9-11.

decision of the board may appeal to a judge in chambers.¹¹⁷ The fees for registration as provided in Schedule 2 of the Architects Registration Regulations do not discriminate on the basis of nationality.

A person who is not registered as an architect may not practice the profession or use the designation “architect” so as to suggest that that he/she is qualified to practice in Jamaica. However, the act recognizes that an engineer or land surveyor (registered under the relevant domestic legislation) may engage in architectural work incidental to his/her practice.¹¹⁸

There is no legislation specifically regulating urban planning and landscape architectural services in Jamaica.

Engineers

Jamaica has undertaken commitments on engineering services (CPC 8672) in the EPA that essentially reflect those inscribed in its GATS schedule.¹¹⁹ These are bound for modes 1 and 2 and for mode 3 National Treatment; with the indication “Joint venture preferred” inscribed in the mode 3 market access column; mode 4 is unbound except as indicated in the horizontal commitments.

The Professional Engineers Registration Act establishes the Professional Engineers Registration Board with responsibility for determining the categories of engineers to be registered, registering engineers, regulating the practice of engineering, and ensuring the maintenance of acceptable professional standards.¹²⁰ Registration is based on possessing the necessary educational qualifications from a recognized institution or a mixture of educational qualifications and practical experience (at least one year of which was gained in Jamaica or another CARICOM member State); the board may also require that an applicant submit to an exam. An applicant for registration should, in principle, be a national of Jamaica or another CARICOM member State or ordinarily resident in Jamaica.¹²¹

¹¹⁷ See Architects Registration Act, section 20.

¹¹⁸ See Architects Registration Act, section 15; see also the Architects Registration (Prohibition of Non-Registered Practice) (Specified Date) Order, 2005, which specifies October 13, 2005, as the date with effect from which no person may carry on the practice of architecture in Jamaica unless registered under the Architects Registration Act.

¹¹⁹ Jamaica’s GATS Schedule also includes the inscription on mode 3 market access “Board examinations. Licensing required,” with respect to CPC 8671, 8672 and 8674. But note that licensing measures and examinations are permissible whether or not inscribed in a State’s schedule once they do not constitute a restriction on market access or national treatment as defined in the agreement.

¹²⁰ See Professional Engineers Registration Act, sections 3 and 4.

¹²¹ See Professional Engineers Registration Act, sections 8 and 9.

The Professional Engineers Registration Act accommodates foreign (non-CARICOM) service suppliers through the facility for temporary registration and special registration. Persons who are not nationals of a CARICOM member State or ordinarily resident in Jamaica may, nevertheless, be temporarily registered where they are temporarily visiting Jamaica for the purpose of practicing the profession of engineering in the capacity of a teacher or research student or the holder of a fellowship or under a foreign assistance program or such other circumstances as the board may approve. The act provides that where such persons possess sufficient knowledge and experience for the efficient practice of engineering in the capacity that they intend to function, the board shall grant temporary registration on payment of the prescribed fee. The board may grant temporary registration to a person temporarily visiting the Island in other unspecified circumstances where a person has the necessary educational background and training and is of good character and reputation. A temporary certificate of registration may not exceed, in the first instance, a period of two years.¹²²

The Professional Engineers Registration Act also provides for special registration of certain categories of persons, most notably, persons in the government service or on the staff of the University of the West Indies, University of Technology or any other local institution approved by the minister engaged in teaching or research capacity in engineering work.¹²³ All registered engineers, except those specially registered, must also obtain a practicing certificate issued by the board in order to practice engineering in the Island.¹²⁴ The fees payable under the act are set out in the Professional Engineers Registration Regulations, 1991 (as amended) and do not discriminate against foreign service suppliers.¹²⁵

The Professional Engineers Registration Act provides for the grant of a certificate of authorization to engage in engineering work to an organization, defined as a partnership, association of persons, or body corporate, which satisfies the board that the practice of engineering is or will be one of its principal functions and will be carried out under the

¹²² See Professional Engineers Registration Act, section 11. Note that the Board is given the power to cancel, without notice, any temporary certificate of registration.

¹²³ See Professional Engineers Registration Act, section 10 and Second Schedule.

¹²⁴ See Professional Engineers Registration Act, section 14A. Note that the practicing certificate is subject to renewal on payment of the prescribed fee.

¹²⁵ See also Professional Engineers Registration (Amendment) Regulations, 2006, which provides for fees that vary depending on the category of registration, whether standard, special or temporary registration; and with regard to applicants for temporary registration, whether they are classified as a teacher, research student, holding a fellowship, or other classification. Separate provision is made for fees for an organization applying for a certificate of authorization.

responsibility and supervision of at least one member or full-time employee of the organization who is a registered engineer in the category of engineering work that the organization will undertake.¹²⁶ The provision for the registration of organizations is a notable feature of the Professional Engineers Registration Act that is not mirrored in the Architects Registration Act.

Persons who are not registered under the Professional Engineers Registration Act may not practice engineering in Jamaica or use any designation, title, name, initials, or description indicating that he/she is entitled to practice. However, the act clarifies that an architect or land surveyor (duly registered as such) may engage in such engineering work as may be incidental to his/her practice.¹²⁷

Trinidad and Tobago

Architectural services

Trinidad and Tobago has undertaken commitments on architectural services CPC 8671, save for CPC 86719 “other architectural services”;¹²⁸ these commitments are bound for modes 1 and 2 and mode 3, save for the condition on market access that joint ventures are *required*; this may be contrasted with the specification in Jamaica’s schedule that joint ventures are *preferred*. Mode 4 is unbound except as indicated in the horizontal commitments. Commitments have also been made on urban planning and landscape architectural services (CPC 8674); these are bound for modes 1 and 2, and for mode 3 National Treatment; left unbound is mode 3 market access and mode 4 except as indicated in the horizontal commitments.

The Architecture Profession Act CAP 90:02 establishes the Board of Architecture, which is responsible for assessing the qualifications and experience, and conducting examinations as necessary of persons applying for registration as an architect; registering suitably qualified

¹²⁶ See Professional Engineers Registration Act, section 16. Note that any person or organization dissatisfied with a determination of the Professional Engineers Registration Board in relation to registration or any disciplinary measure may appeal to a judge in chambers; see *ibid*, section 20.

¹²⁷ See Professional Engineers Registration Act, section 15. Note also that an employee of a registered engineer or an authorized organization does not carry out the practice of engineering by reason only of performing their duties.

¹²⁸ The category of “other architectural services”, CPC 86719, covers services other than advisory and pre-design architectural services, architectural design services, contract administration services, and combined architectural design and contract administration services, requiring the expertise of architects, such as the preparation of promotional material and presentations, preparation of as-built drawings, constant site representation during the construction phase, provision of operating manuals, etc,

applicants; and issuing certificates of registration.¹²⁹ The board is assisted in the exercise of its functions by committees; reference may be made, in particular, to the Accreditation Committee and Assessment Committee.¹³⁰ Entitlement to registration is based on a person's character (i.e., being a fit and proper person to practice architecture), appropriate academic qualifications, and no less than three years practical experience in the trade.¹³¹ Nationality and/or residence criteria are not relevant considerations. Where the board refuses to register an applicant, reasons must be provided,¹³² and an aggrieved applicant may appeal to an independent appeals tribunal established under the act.¹³³

The act protects the use of the title "architect." A registered architect is required to pay the prescribed annual fees and conform to the Code of Ethics which prescribes, among other things, that a registered architect comply with the Conditions of Engagement of the Trinidad and Tobago Institute of Architects.¹³⁴ The said Conditions of Engagement address the basic and other services which may be provided by architects and the fees and reimbursable that may be claimed.¹³⁵

¹²⁹ See Architecture Profession Act, sections 3, 8 and 16, which provides also that the board must be comprised of persons who are citizens of, or ordinarily resident, in Trinidad and Tobago; note that the board is also responsible for, *inter alia*, publishing a list of qualifications and institutions recognized by the board in respect to the training in architecture required by the act.

¹³⁰ See Architecture Profession Act, sections 11-13. The functions of the Accreditation Committee are to assess and keep under review the academic qualifications for registration as a registered architect and to scrutinize, examine, and investigate the academic qualifications of individual applicants for registration as registered architects. The functions of the Assessment Committee are to review the architectural work done by applicants seeking to qualify for registration and to make recommendations in this regard to the board. Note that these committees are comprised of persons who need not necessarily be members of the board.

¹³¹ See Architecture Profession Act, section 17. Note that one year of practical experience may be gained, as approved by the board, during the pursuit of one's professional qualifications. The act does not address the registration requirements for a legal entity such as a firm or corporation.

¹³² See Architecture Profession Act, section 19.

¹³³ See Architecture Profession Act, sections 15 and 20.

¹³⁴ See Architect Profession Act, section 21 and Schedule on Code of Ethics, paragraph 2.

¹³⁵ See also Conditions of Engagement of the Trinidad and Tobago Institute of Architects, paragraph 1.06.06, which provides that the fees and charges described therein may not be sufficient in all circumstances, in which case higher fees and charges may be agreed between the client and architect when the architect is commissioned; <http://www.ttia-architects.org/index.cfm?Content=96>. Note that included in the additional services that may be provided by architects as contemplated in the Conditions of Engagement are town planning, quantity surveying, valuing and surveying, landscape design, building surveys and structural investigations, interior design, shop fitting and furniture design, building systems and components, assistance in negotiations, litigation and arbitration, consultancies, research, development studies/plans, sites and buildings, special drawings, furnishings, and works of art. The list of services covered highlights areas of overlap between the work of architects and other professionals including that undertaken by members of the Trinidad and Tobago Society of Planners and Institute of Surveyors.

There is no legislation specifically regulating urban planning and landscape architectural services in Trinidad and Tobago.

Engineering services

Trinidad and Tobago has undertaken commitments on engineering services CPC 8672, with the exception of CPC 86727 and 86729 relating to other engineering services during the construction and installation phase,¹³⁶ and other engineering services not elsewhere classified.¹³⁷ These commitments are bound without reservation for modes 1 and 2, and for mode 3 National Treatment; mode 3 market access is limited to “Joint ventures only”; mode 4 is unbound except as indicated in the horizontal commitments. The commitments on engineering services as such mirror those on architectural services.

The Engineering Profession Act CAP 90:01 is in many ways similar to the Architecture Profession Act. It establishes a Board of Engineering with responsibility for assessing the qualifications and experience (and conducting exams, as necessary) of persons applying for registration as registered engineers, registering suitably qualified applicants, and issuing certificates of registration.¹³⁸ The board is assisted by committees, including an Accreditation Committee and an Assessment Committee.¹³⁹

Applicants are entitled to registration as a registered engineer if they are persons who are qualified, fit, and proper to practice, and pay the prescribed fee. A person is qualified where he/she has been awarded a degree, diploma, or other qualification in engineering granted by a recognized university or school of engineering, has had not less than four years of experience in

¹³⁶ Subclass CPC 86727 involves services provided both in offices and in the field, such as the review of shop drawings, periodic visits to the site to assess progress and quality of the work, guiding the client and the contractor in the interpretation of contract documents, and any other advice on technical questions that may develop during construction.

¹³⁷ Subclass CPC 86729 includes geotechnical engineering services providing engineers and architects with necessary subsurface information to design various projects; groundwater engineering services including groundwater resources assessment, contamination studies and quality management; corrosion engineering services including inspection, detection and corrosion control programs; failure investigations and other services requiring the expertise of engineers.

¹³⁸ See Engineering Profession Act, sections 2, 13, and 16. Note that the Board is appointed by the minister and comprised of persons who are citizens or ordinarily resident in Trinidad and Tobago.

¹³⁹ See Engineering Profession Act, sections 17-19. The Accreditation Committee assesses and keeps under review the academic qualifications for registration as a registered engineer and examines the academic qualifications of individual applicants for registration as registered engineers. The Assessment Committee reviews the engineering work done by applicants seeking to qualify for registration and makes recommendations in this regard to the board.

the practice of engineering, and has acquired a sufficient standard of proficiency.¹⁴⁰ Nationality and/or residence criteria are not a relevant consideration in determining registration. Where the board decides that an applicant has not satisfied all the requirements for registration it must provide reasons, and an aggrieved applicant may appeal to an independent appeals tribunal appointed by the board.¹⁴¹ The act protects the use of the title “registered engineer” and a registered engineer must adhere to the Code of Ethics.

Barbados

Architectural services

Barbados has undertaken bound commitments on architectural services CPC 8671 on modes 1 and 2, and mode 3 as regards national treatment; left unbound is mode 3 market access, and mode 4 except as indicated in the horizontal commitments. Barbados has undertaken similar commitments on urban planning and landscape architectural services (CPC 8674).

The Architects Registration Act CAP 366 establishes the Architects Registration Board, which is responsible for, *inter alia*, receiving and reviewing applications for registration, and registering qualified applicants as architects. The act requires every person who desires to practice architecture in Barbados and is qualified to do so, to register and pay the prescribed first or annual registration fee, as the case may be, and obtains a certificate of registration. A person is qualified to be registered where he/she has received a qualification in architecture granted by a university or school of architecture that, in the opinion of the board, is evidence of satisfactory training in architecture; or is registered as an architect in another country and, in the opinion of the board, the overseas body upholds satisfactory standards of architecture; and has not less than three years of practical experience acceptable to the board. A person so qualified and who is a fit and proper person to practice architecture is entitled to be registered as an architect under this act.¹⁴² The act allows for an appeal to a judge in chambers against any decision made by the board.¹⁴³

¹⁴⁰ See Engineering Profession Act, section 4. Note also that the Engineering Profession (Registration) Regulations provide for an application fee of \$50 and a registration fee of \$500 dollars. The act does not expressly address the registration of firms or corporations.

¹⁴¹ See Engineering Profession Act, sections 7-9; see also Engineering Profession (Registration) Regulations, regulation 4.

¹⁴² See Architects Registration Act CAP 366, sections 3-5.

¹⁴³ See Architects Registration Act CAP 366, section 16.

Provision is also made for a person to be registered on the basis of reciprocal arrangements between the board and the relevant authorities of another country where the board is satisfied that the requirements for registration in such other country are no less exacting than in Barbados, and the applicant has sufficient practical knowledge of conditions peculiar to the practice of architecture in Barbados. The applicant must also have obtained the necessary work permit.¹⁴⁴ The Architects Registration Act expressly provides that a partnership, association, or corporation may practice architecture in its own name where this is its principal and customary function, and the work is done under the responsibility and supervision of a partner, associate, director, or full-time permanent employee who is a registered architect.¹⁴⁵

The Architects Registration Act protects the use of the title “architect” and limits it to persons registered under the act. A person who is not a registered architect is not entitled to recover any fee, charge, gratuity, or remuneration for the practice of architecture.¹⁴⁶ This, however, does not prevent the practice by other professionals, most notably, engineers registered under the Engineers (Registration) Act, land surveyors, town planners, landscape architects, interior decorators, or furniture designers of their particular discipline, so long as they do not use the term “architect” in its unqualified form with the intention of misleading the public.¹⁴⁷

There is no legislation specifically regulating urban planning and landscape architectural services in Barbados.

Engineering services

Barbados has undertaken bound commitments on engineering services (CPC 8672) on modes 1 and 2, and for mode 3 National Treatment; left unbound is mode 3 Market Access and mode 4,

¹⁴⁴ See Architects Registration Act CAP 366, section 7.

¹⁴⁵ See Architects Registration Act CAP 366, section 14.

¹⁴⁶ See Architects Registration Act CAP 366, sections 2, 9, 10, and 13, which also define the practice of architecture as rendering one or more of the following professional services to clients, namely, advice, consultation, evaluation, planning, design and minor engineering services; and inspection of construction and other services where expert knowledge, skill and experience are required in connection with the erection, enlargement or alteration of any building or buildings or the equipment or accessories thereof, or with the creation of the building environment where public amenity is concerned or involved. Note also that no certification, drawing, valuation, declaration, or other document required by an enactment to be signed by an architect is valid unless the person signing it is registered under the act.

¹⁴⁷ See Architects Registration Act CAP 366, section 12. Note also that the act expressly preserves the right of persons who are not architects to engage in those aspects of the practice of architecture that include drafting or supervising works as owner, contractor, superintendent or clerk of works; performing architectural work involved in minor alterations or architectural services for single-family one-storey dwellings, or minor one-storey business premises (of no more than 1000 square feet), other than where multiple production of buildings is involved, where the interests of the public are not likely to be affected by persons undertaking minor works.

except as indicated in the horizontal commitments. Barbados is the only country reviewed that has undertaken bound commitments on Integrated engineering services, CPC 8673 (except for 86732 concerning integrated engineering and project management services for water supply and sanitation turnkey projects).¹⁴⁸ The Barbadian commitments are bound for modes 1, 2, and 3, and unbound for mode 4 except as indicated in the horizontal commitments.

The Engineers (Registration) Act CAP 368B establishes the Engineers Registration Board which is responsible, *inter alia*, for receiving and reviewing the applications of persons wishing to be registered as an engineer and registering suitably qualified applicants. A person who pays the required registration fee is entitled to be registered as an engineer under the Act if he/she is a fit and proper person and qualified to be so registered.¹⁴⁹ A person is qualified to be registered as an engineer if he/she has been awarded a degree in engineering by the University of the West Indies or other qualification in engineering granted by a university or school of engineering that, in the opinion of the Board, is evidence of satisfactory training in engineering; and he/she has had not less than four years of experience in engineering accepted by the board.¹⁵⁰ Any decision of the board that is prejudicial to an applicant may be appealed to a judge in chambers.¹⁵¹

A person who is registered receives a practicing certificate and may demand and recover reasonable fees for engineering services. Persons not so registered may not use the title “engineer,” which is protected under the act, or provide engineering services. The legislation, however, does not preclude the operation, execution or supervision of any engineering works by an owner, contractor, superintendent, foreman, technician, or inspector.¹⁵²

The Engineers (Registration) Act expressly provides that a partnership, association, or corporation may practice engineering in its own name if this is one of its principal and customary functions and the practice is done under the responsibility and supervision of a partner, member,

¹⁴⁸ Services included within subclass CPC 86732 are planning and pre-investment studies, preliminary and final design, cost estimation, construction scheduling, inspection and acceptance of contracts as well as technical services, such as the selection and training of personnel and the provision of operation and maintenance manuals, and any other engineering services provided to the client that form part of an integrated bundle of services for a turnkey project.

¹⁴⁹ Note that the Engineers (Registration) Act CAP 368B requires payment of the first registration fee or annual registration fee, as relevant, in accordance with the Profession, Trade and Business Registration Act.

¹⁵⁰ See Engineers (Registration) Act CAP 368B, sections 2-5.

¹⁵¹ See Engineers (Registration) Act CAP 368B, section 15.

¹⁵² See Engineers (Registration) Act CAP 368B, sections 8-11 and 17, which also stipulates exceptions in favor of members of the armed forces performing duties involving the practice of engineering where the interest of public safety are not likely to be affected.

director, or full-time permanent employee who is a registered engineer.¹⁵³ Nationality and/or residence criteria are not a relevant consideration for registration as a registered engineer.

The Electrical Wiremen (Licensing) Act CAP 368A is distinct in that similar legislation was not found in other countries reviewed. The act establishes the Electrical Wiremen Licensing Board and requires a person wishing to practice as an electrical wireman to obtain a license. An electrical wireman is defined as a person who installs, fixes, repairs, alters, replaces, connects, disconnects, or removes the whole or any part of the electric wiring of a building.¹⁵⁴ It may be recalled that engineering services (CPC 8672) covers electrical installations for buildings. Upon completion of an electrical installation, an electrical wireman must report to the Electrical Engineer (with responsibilities imposed by the Electricity Act CAP 277) who causes the installation to be inspected before permission is given for electricity to be supplied to the building.¹⁵⁵ A person wishing to work as an electrical wireman may be issued a license if the board is satisfied that he/she is of good character, has had such training and possesses such qualifications as the board prescribes, and pays the prescribed fee. The board may require a person to submit to an examination in addition to or in substitution for any qualification.¹⁵⁶

Belize

Architectural services

Belize has undertaken bound commitments on architectural services CPC 8671 for modes 1 and 2; market access for mode 3 is conditioned on “Joint ventures, transfer of knowledge and technology required”; left unbound is mode 3 National Treatment, and mode 4 except as indicated in the horizontal commitments. Belize has also undertaken bound commitments on urban planning and landscape architectural services (CPC 8674) on mode 2 and for mode 1 national treatment, mode 3 market access is bound as of 1 January 2013; left unbound is mode 1

¹⁵³ See Engineers (Registration) Act CAP 368B, section 13.

¹⁵⁴ See Electrical Wiremen (Licensing) Act CAP 368A, sections 2-4. But note that the term does not cover a person engaged in wiring a telephone, radio-diffusion service, lightning conductor or wiring (including earthing) a wireless aerial; manipulating a switch; connecting and disconnecting a plug; replacing or installing a lamp in a socket; or replacing a fuse where such replacing is in conformity with the rules.

¹⁵⁵ See Electrical Wiremen (Licensing) Act CAP 368A, section 10; see also Electricity Act CAP 277, section 3, which sets out the duties of an electrical engineer.

¹⁵⁶ See Electrical Wiremen (Licensing) Act CAP 368A, sections 5 and 9, which further provide for the appointment of an Examinations Council. Note that where the board refuses to issue or suspends or cancels a license, an aggrieved applicant may appeal to the Electrical Wiremen Appeals Tribunal; see *ibid*, sections 12 and 15-17.

market access, mode 3 National Treatment, and mode 4 except as indicated in the horizontal commitments.

The Professional Architects (Registration) Act CAP 326.02 establishes the Association of Professional Architects of Belize and the Council of the Association as its governing body. The council regulates the profession and provides for the training, education, and examination of persons wishing to practice architecture. The council is also charged with, *inter alia*, promoting and fostering relations with other professional bodies in the furtherance of its objectives¹⁵⁷; in this regard it plays an important role in advancing mutual recognition arrangements (MRAs) in architecture, which is identified as a priority area in the EPA.¹⁵⁸

The council appoints the Board of Professional Architectural Education and an admissions committee. The board is charged with making recommendations to the council on the recognition and the holding of examinations in professional architecture to qualify persons for registration; the committee is charged with considering applications and reporting to the council on a person's fitness to be registered as an architect. Any person who satisfies the committee that he/she is of good character, mentally and physically fit, and qualified to be registered, upon payment of the prescribed fee, is entitled to be registered as a professional architect and elected to the membership of the association.¹⁵⁹

The qualifications required for registration are the possession of a diploma, degree, fellowship, membership, license, certificate, or other status or form of recognition or registration granted by a university, college, or board empowered to confer authority to practice professional architecture by the law of the country where such qualification is granted and which in the opinion of the Board of Professional Architectural Education is evidence of satisfactory professional architectural training. Every person registered as a professional architect under the act is entitled to practice professional architecture in Belize. A person who is not registered may not use the title "registered architect."¹⁶⁰ As such, registration is a condition for effective market

¹⁵⁸ See EPA, Article 85(3).

¹⁵⁹ See Professional Architects (Registration) Act CAP 326.02, section 13. Note that where the board recommends to the council the recognition of any diploma, degree, fellowship, membership, license, certificate or other status, the council must recognize that qualification as acceptable for the purposes of registration. See also *ibid*, section 14, which provides that if the Admission Committee recommends to the council that an applicant is fit and qualified to be registered as a professional architect, the council must authorize the register to register the applicant upon payment of the prescribed registration fee.

¹⁶⁰ See Professional Architects (Registration) Act CAP 326.02, sections 14, 15, and 17.

access. However, nationality and/or residence are not relevant considerations for registration. The regulatory framework, as such, accommodates an even more liberal regime than suggested by Belize's bound EPA commitments.

There is no legislation specifically regulating urban planning and landscape architectural services in Belize.

Engineering services

Belize has made bound commitments on engineering services (CPC 8672) on modes 1 and 2; mode 3 market access is conditioned on "Joint ventures, transfer of knowledge and technology required"; left unbound is mode 3 National Treatment, and mode 4 except as indicated in the horizontal commitments. Belize's commitments on engineering services, as such, mirror those undertaken on architectural services.

The Professional Engineers (Registration) Act CAP 326.03 mirrors the Professional Architects (Registration) Act CAP 326.02 in all relevant respects. The act establishes the Association of Professional Engineers of Belize and the Council of the Association as its governing body. The council appoints the Board of Professional Engineering Education and an admissions committee with similar functions to those performed by the Professional Architectural Education and Admissions Committee under the Professional Architects (Registration) Act. The required qualifications for registration are also stated in similar neutral language without nationality or residence criteria. Provision is also made for the protection of the title "registered engineer" as with the title "registered Architect."

Given the similarity between the commitments made and the regulatory framework with respect to architectural and engineering services in Belize, very similar conclusions may be drawn with regard to the liberal nature of the regime vis-à-vis Belize's bound EPA commitments.

Guyana

Guyana has made bound commitments on architectural services CPC 8671 and for engineering services CPC 8672, for modes 1, 2, and 3; mode 4 is unbound except as indicated in the horizontal commitments. Guyana has not made any commitments on urban planning and landscape architectural services CPC 8674.

There appears to be no legislation regulating the supply of architectural and engineering services in Guyana. The Industrial Training Act CAP 39:04 provides for training apprentices in certain trades including engineering and their certification and the licensing and registration of masters (defined as covering a partnership, firm, or company) who may take on an apprentice in the trade.¹⁶¹ Additionally, the Guyana Association of Professional Engineers provides a registration system for appropriately qualified engineers and has established a code of ethics for the profession. The Guyana Institute of Architects is the relevant professional association for architects. Neither body appears to have been assigned regulatory tasks by statute.

Medical and dental services

Medical and dental services fall under the heading “human and social services” within the group of “human health services” in the Provisional CPC Code (931). The class is divided into general medical services, specialized medical services, and dental services. It covers services chiefly aimed at preventing, diagnosing, and treating illness through consultation by individual patients without institutional nursing, except nursing provided by hospital out-patient clinics for a part of the day.

Reference has already been made to the importance of mutual recognition arrangements in facilitating trade in professional services. The first regional accreditation agency involving CARICOM countries is the accreditation authority for medicine and other health professionals. The 2003 Agreement Establishing the Caribbean Accreditation Authority for Education in Medicine and other Health Professions expresses the concern of Caribbean governments “that international trends in the accreditation of training programmes in certain fields, in particular, the

¹⁶¹ See Industrial Training Act CAP 39:04, sections 8 and 17, and Schedule, which provide for training apprentices in the engineering, building, and printing sectors. The list of engineering services covers agricultural mechanic, auto electrician, blacksmith, copper-smith, draughtsman, electrician, fitter, fitter machinist, heavy plant mechanic, instrument repair mechanic, machinist, marine fitter, motor mechanic, moulder, patter maker, printer mechanic, radio service mechanic, refrigeration service mechanic, sheet-metal worker, steel fabricator, sugar boiler, vehicle body repair mechanic, and welder. The act establishes the Board of Industrial Training to license and keep a register of masters whom it considers suitable to receive apprentices, and issue certificates of competency to artisans qualified to be engaged in any trade or craft to which the act applies. It is charged with fixing the period of apprenticeship for different trades, procuring training by competent masters, issuing or endorsing certificates of competency of apprentices on completion of their term of service, settling disputes between masters and apprentices, and arranging and directing the technical education of apprentices; see *ibid*, sections 2-5. Note that the board maintains a register of artisans and a register of apprentices. The act prohibits anyone who is not a master licensed under the act taking on an apprentice to any trade or craft to which the act applies; see *ibid*, section 9.

regional accreditation initiatives of the European Union will have implications for the traditional methods of accrediting medical programmes offered by institutions in the Caribbean Community,” and recognizes that the establishment of a regional system of accreditation for training program in medicine and other health professions that is internationally recognized is essential.¹⁶²

The agreement establishes the Caribbean Accreditation Authority for Education in Medicine and other Health Professions with the objective of, *inter alia*, securing international recognition of the program of study in medicine (including dental medicine and veterinary medicine) and other health professions.¹⁶³ The responsibilities of the authority include determining and prescribing standards, criteria, and systems for the accreditation of program of study in CARICOM in medicine and other health professions; collaborating with professional bodies to develop training program designed to create a regional cadre of trained assessors; and establishing and maintaining relations with bodies outside of CARICOM having functions in relation to accreditation and quality assurance.¹⁶⁴

Jamaica

Medical and dental services

Jamaica has undertaken commitments on professional services falling within CPC 9312, to the exclusion of CPC 93123, relating to dental services. Jamaica has made bound commitments on general and specialized medical services for modes 1, 2, and 3, and left mode 4 unbound except as indicated in the horizontal commitments. This mirrors Jamaica’s commitments under the GATS.¹⁶⁵ Jamaica has also inscribed similar commitments in Annex IV.F as regards Neurosurgery and CATSCAN services (CPC 931**)

¹⁶² See Agreement Establishing the Caribbean Accreditation Authority for Education in Medicine and other Health Professions, 2nd, 3rd and 4th preambular paragraphs.

¹⁶³ See Agreement Establishing the Caribbean Accreditation Authority for Education in Medicine and other Health Professions, Articles 1, 2, and 3.

¹⁶⁴ See Agreement Establishing the Caribbean Accreditation Authority for Education in Medicine and other Health Professions, Articles 9 and 10. See also the Caribbean Accreditation Authority (Medicine and Other Health Professions) Act of Jamaica.

¹⁶⁵ Note that Jamaica’s GATS schedule includes the inscription on market access mode 3, “Registration, licensing, board examination required.” But note that licensing measures and examinations are permissible whether or not inscribed in a State’s schedule once they do not constitute a restriction on market access or national treatment as defined in the agreement.

The Medical Act establishes the Medical Council with the responsibility of, *inter alia*, registering medical practitioners and ensuring the maintenance of proper standards of professional conduct. The act provides for the registration of fit and proper persons who possess the prescribed qualifications and pay the prescribed fee.¹⁶⁶ Nationality and/or residency criteria are not made a condition for registration. A registered medical practitioner may only practice medicine if in possession of a valid practicing certificate issued by the council.

Persons not otherwise qualified to be registered but who are engaged in certain capacities such as practitioners on the permanent staff of the University of the West Indies in a teaching or research capacity, practitioners doing special field work or research and sponsored by approved organizations, or practitioners working with the government on a full-time basis qualify for special registration. Persons who do not otherwise satisfy the requirements of the act may apply for provisional registration where they are coming to the Island in a resident medical capacity in an approved hospital or institution.¹⁶⁷

The act establishes a medical appeal tribunal, which may hear appeals from any person aggrieved by the refusal of the council to register him/her or a decision to censure, suspend registration or remove a person's name from the register.¹⁶⁸ The fees imposed for receipt of a practicing certificate vary with the length of time a person has been practicing in the profession and are not otherwise discriminatory.¹⁶⁹ The legislation on medical services, as such, generally conforms to Jamaica's international commitments.

As above-noted, Jamaica has not undertaken any commitments on dental services that are regulated by the Dental Act.¹⁷⁰ The regulatory framework for dental services is liberal and does

¹⁶⁶ See Medical Act, section 7. See also the Medical (Registration and Disciplinary Proceedings) Regulations, 1976, regulation 3, which require that an applicant hold a degree from the University of the West Indies or other appropriate medical qualification, to have completed a period of internship and, if required, passed an exam that may be set by the council.

¹⁶⁷ See Medical Act, sections 8, 9, and Third Schedule; note that reference to employment in a resident medical capacity is construed as a reference to employment in the practice of medicine, surgery or midwifery, where the person in question is resident in the hospital or institution where he is employed or conveniently near thereto, and is by the terms of his employment required to be so resident.

¹⁶⁸ See Medical Act, sections 12 and 13.

¹⁶⁹ See the Medical (Practising Certificate) Regulations, 1996.

¹⁷⁰ See Dental Act, sections 3-6. See also *ibid*, section 2, which defines the practice of dentistry for the purposes of the act.

not impose nationality or residency criteria for registration in the dental profession.¹⁷¹ General rules of procedural fairness are also addressed in the Act.¹⁷²

Trinidad and Tobago

Medical and dental services

Trinidad and Tobago has undertaken bound commitments in the EPA on medical and dental services (CPC 9312) on modes 1 and 2, and for mode 3 market access; mode 4 is unbound except as indicated in the horizontal commitments; no entry is found for mode 3 National Treatment. Trinidad and Tobago has inscribed specific bound commitments for Neurosurgery, Epidemiology (CPC 931**), and CATSCAN services (CPC 931**), on modes 1, 2 and 3; mode 4 is unbound except as indicated in the horizontal commitments.

The Medical Board Act CAP 29:50 provides for the continuance of the Medical Board of Trinidad and Tobago (formerly the Medical Board of Trinidad established by the Medical Board Ordinance) comprised of all registered practitioners, and the Council of the Board, which is responsible for, *inter alia*, receiving and reviewing applications for registration as a medical practitioner.¹⁷³ Any fit and proper person who is qualified to practice medicine is eligible for registration under the act. A person is qualified if he/she holds a diploma, license, certificate or other status or other form of recognition granted by an approved institution. The schedule to the act (as reflected in the 2009 amendment) contains the list of recognized institutions and names only the University of the West Indies. The minister may, however, amend the schedule by order.¹⁷⁴

The council of the board may issue a temporary license, other than a “special temporary license,” to persons who meet the above criteria except for the fact that their approved diploma is not from an institution listed in the schedule. A temporary license may be subject to such terms and conditions as the council deems expedient including the nature and character of work which may be performed, the duration of the license, and area to which it extends. After the expiration

¹⁷¹ See Dental Act, sections 9-11. See also Dental Act, section 16. Note that a person who is not registered as a dentist or enrolled as a member of a prescribed class of dental auxiliary under the act may not practice as such in Jamaica. Only an enrolled dental auxiliary may use the title “Enrolled Dental Nurse” or “Enrolled Dental Hygienist” or “Enrolled Dental Technician,” as appropriate. Provision is made for some exceptions, such as the practice of dentistry by a registered medical practitioner.

¹⁷² See Dental Act, section 15.

¹⁷³ See Medical Board Act, sections 3-9.

¹⁷⁴ See Medical Board Act, section 12.

of the fixed period of the temporary license, a person may be registered as a member of the board.

The 2009 amendment to the Medical Board Act establishes the “Panel for the issue of Special Temporary Licences.” which is tasked with considering applications for the issuance of special temporary licenses where requested to do so by the minister. A special temporary license may be issued where the minister is satisfied that there is a shortage of persons available to practice medicine in the public health sector. It may be issued to persons who meet the normal registration criteria or who hold a non-UWI degree from an institution approved by the panel. Although empowered to grant a special temporary license, the panel may not register a person as a member of the board.¹⁷⁵

The Medical Board Act provides for an aggrieved applicant who has been refused registration or subject to disciplinary proceedings to appeal from the decision of the council to a judge in chambers. The provision for an appeal, however, does not extend to the refusal of the panel to grant, suspend, or revoke a special temporary license; in this case, standard judicial review procedures would apply.¹⁷⁶

A person who is admitted to registration or to whom a temporary license has been granted, other than a special temporary license, is required to pay the prescribed initial registration and annual fees.¹⁷⁷ A person who is not registered or the holder of a temporary license may not use any affix, prefix, or title suggesting that he/she is registered or licensed under the act or recognized by law as a medical practitioner or advertise or hold him/herself out as authorized to practice or engage in the practice of medicine.¹⁷⁸ The supply of medical services is therefore dependent on registration or the grant of a license.

It may be suggested that the regulatory framework in Trinidad and Tobago assures market access only to medical practitioners with a UWI degree. Conditions may be imposed on all other medical professionals whether applying for a temporary license or a special temporary license. The accreditation process and mutual recognition agreements provide an avenue for

¹⁷⁵ See Medical Board Act, sections 9A, 9B and 13.

¹⁷⁶ See Medical Board Act, section 29.

¹⁷⁷ See Medical Board Act, section 14; see also Medical Board (Fees) Regulations.

¹⁷⁸ See Medical Board Act, sections 22 and 23. Note that the prohibition to practice medicine does not apply to persons acting under the supervision of a medical practitioner or persons registered or licensed under any other act providing them with authority to perform or provide any service (or persons acting under the supervision of such persons as may be permitted by such act). The prohibition also does not prevent persons from giving necessary medical or surgical aid in emergency cases without reward or the domestic administration of family remedies.

other institutions to be recognized and included in the schedule to the act. Listing the UWI as the only recognized institution may be seen as unduly trade restrictive and imposing an unnecessary barrier to trade in medical services. Nevertheless, limitations placed on market access which define the appropriate professional qualifications for a particular jurisdiction are permissible.

It may be recalled that the GATS contemplates the development of disciplines on measures relating to, *inter alia*, qualification requirements and procedures with a view to ensuring that they do not constitute unnecessary barriers to trade. Such disciplines should be designed to ensure that requirements are based on objective and transparent criteria, such as competence and the ability to supply the service and not be more burdensome than necessary to ensure the quality of the service. Pending the entry into force of such discipline, where a member has undertaken specific commitments, the GATS imposes an obligation on the member not to apply qualifications requirements in a manner that does not meet with the aforesaid conditions, where they could not reasonably have been anticipated at the time the specific commitments in those sectors were made.¹⁷⁹ The EPA does not contain a similar obligation, and in this regard may be considered “WTO minus.” The right to regulate and to introduce new regulations is recognized in the EPA and, as discussed in the introductory chapter, it must be exercised with a view to meeting legitimate policy objectives.¹⁸⁰ Measures to ensure that medical professionals are properly qualified are legitimate.

Reference may also be made to the standstill clause in Annex IV.F where CARIFORUM countries agree to “maintain the conditions of market access and national treatment in the meaning of Articles 67 and 68, and Articles 76 and 77 applicable according to their respective legislation to services, service suppliers, investors and commercial presences of the EC Party at the time of the signature of this Agreement.”¹⁸¹ It is unclear what the status of the law was prior to the 2009 amendment, i.e., whether the list of recognized institutions was broader. In any event, regulatory measures defining professional qualifications that are not discriminatory and do not impose limitations on the number of service suppliers, or the value or number of service transactions, do not affect the conditions of national treatment or market access as defined in the EPA and, as such, the standstill provision is not a relevant consideration.

¹⁷⁹ See GATS, Article VI (4) and (5).

¹⁸⁰ See EPA, Article 60.4.

¹⁸¹ See EPA, Annex IV.F, paragraph 9.

Dentists

The Dental Profession Act CAP 29:54 establishes the Dental Board of Trinidad and Tobago and a council that is responsible for its management and the registration of persons to practice dentistry and the enrolment of persons as dental auxiliaries.¹⁸² The council is specifically charged with, *inter alia*, determining and keeping under review the professional qualifications and experience required of an applicant for registration or enrolment. It regulates the training of persons enrolled as dental auxiliaries and publishes for general information a list of recognized universities, colleges, or other institutions.¹⁸³

Any fit and proper person holding a diploma from a recognized university, college, or other institution is entitled to be registered as a dentist upon payment of the prescribed fees.¹⁸⁴ Similarly, enrolment as a dental auxiliary is based on having the appropriate qualifications, being fit and proper, and paying the prescribed fees.¹⁸⁵ An aggrieved applicant may appeal against the council's decision to a judge in chambers.¹⁸⁶ The act authorizes the council to grant temporary registration where it is not satisfied that the qualification of an applicant for registration is sufficient to assure the possession by the applicant of the requisite knowledge and skill for the efficient practice of dentistry; similar provision is made with respect to dental auxiliaries.¹⁸⁷ The facility for temporary registration or enrolment does not appear to be designed to accommodate temporary service providers (as opposed to persons not fully qualified) who are eligible to apply for registration or enrolment in accordance with standard procedures.

¹⁸² Note Part II of the Medical Board Act, which addressed dentists, was repealed by Act No. 15 of 1980. Note also that the Dental Profession Act establishes an Advisory Committee on Dental Auxiliaries which advises the council on various matters including the determination of which dental operations may be performed by dental nurses and the dental work that a dental assistant, dental hygienist, or dental technician may undertake; see Dental Profession Act, sections 43 and 44.

¹⁸³ See Dental Profession Act, sections 9 and 12.

¹⁸⁴ See Dental Profession Act, section 5. The institutions listed in the schedule to the act are US, Canadian, and UK institutions, in addition to the University of the West Indies. Note that special provision is made for persons who hold a diploma from the University of the West Indies Faculty of Medical Sciences Dental School to receive temporary registration in the first instance and upon certification of completion of a one-year period of vocational training, full registration. See also the Dental Regulations, which provide for an initial fee of \$600 to practice dentistry and an annual practice fee of \$600.

¹⁸⁵ See Dental Profession Act, section 7. Note that the act does not address the registration of firms or corporations.

¹⁸⁶ See Dental Profession Act, section 37.

¹⁸⁷ See Dental Profession Act, sections 15, 16, and 21; note that the act provides as an alternative to temporary registration the recognition of the qualification conditional upon the passing of an examination conducted by the Board of Examiners appointed by the council.

Barbados

Medical and dental services

Barbados has undertaken commitments on specialized medical services (CPC 93122)¹⁸⁸ only; excluded are general medical services and dental services. However, the extent to which substantive commitments have been undertaken may be questioned. Barbados has left unbound modes 1 and 2, and mode 3 National Treatment, mode 4 is also unbound except as indicated in the horizontal commitments; inscribed beside the entry on mode 3 Market Access is the notation that “Only a natural person can practice medicine”. Barbados has also inscribed specific commitments for neurosurgery, epidemiological services, and CATSCAN services. These are all unbound for modes 1 and 2 and for mode 4 except as indicated in the horizontal commitments; in the mode 3 market access column appears the inscription that “Only a natural person can practice medicine”; mode 3 National Treatment is bound.

Barbados’ only bound commitments concern mode 3, commercial presence. The term “commercial presence” refers to any type of business or professional establishment involving the constitution, acquisition, or maintenance of a juridical person or the creation or maintenance of a branch or representative office within a State for the purpose of performing an economic activity. The reservation that only a natural person can practice medicine would seem to exclude the supply of services through the establishment of a juridical person. This interpretation would, however, negate the commitments which have been undertaken.

It may be recalled that where liberalization commitments are undertaken in relation to commercial presence, subject to any reservations made, States agree to allow investors of another EPA State to employ in their commercial presences natural persons of such party provided that such employees are key personnel (including specialists) or graduate trainees.¹⁸⁹

¹⁸⁸ Specialized medical services (CPC 93122) are defined as services limited to specific or particular conditions, diseases, or anatomical regions (except dental services), such as medical services for the following: nervous system; eye; ear, nose and throat; respiratory system; circulatory system; digestive system; hepatobiliary system and pancreas; musculoskeletal system connected tissues; skin, subcutaneous tissue and breast; endocrine, nutritional and metabolic diseases and disorders; kidney and urinary tract; male reproductive system; female reproductive system; pregnancy, childbirth and puerperium; newborns and other neonates; blood and bloodforming organs; myeloproliferative disorders; infectious and parasitic diseases; mental diseases and disorders; substance use and substance induced organic mental disorders; injuries, poisonings and toxic effects of drugs; burns; factors influencing health status, and other contacts with health services (e.g., rehabilitation, aftercare, etc.).

¹⁸⁹ See EPA, Article 81. Note that the EPA provides that the temporary entry and stay of key personnel and graduate trainees shall be for a period of up to three years for intra-corporate transfers, 90 days in any 12-month period for business visitors, and one year for graduate trainees.

The reference to “natural persons” in relation to commercial presence in the Barbados schedule may bear allusion to this; the inference to be drawn from the inscription is unclear.

The Medical Profession Act 2011 replaces the Medical Registration Act CAP 371 although the two acts are quite similar in most material respects. Significantly, the 2011 act adopts modern practices on mandating continuing professional education of registered practitioners.¹⁹⁰ The Barbados Medical Council, established under the 2011 act, is charged with the establishment and maintenance of a system to enable the continual assessment of the level and adequacy of medical training of practitioners and the ability and competency of a practitioner. The council also has general responsibility for such matters as the registration of persons, regulation of standards of medical practice, and investigation of professional conduct.¹⁹¹

The Medical Profession Act provides that the council will have at least three committees: an Assessment Committee, Complaints Committee, and Disciplinary Committee, and may appoint such other committees as necessary. The Assessment Committee is responsible for examining applications and advising the council on the adequacy of the qualifications of an applicant for registration and, where relevant, any additional qualifications that may be required. The Assessment Committee is also responsible for the implementation of the system of assessment of medical practitioners. The requirements for registration are essentially the same as under the Medical Registration Act; a person may be registered if he/she is fit and proper to practice in the field and provides the council with satisfactory evidence of medical training (including the completion of a required period of internship), and fluency in the English language. Where the council is not satisfied with the evidence on an applicant’s medical training, it may, in its absolute discretion, require the applicant to submit to an examination.¹⁹²

A medical practitioner may be registered as a specialist in a “specialist register” where he/she satisfies the Council that he/she has completed the required tuition and training in a specialty and has obtained the relevant qualification from an institution or body recognized by

¹⁹⁰ See Medical Profession Act 2011, section 18, which provides that the council may require as a condition precedent of the renewal of registration evidence that a registered medical practitioner has participated in post-graduate training, or in symposia or other approved activities that provide information or training on new developments in the medical profession; or has been exposed to new techniques or procedures in the practice of medicine approved by the council.

¹⁹¹ See Medical Profession Act 2011, section 3.

¹⁹² See Medical Profession Act 2011, sections 9-11.

the council.¹⁹³ The act further requires a medical practitioner or specialist, prior to establishing a medical practice or making any public announcement concerning the same, to inform the council in writing of his/her intentions.¹⁹⁴

Temporary registration for a period not exceeding six months is available to a person who is residing temporarily in Barbados and who otherwise qualifies for registration by virtue of his/her qualifications to practice medicine in his/her own country. This is a notable feature of the legislation in that it facilitates the registration of foreign service suppliers, including specialists. Additionally, the council may specially register a person for a period not exceeding three years, where he/she is qualified to practice medicine in any country and is doing special work in the field of public health or research and is sponsored by an approved institution, or is employed on a full-time basis with an organization to render medical services exclusively and without fee to members of that organization in Barbados, or is employed on a full-time basis in the public service and is working under the supervision of a consultant or specialist. The legislation also gives the council the discretion to renew the registration of a person for such further period as may be required in the circumstances. A person may also be registered provisionally to undertake employment as an intern in a hospital in Barbados or other approved health institution.¹⁹⁵

Interestingly, the 2011 act introduces a new ground upon which the council may refuse to grant registration, i.e., where the applicant has previously been registered as a medical practitioner in another country and the registration had been cancelled on grounds that would justify a similar cancellation in Barbados.¹⁹⁶ The new clause highlights an important rider to recognition arrangements and the liberalization of trade in professional services with a view to maintaining professional standards and providing consumer protection. Under the 2011 act an

¹⁹³ See Medical Profession Act 2011, section 20. See also *ibid*, section 21, which provides transitional arrangements for the registration of persons who have not undergone formal training nor relevant certification as specialists by December 31, 2010, but who have practiced the specialty for a continuous period of not less than 10 years and have the requisite experience, skill, and competence in the specialty; or have been appointed a consultant with the Ministry of Health or at a public hospital. The Seventh Schedule to the act sets out a list of institutions approved by the minister for the provision of post-graduate training and certification as specialists in medicine. Where an applicant relies on a qualification that is not granted by an institution on the list, the council may, in its absolute discretion, seek to verify that the qualification sought to be relied on is of an equivalent standard.

¹⁹⁴ See Medical Profession Act 2011, section 24.

¹⁹⁵ See Medical Profession Act 2011, section 15; note that persons specially registered are not liable to pay the prescribed fee. See also *ibid*, Ninth Schedule – setting out the applicable fees.

¹⁹⁶ See Medical Profession Act 2011, section 12.

applicant aggrieved by the refusal of the council to register him/her may first apply to the council for reconsideration of its decision, before appealing to a judge in chambers.¹⁹⁷

The Medical Profession Act 2011 proscribes any person not being a medical practitioner or specialist from using any title or prefix, name, or other description implying that he/she is a registered medical practitioner or specialist or is recognized by law as a person authorized and qualified to practice medicine; or advertising or holding oneself out as so qualified or authorized; or engaging in the practice of medicine, unless the person is acting under the direct supervision of a medical practitioner, or is registered, licensed or enrolled under any enactment and provides a service which he/she is authorized to perform.¹⁹⁸

The legislative framework in Barbados is far more liberal than suggested by its limited bound EPA commitments.

As previously noted, Barbados has not undertaken any commitments on dental services. The provision of dental services is regulated by the Dental Registration Act CAP 367, which provides for the temporary registration of dentists similarly to the Medical Profession Act (though the temporary registration of an applicant may not be renewed within one year of the expiration of that registration). The Dental Registration Act also addresses general rules of procedural fairness, including the facility for an appeal by an aggrieved applicant who is refused registration.¹⁹⁹

Belize

Medical and dental services

Belize has undertaken bound commitments on general and specialized medical services, CPC 93121 and 93122, on modes 1, 2, and 3; mode 4 is unbound except as indicated in the horizontal

¹⁹⁷ See Medical Profession Act 2011, sections 13, 14, and 40, which further provides that an appeal does not lie against the refusal of an application for registration where this is conditional upon the applicant's satisfying the council that he/she is qualified to be registered or is a fit and proper person to practice medicine and the applicant has failed to provide satisfactory evidence in this regard..

¹⁹⁸ See Medical Profession Act 2011, section 46; see also *ibid*, section 47, which provides that this prohibition does not prevent giving aid in emergencies without hire, gain, or hope of reward, or providing domestic administration of home remedies and treatment. Note also that the act prohibits a medical practitioner or specialist from advertising his/her services or making any representation that is likely or is intended to attract business unfairly or which may reasonably be regarded as touting; see *ibid*, section 25.

¹⁹⁹ See Dental Registration Act CAP 367, section 28. Note that an appeal is heard by a Judge in chambers whose decision is final, but an appeal does not lie against the refusal of an application for registration where the registration is conditional upon the applicant's satisfying the Council that he/she is qualified to be registered under the act. Note also that the Dental Registration Act does not apply to the practice of dentistry by a person registered under the Medical Registration Act; see Dental Registration Act CAP 367, section 33.

commitments. Similar commitments have been made for neurosurgery and CATSCAN services CPC 931**. However, Belize has not made any commitment on dental services.

The Medical Practitioners Registration Act CAP 318 establishes the Medical Council of Belize comprised of the director of health services, medical practitioners, and dentists.²⁰⁰ The council is responsible for, *inter alia*, interviewing and examining applicants for registration, and holding examinations.²⁰¹ Any person may be registered as a medical practitioner who satisfies the council that he/she is of good character, physically and mentally fit and qualified to be registered. A person is qualified to be registered as a medical practitioner if he/she holds any diploma, degree, fellowship, membership, license, certificate, or other status or form of registration granted by a university, college, or other body that in the opinion of the council provides satisfactory medical training. The council maintains a list of accredited institutions and may undertake investigations, as necessary, to verify and ensure the suitability of any institution to be approved. In principle, therefore, the legislation permits any person with satisfactory medical training, irrespective of nationality, to be registered as a medical practitioner. An applicant aggrieved by a decision of the council may appeal that decision to a judge of the Supreme Court.²⁰²

The act further provides for the provisional registration of interns in a government hospital and the temporary registration (for a period not exceeding a year though subject to renewal) of persons engaged on a contract basis with a private institution where there is no qualified Belizean to fill the post, or practicing as a specialist in a field of medicine in which specialist services are not available in Belize.²⁰³ The facility for temporary registration is therefore subject to economic needs tests. It may be recalled that Belize's commitments on mode 4 (movement of natural persons) are unbound except as indicated in the horizontal commitments that provide for the use of ENTs.

²⁰⁰ See Medical Practitioners Registration Act CAP 318, section 3; note that professionals appointed to serve on the council must be Belizean nationals.

²⁰¹ See Medical Practitioners Registration Act CAP 318, section 4.

²⁰² See Medical Practitioners Registration Act CAP 318, section 18.

²⁰³ See Medical Practitioners Registration Act CAP 318, section 7. Note that persons employed on a full time basis in the public service, or doing full time work with a non-profit organization or a hospital, may also qualify for temporary registration.

It is unlawful to practice medicine in Belize without being registered or to use the name or title of a physician, surgeon, doctor, or any other designation or description implying that one is qualified to practice medicine, surgery, or midwifery without being registered.²⁰⁴

The Medical Practitioners Registration Act would seem to afford market access to foreign professionals in accordance with Belize's EPA commitments. Reference, however, should be made to the Medical Practitioners Registration (Fees) Regulations, which impose on non-citizens double the fees required of citizens both as regards an application to register as a medical practitioner as well as the annual practicing fee. This constitutes a denial of national treatment. However, as noted above, the imposition of differential fees may be compared to a subsidy falling outside of the scope of the EPA. The merits and shortfalls of this argument have already been debated.

As noted above, Belize has not undertaken any commitments with respect to dental services that are regulated by the Dentists Act (CAP 316). The act provides for the registration of persons without reference to nationality or residence,²⁰⁵ and addresses general rules of procedural fairness, including the facility for an aggrieved applicant to appeal a decision of the Medical Council of Belize (established under the Medical Practitioners Registration Act CAP 318, and which also serves as the regulatory body for dentists) to a judge in chambers.²⁰⁶

Guyana

Medical and dental services

Guyana has undertaken bound commitments in the EPA on medical and dental services, CPC 9312, on modes 1, 2 and 3; mode 4 is unbound except as indicated in the horizontal commitments.

²⁰⁴ See Medical Practitioners Registration Act CAP 318, section 11. Note, however, that a person may give necessary medical or surgical aid in emergencies without hire, gain, or hope of reward, and administer in the domestic context family remedies without committing an offence; see *ibid*, section 19.

²⁰⁵ See Dentists Act CAP 316, section 6, which provides that any person who is registered or entitled by law to be registered as a dentist in the UK, or holds a certificate from any institution recognized by the council as furnishing a sufficient guarantee of the possession of the requisite knowledge and skill for the efficient practice of dentistry, is entitled to be registered as a dentist in Belize; see also *ibid*, section 7, which permits persons working full time for the government with the approval of the minister to practice without being formally registered (the act provides that they shall be deemed to be so registered).

²⁰⁶ See Dentists Act CAP 316, section 10. Note that the judge may request the assistance of two duly qualified dentists.

The Medical Practitioners Act CAP 32:02 establishes the Medical Council of Guyana. The council is responsible for, *inter alia*, appointing examiners and conducting examinations of persons applying for registration as medical practitioners as may from time to time be deemed necessary and registering medical practitioners. To be registered as a medical practitioner a person must be fit and proper, hold a diploma or certificate from an approved medical school, and be qualified to practice independently in the country where he/she obtained his/her diploma or certificate, and be a citizen of Guyana, or the spouse of a citizen of Guyana, or resident in Guyana, or a national of CARICOM member State, and able to communicate satisfactorily in English. The council may require an applicant to take an exam where his/her diplomas or certificates are not from an approved medical school, if he/she is not qualified to practice independently in the country where the diploma or certificate was obtained, or is not able to speak English satisfactorily.²⁰⁷

The Medical Practitioners Act CAP 32:02 provides for the grant of internship registration where an applicant meets all criteria except for being entitled to practice independently in the country where his/her diploma or certificate was obtained. It provides for the grant of institutional registration for a period of not more than three years where any of the requirements for registration are not satisfied (save that he/she is of good character) but where there is evidence of the possession of the requisite knowledge and skill for the efficient practice of medicine or surgery and the individual is employed in an approved institution. Full registration will be granted to a person who has satisfactorily completed the period of institutional or internship registration, on payment of the prescribed fee. Additionally, persons qualified to practice medicine but not satisfying nationality and language requirements may be permitted to practice in Guyana for a period not exceeding nine months provided that no fee is accepted by such person(s) for medical services rendered under the license.²⁰⁸

In principle, therefore, service suppliers not satisfying nationality and/or residence requirements may not engage in profit-making activities. However, it would appear that institutional registration may provide a vehicle through which to qualify for full registration, although it would be useful to seek clarification of this. Such a facility could be analogous to a

²⁰⁷ See Medical Practitioners Act CAP 32:02, sections 2-6. See also EPA, Annex IV.F, explanatory notes, paragraph 10; and *supra*, Chapter 1, on the treatment of language tests.

²⁰⁸ See Medical Practitioners Act CAP 32:02, section 10 and Third Schedule concerning hospitals or institutions approved by the council for internship and institutional regulation.

requirement for local experience as a condition for the recognition of a person's professional qualifications. It may be recalled that Guyana has undertaken bound commitments on modes 1, 2, and 3. A person not registered under the act may not practice medicine in Guyana or use a title or description suggesting that he/she is so registered. The proscriptions of the act curtail the nature of services trade that may legitimately take place under mode 1 (in addition to mode 4, which is left unbound). Few EU professionals will likely qualify for registration to enable them to provide cross-border services. However, should full registration of non-CARICOM professionals and non-residents be afforded through a period of institutional registration, the measure would seem to be permissible, although it may appear to raise unnecessary barriers to trade (as noted in the discussion concerning Trinidad and Tobago's commitments on medical services) as it does not preclude market entry, i.e., impose a zero quota, on foreign service suppliers.

The Medical Practitioners Act notably also addresses rules of procedural fairness and allows any person aggrieved by the refusal of the council to register him/her under the act to appeal to a judge of the High Court in chambers.²⁰⁹

Dental services

The Dental Registration Act CAP 32:03 establishes the Dental Council of Guyana whose functions include the registration of dental practitioners, dentist extenders, and dental technicians; and the establishment of a suitable training program for dentist extenders and dental technicians.²¹⁰ The requirements for registration as a dental practitioner mirror those provided for medical practitioners, including nationality and/or residency requirements and, as such, the comments noted above are equally valid here.²¹¹ Similarly, persons may be required to take an

²⁰⁹ See Medical Practitioners Act CAP 32:02, sections 11, 13, 17, and 25. Note that the proscription on persons not registered engaging in the practice of medicine does not apply to persons under the direct supervision of a medical practitioner or having institutional or internship registration, or authorized under any other written law to provide a service; nor does it apply to persons who render first aid, or a chemist and druggist exercising what is known as counter prescribing in the ordinary course of his/her business and under the conditions determined by the council.

²¹⁰ See Dental Registration Act CAP 32:03, sections 2-4. Note that the definition of dentistry covers any professional service performed by a dental practitioner and includes the practice of oral surgery by a medical practitioner licensed under the Medical Practitioners Act, and operations undertaken by students.

²¹¹ See Dental Registration Act CAP 32:03, section 6, which requires a person to be a Guyanese citizen, the spouse of a citizen, a Guyanese resident, or a national of a CARICOM member State, able to communicate satisfactorily in English, and of good character, holding a diploma, degree or certificate from a recognized dental school approved by the council, and qualified to practice independently in the country where he/she obtained his/her diploma, degree

exam where his/her diplomas or certificates are not from an approved dental school, he/she is not qualified to practice independently in the country where the diploma or certificate was obtained, or is not able to speak English satisfactorily.²¹²

The Dental Registration Act CAP 32:03 provides for short term/temporary registration for a period not exceeding 12 months. Temporary licenses may be granted to a person who is employed or selected for employment in an approved institution such as the National Dental Centre, any public hospital or any government dental clinic, where such person satisfies the council that he/she is of good character and holds a diploma granted in a country other than Guyana by virtue of which he/she would be entitled to practice in that country as a dentist without supervision; this is recognized by the council as furnishing a sufficient guarantee of the possession of the requisite knowledge and skill for efficient practice of dentistry.²¹³

Where the council is satisfied that a person with a temporary license has practiced efficiently as dentist for a period of not more than 12 months in any approved government institution under the direct or indirect supervision of a person registered as a dental practitioner, the person will be entitled to be registered as would any person meeting all the required criteria on payment of the prescribed fee.²¹⁴ A person not duly registered under the act may not hold him/herself out as entitled to practice dentistry.²¹⁵ An aggrieved applicant may appeal the decision of the council to a judge of the High Court.²¹⁶

Dentist extenders and dental technicians are also regulated and must be registered before they may perform dental services in Guyana.²¹⁷ A person who applies to the council to be

or Certificate, to be entitled with approval of the council to be registered as a dental practitioner, upon payment of the prescribed fee.

²¹² See Dental Registration Act CAP 32:03, section 6.

²¹³ Note that where a short-term license is granted to a suitable applicant, and where the person charges no fee for all dental services rendered under the license, the chairman of the council may waive the prescribed fee; see Dental Registration Act CAP 32:03, sections 6, 10, and 11.

²¹⁴ See Dental Registration Act CAP 32:03, section 12.

²¹⁵ See Dental Registration Act CAP 32:03, sections 9 and 14. But note that this does not operate to prevent, *inter alia*, the extraction of teeth by a duly registered dispenser, medex, or registered medical practitioner when no dentist or dentist extender is available.

²¹⁶ See Dental Registration Act CAP 32:03, section 13.

²¹⁷ Note that the subclass of dental services CPC 93123 includes the diagnosis and treatment services of diseases affecting the patient's teeth or aberrations in the cavity of the mouth, and services aimed at the prevention of development of dental diseases, including dental surgery, even when given in hospitals to in-patients. These dental services can be delivered in health clinics, such as those attached to schools, as well as in own consulting and operating rooms. It concerns services in the field of general dentistry, such as routine dental examinations, preventive dental care, and treatment of caries, etc.; as well as specialized dental services such as, orthodontic services, services in the field of oral surgery, periodontics, paedodontics, endodontics, and reconstruction.

registered as a dentist extender or dental technician must have the appropriate qualifications (successful completion of the approved training and examination) and be a citizen of Guyana, the spouse of a citizen, or be resident in Guyana, able to communicate satisfactorily in English, and be deemed to be a fit and proper person to perform the services of a dentist extender or dental technician. Any such person is entitled to be registered on payment of the prescribed fee.²¹⁸ Only persons registered under the act may use the titles of dental practitioner, dentist extender, or dental technician. An aggrieved applicant may appeal a decision of the council to a judge in chambers.²¹⁹

The application of nationality and/or residency criteria may seem to raise concerns. However, it should be noted that the definition of a dentist extender is linked to employment in the public service, which would require a person to be resident locally; dental technician services would not likely be delivered remotely (i.e., through mode 1 cross-border).

Veterinary services

Veterinary services, CPC 932, covers animal and veterinary hospital and non-hospital medical, surgical and dental services delivered to animals. The services are aimed at curing, reactivating, and/or maintaining the health status of the animal. Included are hospital, laboratory and technical services, food, and other facilities and resources. Trinidad and Tobago is the only country of all five reviewed which has undertaken bound commitments on veterinary services.

Trinidad and Tobago

Trinidad and Tobago has undertaken bound commitments without reservation on all four modes of supply (1, 2, 3 and 4).

The Veterinary Surgeons (Registration) Act CAP 67:04 establishes the Veterinary Surgeons Registration Board for the purpose of, *inter alia*, registering veterinary surgeons.²²⁰

²¹⁸ See Dental Registration Act, CAP 32:03, Part V, sections 16 and 18. See also *ibid*, sections 2, 19, and 20, which define the dental services that a dentist extender and dental technician may perform. Note that one of the defining criteria of a dentist extender is employment in the public service. A dental technician may perform such services as fabricating dental appliances, *viz.* dentures, bridges, obturators, and orthodontic appliances. Note that the council may, with the approval of the minister, recognize any place, institution, or school as a place of training or affiliated place of training for dentist extenders or dental technicians; see *ibid.*, section 30.

²¹⁹ See Dental Registration Act, CAP 32:03, sections 21 and 28.

²²⁰ See Veterinary Surgeons (Registration) Act, sections 3.

The act protects the use of the title “veterinary surgeon” and proscribes the practice of veterinary surgery by persons who are not registered.²²¹ A person is eligible for registration where he/she is entitled to registration as a veterinary surgeon in the UK, or holds a certificate granted in another country that is recognized by the board as furnishing a sufficient guarantee of the possession of requisite knowledge and skill for the efficient practice of veterinary surgery.²²² Nationality and/or residence criteria are not made a condition for registration; an aggrieved applicant may appeal the refusal by the board to register a candidate to the minister.²²³

In this way, the legislation would seem to afford market access to suppliers of veterinary services in accordance with Trinidad and Tobago’s EPA commitments.

Jamaica

The Veterinary Act establishes the Veterinary Board with responsibility for, *inter alia*, registering veterinary surgeons and enrolling animal health assistants and ensuring the maintenance of acceptable standards of professional conduct.²²⁴ Registration or enrolment, as appropriate, is based on an applicant possessing the prescribed qualifications and being of good character and a fit and proper person to practice the profession.²²⁵ The Veterinary Regulations

²²¹ See Veterinary Surgeons (Registration) Act, sections 4 and 5. Note that the First Schedule to the act exempts from the restriction on practice of veterinary surgery any treatment given to an animal by the owner thereof; the rendering in an emergency of first aid for the purpose of saving life or relieving pain; the destruction of an animal by painless methods; and the performance of any of the following operations: castration or caponizing of any animal other than a horse, pony, ass, or mule; the docking of the tail of a dog before its eyes are open; and the amputation of the dew claws of a dog before its eyes are open.

²²² See Veterinary Surgeons (Registration) Act, section 7.

²²³ See Veterinary Surgeons (Registration) Act, section 9.

²²⁴ See Veterinary Act, sections 3 and 4. See also *ibid*, section 2, defining veterinary surgery as the art and science of veterinary surgery and medicine and, without prejudice to the generality of the foregoing, shall be taken to include (a) the diagnosis of diseases in, and injuries to, animals, including tests performed on animals for diagnostic purposes; (b) the giving of advice based upon such diagnosis; (c) the surgical or medical treatment of animals; and (d) the performance of surgical operations on animals. See also Veterinary Regulations, regulation 18, which detail the functions that an animal health assistant may perform.

²²⁵ Note that residency is not made a requirement of registration or enrollment, but a person who is absent from Jamaica for a period of two or more years will have his/her name removed from the register or the roll; see Veterinary Act, sections 8, 11 and 12; see also Veterinary Regulations, 1976, regulations 3-5 and 11-13. Note that the act establishes a Veterinary Appeal Tribunal to hear appeals from a decision of the board refusing registration or enrollment, censoring an individual, suspending registration or enrollment, or imposing any disciplinary measure; see Veterinary Act, sections 14 and 15.

also provide for the temporary registration of veterinary surgeons and temporary enrolment of animal health assistants with the appropriate education and training.²²⁶

It may be noted that the Veterinary Regulations contemplate cooperation between the board and statutory veterinary bodies constituted outside Jamaica in taking disciplinary action against registered veterinary surgeons or enrolled animal health assistants. Notice of deprivation or suspension of membership of a foreign statutory veterinary body will trigger local disciplinary proceedings; notification of restoration to the register or roll of a foreign country will trigger a review of any action taken by the board.²²⁷

Barbados

The Veterinary Surgeons Act CAP 374 establishes the Veterinary Council, which receives and reviews applications for persons to be registered as veterinary surgeons and enrolled as animal health assistants.²²⁸ The act provides for registration as a veterinary surgeon based on a person's qualifications, being fit and proper, and ability to read, write, speak, and understand the English language. A person is qualified to be registered if he/she holds a diploma or other form of recognition granted by a university or college of veterinary medicine that is accepted by the council as evidence of satisfactory training in veterinary medicine.²²⁹ The act also makes provision for temporary registration for a period not exceeding six (6) months of persons who are temporarily in Barbados and qualified for registration by virtue of their qualifications to practice

²²⁶ See Veterinary Regulations, regulations 9 and 17. Note that certification is required of the nature of the assignment or, if an animal health assistant, the name of the registered veterinary surgeon under whose supervision the applicant proposes to work and the period of time for which registration or enrollment is required.

²²⁷ See Veterinary Regulations, regulations 20 and 36.

²²⁸ See Veterinary Surgeons Act CAP 374, sections 2 and 3, which further defines "veterinary medicine" as the art and science of veterinary surgery and medicine, including obstetrics and dentistry and including the diagnosis of disease in, and injuries to, animals, including tests performed on animals for diagnostic purposes; the giving of advice based on such diagnosis; the medical or surgical treatment of animals; the prescription of medicine for animals; the performance of surgical operations on animals; the collection and transfer of ova and embryos in animals; and pathological examination of animals.

²²⁹ Note that where questions arise with respect to the nature of a person's training in veterinary medicine, the council may at its absolute discretion require the applicant to submit to an examination. A successful applicant is issued a certificate of registration; see Veterinary Surgeons Act CAP 374, sections 6, 7 and 9 and Second Schedule, which includes a list of qualifications accepted as providing satisfactory training in veterinary medicine, as follows: 1. a qualification which is recognized by the Royal College of Veterinary Surgeons of the United Kingdom for registration in the register of Veterinary Surgeons of the United Kingdom; 2. the degree of Doctor of Veterinary Medicine of the University of the West Indies; 3. a qualification granted by a College of Veterinary Medicine classified as "accredited" or "approved" by the American Veterinary Medical Association. The qualification must be accompanied by evidence of the attainment of a score higher than 1.5 standard deviations below the mean on both parts of the National Board Examination for Veterinary Medical Licensing of the National Board Examination Committee of the American Veterinary Medical Association, including the "clinical competency test."

veterinary medicine in their own countries; this is subject to the approval of the minister. A person may also be specially registered for a period not exceeding three years where he/she is qualified to practice veterinary medicine in any country and is doing special work sponsored by an approved organization or is employed in the public service and is working under the supervision of a veterinary surgeon.²³⁰ Persons who are not registered may not provide veterinary services.²³¹

The Veterinary Surgeons Act provides for the enrolment of persons wishing to practice as an animal health assistant who hold a certificate of proficiency from the Regional Educational Programme for Animal Health Assistants in Guyana or other such program of training as approved by the council.²³² A person aggrieved by the decision of the council as regards enrolment or registration may appeal to a judge in chambers, whose decision is final.²³³

Belize

The Veterinary Surgeons Act CAP 326 establishes the Veterinary Surgeons Board of Belize, which is charged with, *inter alia*, registering veterinary surgeons, veterinary specialists and animal health assistants, and examining where necessary, and determining the qualification and fitness of applicants for registration.²³⁴ The board is mandated to refuse registration to persons not meeting the prescribed qualifications and requirements and standards of honesty and

²³⁰ See Veterinary Surgeons Act CAP 374, section 11. Note that persons who are specially registered are not liable to pay any fee specified in the Profession, Trade and Business Registration Act during the period for which he/she is so registered.

²³¹ The Veterinary Surgeons Act prohibits any person not registered as a veterinary surgeon from using any affix or prefix, title, or other description implying that he/she is registered as a veterinary surgeon or recognized by law as authorized or qualified to practice in the field; or advertising or holding oneself out as authorized or qualified to practice veterinary medicine; or engaging in the practice of veterinary medicine. A person who is duly registered is entitled to demand and recover reasonable fees for professional services rendered and for drugs, medicines, or appliances supplied for the treatment of any animal; see Veterinary Surgeons Act CAP 374, sections 20, 22, and 23; but note that the prohibition does not prevent any person from giving aid in cases of emergency without hire, gain, or hope of reward; the domestic administration of home remedies and treatment including the performance of minor procedures to an animal by its owner, except where the ownership of the animal was transferred for the purpose of circumventing this; or the provision of services by a person under the direct supervision of a veterinary surgeon, or a person otherwise registered, licensed, or enrolled under any other enactment who performs any service which he/she is authorized to perform thereby.

²³² See Veterinary Surgeons Act CAP 374, sections 13, 14, and 16, which further provides that a person enrolled under the Act is entitled to use the title “Animal Health Assistant” and must perform his/her functions under the direction of a registered veterinary surgeon.

²³³ See Veterinary Surgeons Act CAP 374, section 19. Note that the provision for an appeal does not apply against the refusal of an application for registration or enrollment where such registration or enrollment is conditional upon the applicant's satisfying the council that he/she is qualified to be registered or enrolled, as the case may be.

²³⁴ See Veterinary Surgeons Act CAP 326, sections 3 and 4.

integrity. A person must be the holder of a degree in veterinary surgery from a recognized institution or have other suitable qualification in veterinary surgery considered by the board to be of at least equivalent standard.²³⁵ A person who is otherwise qualified to be registered as a veterinary surgeon may apply for temporary registration where he/she has the appropriate supplementary documentation, including a work permit (where applicable), a letter stating the nature of the assignment that the person intends to undertake, and the period of time for which the registration is required.²³⁶

Similar provision for registration is made with respect to animal health assistants holding a certificate of proficiency from an approved training institution or a certificate of proficiency from a training programme approved by the board. The facility for temporary registration is also available. An applicant for temporary registration must submit a work permit (where applicable), a letter stating the name of the registered veterinary surgeon under whose supervision he/she proposes to work, and indicate the period of time for which registration is required.²³⁷

No person may engage in the practice of veterinary surgery or hold him/herself out as qualified to practice unless registered under the act. This, however, does not prevent, *inter alia*, a veterinary surgeon regularly licensed or registered in another country from consulting with a registered veterinary surgeon in Belize, or a veterinary surgeon lecturing or giving instructions or demonstrations in connection with a continuing education course or seminar.²³⁸

Guyana

The Animal Diseases Act CAP 71:02 makes provision for the chief agricultural officer to maintain a Veterinary Surgeons' Register that includes the names of all persons registered as veterinary surgeons. Any person who holds a certificate (wherever granted), which is for the time being recognized by the minister as furnishing a sufficient guarantee of the possession of

²³⁵ See Veterinary Surgeons Act CAP 326, sections 5, 15, and 16. Note that where the board has doubts as to the qualification or skill of an applicant for registration, the board may refer the matter to a board of examiners, which may conduct an examination of the application before making its recommendation, The Veterinary Surgeons Board of Belize may appoint a board of examiners from time to time, as may be necessary.

²³⁶ See Veterinary Surgeons Act CAP 326, section 19. Note that any person aggrieved by a decision of the Board, including a refusal to grant temporary registration, may appeal against the board's decision to a judge of the Supreme Court; see *ibid*, section 11.

²³⁷ See Veterinary Surgeons Act CAP 326, sections 20 and 21. See also *ibid*, section 22 on the tasks that a registered animal health assistant may perform, including the restraint and vaccination of animals, collection of blood samples, etc.

²³⁸ See Veterinary Surgeons Act CAP 326, section 24.

requisite knowledge and skill for the efficient practice of veterinary surgery, may be registered.²³⁹ The act protects the title “veterinary surgeon” and proscribes its use by any person who is not registered.²⁴⁰

Midwives, Nurses and other paramedical professions CPC 93191

The professional services falling within CPC 93191 include midwifery services such as supervision during pregnancy and childbirth and the supervision of the mother after birth; services in the field of nursing (without admission) care, advice and prevention for patients at home, the provision of maternity care, children's hygienic, and similar activities; and physiotherapy and paramedical services in the field of physiotherapy, ergo therapy, occupational therapy, speech therapy, homeopathy, acupuncture, nutrition instructions, and other related fields. Of the five countries reviewed, Barbados, Jamaica and Trinidad and Tobago have undertaken bound commitments on services falling within this category.

Jamaica

Jamaica has undertaken bound commitments without reservation on services falling within CPC 93191, on modes 1, 2, and 3; mode 4 is unbound except as indicated in the horizontal commitments.

Nurses and midwives

The Nurses and Midwives Act establishes the Nursing Council which is responsible for, *inter alia*, registering nurses and midwives, and enrolling assistant nurses.²⁴¹ The registration of nurses and midwives and enrolment of assistant nurses is based on completion of a recognized educational program and obtaining the necessary qualifications. The Nurses and Midwives

²³⁹ See Animal Diseases Act CAP 71:02, sections 3 and 11. Note that a person's name may be erased from the register where, *inter alia*, he/she has ceased to practice or has been continuously absent from Guyana for three years; see *ibid*, sections 7 and 8. But note that when a person resumes practice or returns to Guyana, he/she is entitled to have his/her name restored to register without payment of any fee. Where the chief agricultural officer refuses to register an applicant, an appeal may be made to the minister; see *ibid*, section 4.

²⁴⁰ See Animal Diseases Act CAP 71:02, section 10; note that a person is therefore not entitled to recover any fee or charge in any court for performing any veterinary operation or for giving any veterinary attendance or advice, unless registered under the act.

²⁴¹ See Nurses and Midwives Act, sections 3 and 4.

Regulations, 1966, provides for registration or enrolment, as appropriate, of both locally and foreign trained professionals. In the latter instance, where a person's training and qualifications were gained outside Jamaica, the council may require the completion of a further period of training and/or passing prescribed exams as a condition for registration or enrolment.²⁴² Nationality and/or residency criteria are not made a condition for registration or enrolment. Any person aggrieved by a decision of the council in respect to registration or enrolment may appeal from the council's decision to the Nursing Appeal Tribunal.²⁴³

In order to practice as a nurse, midwife, or an assistant nurse, a person must also hold a license issued by the registrar, which is valid for two years.²⁴⁴ The Nursing and Midwives Regulations require nurses, midwives, and nursing assistants to participate in a continuing program of education during the license period.²⁴⁵

The Nurses and Midwives Act, as such, facilitates trade in health services in line with Jamaica's commitments. However, it may be recommended that the Nurses and Midwives Act and subsidiary regulations should be amended for purposes of clarity and consistency as nurses, midwives, and assistant nurses are at times referred to as persons in a gender neutral manner and at other times through the use of feminine pronouns.²⁴⁶ Section 4 of the Interpretation Act provides that "in all Acts, regulations and other instruments of a public character relating to the Island now in force or hereafter to be made, unless there is something in the subject or context inconsistent with such construction, or unless it is therein otherwise expressly provided - (a) words importing the masculine gender include females." However, the converse—that the feminine gender may be read to include males—does not necessarily apply.

Other paramedical professions

Jamaica does not have umbrella legislation covering paramedical professions as is the growing trend within the region. Para-medical services are those which assist the medical profession in one or many forms. Pharmacy and optometry are important areas in paramedical education where there is specific legislation in Jamaica. The Opticians Act and Pharmacy Act provide for

²⁴² See Nurses and Midwives Regulations, 1966, regulations 9, 22 and 37.

²⁴³ See Nurses and Midwives Act, section 12.

²⁴⁴ See Nurses and Midwives Act, sections 10A and 10B.

²⁴⁵ See Nurses and Midwives Regulations, 1966, regulations 13A, 13B, 13C, 25A, 25B, 25C, 25D, 40A and 56.

²⁴⁶ E.g., Nurses and Midwives Act, section 14; Nurses and Midwives Regulations, 1966, regulations 4, 9, 17, 22, 36, 37, and 56, which appear to limit the legislative prescriptions to the female gender.

the registration of persons entitled to practice optometry,²⁴⁷ and pursue a pharmacy practice,²⁴⁸ respectively. Registration is based on a person's qualifications, training, and character; nationality criteria are not made a condition for admission to practice.²⁴⁹ The Pharmacy Act additionally provides for the registration of pharmacies and the owners thereof.²⁵⁰

Trinidad and Tobago

Trinidad and Tobago has undertaken bound commitments without reservation on services falling within CPC 93191 on modes 1 and 2, and 3 as regards national treatment; mode 3 market access is left unbound, and mode 4 except as indicated in the horizontal commitments.

Nurses and midwives

The Nurses and Midwives Registration Act CAP 29:53 extends the existence of the Nursing Council of Trinidad and Tobago established by the Nurses Registration Ordinance (repealed by the act).²⁵¹ The council is responsible for designating schools, hospitals or institutions to be recognized as places of training or as affiliated places of training for nurses or midwives or

²⁴⁷ Note that the act does not prejudice or in any way affect duly registered medical practitioners, registered chemists or druggists, wholesale dealers in frames and lenses, or retailers of spectacles kept in stock in a state ready for use, from pursuing their legitimate trade; see Opticians Act, section 17.

²⁴⁸ See Pharmacy Act, section 22, which restricts the use the titles of pharmacist, druggist, chemist and druggist, or pharmaceutical chemist to persons registered under the act.

²⁴⁹ Entitlement to registration under the Opticians Act is based on evidence of good moral character and having obtained a diploma, license or certificate granted by a recognized university, college or institution; see Opticians Act, sections 8 and 9, which provides for the registration of persons qualified or entitled to practice in the UK or holding the sight-testing diploma of the Worshipful Company of Spectacle Makers or the British Optical Association, both of London, England, and of other graduates of institutions recognized by the minister; see also the Opticians Act Regulations providing a list of recognized institutions. The act provides for registration as a pharmacist or pharmaceutical student based on good character and the possession of the prescribed qualifications; the registration of pharmacies and owners thereof is linked to the suitability of the premises and the pharmacy business being under the immediate control, management and supervision of a registered pharmacist; see Pharmacy Act, sections 11-13. See also Pharmacy Act Regulations, 1975, regulations 3-6, which provide for the appropriate educational qualifications and training.

²⁵⁰ See Pharmacy Act, section 13.

²⁵¹ See Nurses and Midwives Registration Act, section 3. See also the Private Hospitals Act CAP 29:03, requiring the licensing of a house as a private hospital where it is intended to use the premises as a place of care or treatment for sick persons or care and accommodation for the elderly as in a "nursing home" or "home for the elderly." A license for a private hospital specifies the nature of the service that may be provided, such as a medical, surgical and/or maternity hospital; a home for the care and accommodation of convalescent or chronically ill persons; etc; see Private Hospitals Act, sections 5 and 8. See also the Private Hospitals Regulations addressing, *inter alia*, the staffing requirements of a private hospital, including medical practitioners, nurse-midwives, qualified hospital administrators, etc.

nursing assistants, as the case may be.²⁵² The council is also responsible for, *inter alia*, maintaining a register of nurses which may be divided into male and female nurses.²⁵³ The provision is notable because a system for the classification of nurses by gender is not found in relation to other health professionals. Nonetheless, merely drawing gender distinctions in a register does not in itself suggest any form of discriminatory treatment *per se*.

A fit and proper person is entitled to be registered as a nurse upon passing examinations prescribed by the council following the completion of a course of training in a recognized institution or being registered or registrable on the Register of the General Nursing Council of England and Wales or any country with reciprocal recognition arrangements with Trinidad and Tobago. Provision is also made for persons not satisfying the aforementioned criteria but registered in the country in which they graduated as a nurse to be registered subject to such conditions as the council may impose.²⁵⁴ Nationality and/or residence are not made conditions for registration; and the refusal of the council to register an applicant may be appealed to a judge in chambers.²⁵⁵

Registration as a midwife is based on similar criteria, i.e., proof that the applicant is a fit and proper person, and either the completion of a course of training in a recognized institution and passing examinations prescribed by the council; or meeting the requirements to be placed on the Register of the Central Midwives Board of the United Kingdom or any other register of a

²⁵² See Nurses and Midwives Registration Act, section 40. Note that the designation of the council is subject to the approval of the minister; see also the Nurses and Midwives Registration Regulations Schools of Training. See also Regional Health Authorities Act Cap 29:05, establishing regional health authorities for the purpose of, *inter alia*, collaborating with recognized training institutions in the education and training of persons and in research in medicine, nursing, dentistry, pharmacy and bio-medical and health-science fields, veterinary medicine as well as any related ancillary and supportive fields; providing health care facilities for service, teaching and research; and establishing and developing relationships with national, regional and international bodies engaged in similar or ancillary pursuits; see Regional Health Authorities Act, section 6. In the fulfillment of their functions regional health authorities may enter into arrangements for the supply of services necessary for carrying out the objects of the authority; See Regional Health Authorities (Contracting for Goods and Services) Regulations, regulation 4, which provides for tenders committees for the purpose of inviting, considering, accepting, or rejecting offers in excess of \$50,000 for the supply of goods or the undertaking of works or services.

²⁵³ See Nurses and Midwives Registration Act, section 15, which provides that the register may be divided or classified, according to the manner which the council deems most appropriate, into male and female nurses, and into nurses qualified for general nursing or for such special classes or branches of nursing as the council may from time to time specify.

²⁵⁴ See Nurses and Midwives Registration Act, section 16. Note also that the council may exempt an applicant from such portion of the prescribed course of training or from such portion of the examination as the council thinks fit.

²⁵⁵ See Nurses and Midwives Registration Act, section 38.

body recognized by the council.²⁵⁶ An aggrieved applicant may appeal against the council's decision to a judge in chambers.²⁵⁷

It may be noted that the legislation consistently uses the female gender in referring to individuals in the profession of midwifery. The Interpretation Act CAP 3:01 provides that "[w]ords in a written law importing, whether in relation to an offence or not, persons or male persons include male and female persons, corporations, whether aggregate or sole, and unincorporated bodies of persons."²⁵⁸ No provision is made for the use of the female gender to cover male persons. As such, the legislation is open to an interpretation that could restrict applicants to women. It is recommended that the legislation be amended for purposes of clarity. The approach adopted in Barbados may be commended; here the legislation has been amended to provide that for the purposes of the act the female gender covers the male.

The Nurses and Midwives Registration Act gives the council the discretion to authorize the entry on the Roll of Nursing Assistants the name of any person who has completed a course of training approved by the council and who has passed the examinations prescribed by the council.²⁵⁹ An aggrieved applicant may appeal against the council's decision to the minister, whose decision is treated as final.²⁶⁰

Para-medical services

The Professions Related to Medicine Act CAP 90:04 establishes the Council for Professions Related to Medicine, which is responsible for coordinating, guiding, and generally supervising the activities of a number of boards created by the act to regulate professional services associated with medical services. These include physiotherapists, radiographers, medical laboratory technicians, nutritionists and dieticians, speech and occupational therapists, and

²⁵⁶ See Nurses and Midwives Registration Act, section 21. But note that a person may only be admitted to an Approved School of Midwifery if the person is a registered nurse; see Nurses and Midwives Registration Regulations Schools of Training, regulation 44. See also Nurses and Midwives Registration Act, section 25, which provides that every midwife must give notice in writing before practicing in any district, and provide details of her place of residence or intended place of residence.

²⁵⁷ See Nurses and Midwives Registration Act, section 38.

²⁵⁸ See Interpretation Act, section 16(1).

²⁵⁹ See Nurses and Midwives Registration Act, section 34.

²⁶⁰ See Nurses and Midwives Registration Act, section 38. It may be noted that a nursing assistant trainee is required to have no more than two years of secondary education and would therefore not appear to be a vocation founded upon specialized educational training as generally associated with a profession; see Nurses and Midwives Registration Regulations Schools of Training, regulation 68.

medical/psychiatric social workers.²⁶¹ The council, in consultation with the relevant professional board, may approve any course of training, qualification, and institution that will satisfy conditions for registration in a regulated profession. Registration entitles the individual to use the title of “Registered Physiotherapist”, “Registered Radiographer”, etc., according to the profession in respect of which a person is registered.²⁶² The act provides for registration based on qualifications granted in and outside of Trinidad and Tobago.²⁶³ If a board refuses an application for registration, or neither grants nor refuses such application before the expiration of three months from the date of the application, the applicant may appeal to the council.²⁶⁴ A person who is registered is entitled to a practicing certificate on payment of the prescribed fees, which are the same for all individuals and all professions regulated by the act.²⁶⁵ Nationality and/or residency criteria are not made conditions for registration.

The Pharmacy Board Act CAP 29:52 establishes the Pharmacy Board of Trinidad and Tobago of which all pharmacists must be members.²⁶⁶ The council of the board is responsible for reviewing applications for registration.²⁶⁷ Nationality is a consideration in registration, but provision is made for the registration of foreign services providers. A temporary license may be issued to a foreign qualified applicant to practice pharmacy at an approved pharmaceutical establishment for a period of three months; the three-month period of supervision may be extended by the board upon recommendation by the chief medical officer. Where the applicant is not a CARICOM national, he/she must also be the holder of a valid license to practice pharmacy

²⁶¹ See Professions Related to Medicine Act, section 3 and First Schedule. Note that provision is made for the minister by order to extend the act to other professions or remove any covered profession from the scope of the act as considered appropriate after consultations with the council and existing boards; see *ibid*, section 20.

²⁶² See Professions Related to Medicine Act, sections 9 and 12.

²⁶³ See Professions Related to Medicine Act, sections 7(2) and 8(4).

²⁶⁴ See Professions Related to Medicine Act, section 7(3). See also Professions Related to Medicine Rules, sub-rule 11(8), which requires – requiring the Registrar to provide reasons for refusing an application.

²⁶⁵ See Professions Related to Medicine Rules; note that a practice certificate is valid only for the year in which the practice fee is paid.

²⁶⁶ See Pharmacy Board Act, sections 3 and 4. Note that the act protects the use of the title “pharmacist” and “pharmacist assistant” or any other title or symbol calculated to suggest that a person is recognized by law as a pharmacist or as one entitled to dispense prescriptions or to prepare or retail drugs or devices or assist therewith; see *ibid*, section 25.

²⁶⁷ Note that where the council refuses to register an applicant it must provide reasons; see Pharmacy Board Act, sections 7 and 17; note also *ibid*, section 17(7), which provides that where the registrar has been directed by the council to register an applicant who is entitled to be registered under this act, and he/she fails to do so, the applicant shall be entitled within 21 days of the direction being given, to be registered by the president of the council. Note also that the act provides for the registration of pharmacy assistants.

in another jurisdiction.²⁶⁸ A person to whom a three-month temporary license has been issued is entitled to be registered as a pharmacist upon certification by the chief medical officer that the period of supervision has been completed and the person is now competent to be registered as a pharmacist.²⁶⁹ A person aggrieved by a decision of the council may appeal to a judge in chambers.²⁷⁰

The Pharmacy Board Act provides for the licensing of pharmacies. In this regard, the council is mandated to consider the public interest and the interests of the pharmaceutical profession, and for such purposes, to ensure, so far as is consistent with the provision to the public of a full, efficient and economic service in respect of the supply of drugs and pharmaceutical goods, and that the operations of pharmacies are controlled by pharmacists.²⁷¹ The criteria stated in the act do not treat with nationality.²⁷²

Barbados

Barbados has undertaken bound commitments without reservation on services falling within CPC 93191, on modes 1 and 2, and 3 as regards national treatment; mode 3 market access is left unbound, and mode 4 except as indicated in the horizontal commitments.

Nurses and midwives

The Barbados Nurses Bill is scheduled to replace the Nurses and Midwives (Registration) Act CAP 372. Previous amendments to the act (CAP 372) have sought to address some of the legislation's more dated features, for example, clarifying that a reference to a female person includes a reference to the male.²⁷³ The legislation in many CARICOM countries maintains the

²⁶⁸ See Pharmacy Board Act, section 18. Note that provision is also made for the issuance of a temporary license to practice pharmacy to an applicant with a UWI degree in pharmacy to train as a pharmacist at an approved pharmaceutical establishment for a period of six months. See also Pharmacy Board Regulations, regulation 13, which also expressly require fluency in English.

²⁶⁹ See Pharmacy Board Act, section 18A.

²⁷⁰ See Pharmacy Board Act, section 21, which provides that the Judge may confirm, modify, or reverse the decision of the council; and the judge's decision is final.

²⁷¹ See Pharmacy Board Act, section 27B. Where a company applies for a license for a pharmacy, the license is issued in the name of the pharmacist who has the management and conduct of the pharmacy and who must sign the application for the license; see *ibid*, section 27C(3); see also Pharmacy Board Regulations, regulation 21.

²⁷² Note that where the Council refuses to grant the license, the council must provide reasons; see Pharmacy Board Act, section 27C. See also *ibid*, section 21, which provides that a person aggrieved by any decision of the council may within six weeks after the date on which notice thereof is given to him/her by the registrar appeal to a judge in chambers.

²⁷³ See Nurses and Midwives (Registration) Act CAP 372, section 2(2).

use of the feminine pronoun in addressing the nursing profession. This may be limiting in light of the general provision in most interpretation acts for the male to include the female, though not *vice versa*. The approach adopted in the Barbados Act is simple and addresses the key concern.

The Nurses and Midwives (Registration) Act establishes the General Nursing Council, which is responsible for, *inter alia*, receiving and reviewing applications for registration as a nurse and/or midwife. The act provides for the registration of any person who is fit and proper and qualified to be so registered. A person is qualified to be registered as a nurse or midwife where he/she has completed a prescribed course of training in Barbados and passed the prescribed examinations; or holds a diploma, certificate or other form of recognition granted in a foreign country by a duly appointed authority and, if required, submits to an examination to establish a satisfactory level of nursing training. Where the council requires an applicant to take an examination it may provisionally register the applicant for a period not exceeding six months.²⁷⁴ Significantly also, the act makes provision for the temporary registration for a period not exceeding six months of a person who is temporarily in Barbados and who in the opinion of the council is qualified for registration and pays the temporary registration fee.²⁷⁵

In order to practice as a nurse an applicant must also obtain a practicing certificate from the registrar of the Supreme Court upon payment of the annual registration fee in accordance with the Profession, Trade and Business Registration Act.²⁷⁶

The Nurses and Midwives (Registration) Act instructs the registrar to keep a nursing assistants roll. A person may be enrolled as a nursing assistant where he/she is a fit and proper person and qualified to be so enrolled. A person is qualified to be enrolled where he/she has completed a course of training approved by the council and passed the prescribed examination. The act also provides for the enrolment of a person registered, licensed, or otherwise entitled to practice as a nursing assistant, a nursing aide, or under any other designation in another jurisdiction where the training is in the opinion of the council equivalent to that of a nursing aide

²⁷⁴ See Nurses and Midwives (Registration) Act CAP 372, sections 3, 4, 7, 7A, 8, 17, and 18. Where the council is satisfied as to an applicant's character and qualifications for registration it must, upon payment of the prescribed fee, issue to that person a certificate of registration.

²⁷⁵ See Nurses and Midwives (Registration) Act CAP 372, section 7A.

²⁷⁶ See Nurses and Midwives (Registration) Act CAP 372, sections 9-13. Note that persons employed full-time in the public service are not required to pay the fee, but any other person who fails to pay the fee after one month from the date on which it is payable is treated as not being registered under the act.

in Barbados. An applicant seeking enrolment on this basis may be required to submit to an examination to establish that he/she possesses satisfactory training as a nursing assistant.²⁷⁷

Any person aggrieved by the refusal of the council to register or enrol him/her or to censure or cause any other disciplinary measures to be taken may appeal to a judge in chambers.²⁷⁸ The Nurses and Midwives (Registration) Act proscribes a person, not being a duly registered or enrolled nurse, midwife, or nursing assistant from assuming or using any name, title, or description implying that he/she is entitled to be recognized as a nurse, midwife, or nursing assistant; or advertising or holding him/herself out as being so authorized; or practicing as a nurse, midwife, or nursing assistant.²⁷⁹

The special provision for temporary registration of nurses temporarily within the Island and the recognition of foreign qualifications and training of equivalent standards in the Nurses and Midwives (Registration) Act facilitates trade in professional services consistent with Barbados' EPA commitments. The intention is, as above-noted, to replace the act with new legislation.

The Barbados Nurses Bill 2008 is designed in part to regulate and enforce certain minimum standards for care-givers, such as nursing auxiliaries. The bill is substantially similar in areas of relevance to the Nurses and Midwives (Registration) Act. The bill would establish the Nursing Council of Barbados with the responsibility for regulating the nursing profession; establishing suitable training program; registering or enrolling persons in the nursing profession; setting standards, and investigation and discipline, as appropriate. The bill uses the term "nursing professional" to refer to nurses, graduate nurses, nursing assistants or nursing auxiliaries.²⁸⁰

The bill provides for the registration of nurses based on a person's qualifications and character (i.e., being fit and proper to practice in the field). A person is qualified to be registered

²⁷⁷ See Nurses and Midwives (Registration) Act CAP 372, sections 20-22, which also extend sections 9-15 of the act (concerning such matters as the issuance of a certificate of registration and practicing certificate, and the payment of fees) *mutatis mutandis* to nursing assistants as they apply to nurses.

²⁷⁸ See Nurses and Midwives (Registration) Act CAP 372, section 29, which further provides that the provision for an appeal does not apply against refusal of an application for registration or enrollment, as the case may be, where this is conditional upon the applicant's satisfying the council that he/she is qualified to be registered or enrolled, as appropriate.

²⁷⁹ See Nurses and Midwives (Registration) Act CAP 372, section 32. See also *ibid*, section 33, which notes that the prohibition does not prevent a person from providing in cases of emergency, nursing, or midwifery services without hire, gain or hope of reward.

²⁸⁰ See Barbados Nurses Bill 2008, sections 2-5.

as a nurse if that person has completed the prescribed course of training in Barbados or in another CARICOM country (which extends the provisions of the Act CAP 372), has passed the required exams, including the regional examination required for registration as a nurse. Alternatively, a person is qualified to be registered as a nurse if that person holds a foreign diploma, associate degree or any other form of recognition granted by a recognized body which confers authority to practice nursing, and has successfully completed the regional examination required for registration as a nurse or such other exam as the council considers necessary. A person who is entitled to be registered as a general nurse may apply to the council to be registered as a midwife or a psychiatric nurse where that person has completed the prescribed training and holds the prescribed qualifications. Provision is also made for temporarily registering persons temporarily in Barbados who wish to work there for a period not exceeding three months where such persons hold qualifications granted outside Barbados by a recognized authority.²⁸¹ This may be compared with the provision for temporary registration under the Nurses and Midwives (Registration) Act, which is for a period of six months.

A person is entitled to be enrolled as a graduate nurse, nursing assistant, or nursing auxiliary if he/she is a fit and proper person, qualified to be enrolled, and pays the enrolment fee. Provision is made for the recognition of foreign qualifications and training of an equivalent standard to that provided locally.²⁸²

Where the council registers or enrolls a person, it must issue to that person a certificate of registration or enrolment and, in respect of the first registration or enrolment, issue to such person a practicing certificate on payment of the prescribed fee.²⁸³ The bill provides that the Profession, Trade and Business Registration Act will no longer apply to nursing professionals

²⁸¹ See Barbados Nurses Bill 2008, sections 7 and 8.

²⁸² See Barbados Nurses Bill 2008, sections 10 and 11. Note that a person is qualified to be enrolled as a graduate nurse if that person has passed an exam in nursing after three (years of study at a training institution recognized by the council, but has not successfully completed the regional exam required for registration; or who holds a foreign (non-CARICOM) qualification recognized by the council. A graduate nurse must work under the supervision of a registered nurse and may not hold that post for a period exceeding 18 months. A person is qualified to be enrolled as a nursing assistant or nursing auxiliary if he/she has completed a course of training approved by the council and passed an exam. A person who has obtained equivalent training and qualifications at a place outside Barbados as may be approved by the council is also qualified to be enrolled as a nursing assistant or nursing auxiliary.

²⁸³ See also Barbados Nurses Bill 2008, section 29, which provides that a person aggrieved by a refusal of the council to register or enroll that person or to censure or take other disciplinary action may appeal to a judge in chambers, whose decision is final. But note that the provision for an appeal does not apply against the refusal of an application for registration or enrolment where this is conditional upon the applicant satisfying the Council that he/she is qualified to be registered or enrolled, as the case may be.

regulated under the bill/proposed act.²⁸⁴ Persons not duly registered or enrolled are proscribed from using any name, title or description implying an entitlement to be recognized or to practice as a nursing professional; advertising or holding oneself out as a person so authorized or qualified; or practicing as a nursing professional.²⁸⁵

Paramedical services

The Paramedical Professions Act CAP 372C provides for the registration of members of certain professions supplementary to medicine, including medical laboratory technology, occupational therapy, optometry, ophthalmic dispensing, physiotherapy, clinical psychology, diagnostic radiography, therapeutic radiography, dietetics, nutrition, cardiac technology, speech language pathology, audiology, chiropody/podiatry, and nuclear medicine.²⁸⁶ The act establishes the Paramedical Professions Council, which advises the minister on paramedical services in Barbados and the maintenance of standards in the profession. The council receives and reviews applications for registration as a paramedical professional.

A person is entitled to be registered as a paramedical practitioner if he/she can read, write, speak, and understand the English language; is qualified to be so registered; is a fit and proper person to practice in the field; and pays the first registration fee in accordance with the Profession, Trade and Business Registration Act.²⁸⁷ A person is qualified to be registered as a paramedical practitioner if he/she holds a diploma, certificate or other form of recognition granted by an institution or body that confers authority to practice any paramedical profession by the law of the country where it is granted and which, in the opinion of the council, is evidence of satisfactory training in that profession. Provision is also made for the council in its absolute

²⁸⁴ See Barbados Nurses Bill 2008, sections 17-22, which further provides that where a person fails to pay the prescribed fee after one month of the date that becomes payable, the person will be treated as not being registered or enrolled for the purposes of the act; but note that no fee is payable for persons employed on a full-time basis in the public service.

²⁸⁵ See Barbados Nurses Bill 2008, sections 32 and 33. Note that the prohibition does not prevent a person from performing in cases of emergency, nursing services without hire, gain, or hope of reward. See also Barbados Registered Nurses Association Act CAP 364.

²⁸⁶ See Paramedical Professions Act CAP 372C, section 2 and First Schedule.

²⁸⁷ Note that where the council refuses to approve the registration of a person or directs that disciplinary action be taken, a person aggrieved by the council's decision may appeal to a judge in chambers whose decision is final; see Paramedical Professions Act CAP 372C, section 22. But note that the provision for an appeal does not apply against the refusal of an application for registration in a case in which such registration is conditional upon the applicant's satisfying the Council that he/she is qualified to be registered.

discretion to register persons not fully meeting the above qualifications, but who undergo further training and submit to an examination as the council considers necessary.²⁸⁸

In order to practice in one's field, persons registered under the act require a practicing certificate from the registrar of the Supreme Court, which may be obtained on payment of the annual registration fee in accordance with the Profession, Trade and Business Registration Act.²⁸⁹

The Paramedical Professions Act prohibits a paramedical practitioner from practicing a paramedical profession other than that in respect of which he/she is registered. A person who is not registered as a paramedical practitioner may not use any affix, prefix, title, or other description implying that he/she is recognized by law as a person authorized or qualified to practice any paramedical profession; advertise, or hold him/herself out as qualified so to do; or engage in the practice of any paramedical profession.²⁹⁰

The Paramedical Professions Act, as such, provides an appropriate regulatory environment for the supply of paramedical services in accordance with Barbados' EPA commitments. In this regard it may be recalled that conditions related to language as provided for in the act are among the qualification requirements to which express reference is made in the interpretative notes to Annex IV.F of the EPA.²⁹¹

The Pharmacy Act CAP 372D establishes the Pharmacy Council to, *inter alia*, decide on matters relating to the registration of pharmacists and persons as authorized sellers of poisons.²⁹² A person who is of good character, possesses the prescribed qualifications, and pays the first registration fee in accordance with the Profession, Trade and Business Registration Act, is entitled to be registered as a pharmacist; a person not so registered may not practice pharmacy²⁹³

²⁸⁸ See Paramedical Professions Act CAP 372C, sections 7 and 8.

²⁸⁹ See Paramedical Professions Act CAP372C, sections 9-12. Note that a person who fails to pay the fee is deemed not to be registered; full-time government employees are not liable to pay the fee.

²⁹⁰ See Paramedical Professions Act CAP 372C, sections 24 and 25, which further notes that this prohibition does not prevent the performance of paramedical services by a person in training if those services are performed under the direct supervision and control of a paramedical practitioner registered in that paramedical profession, or of a medical or dental practitioner.

²⁹¹ See EPA, Annex IV.F paragraph 10; see also *supra*, Chapter 1, Introduction.

²⁹² See Pharmacy Act CAP 372D, sections 10 and 11; note that the Pharmacy Act repeals the Druggist Act. See also Barbados Pharmaceutical Society Act CAP 365. The Pharmacy Act also provides for the registration of authorized sellers of poisons and regulates the sale of poisons and the premises from which they may be sold; see Pharmacy Act, sections 27-29.

²⁹³ See Pharmacy Act CAP 372D, sections 3 and 4.

or use a title suggesting that he/she is qualified to do so.²⁹⁴ The registrar of corporate affairs and intellectual property is responsible for maintaining a Register of Pharmacists and Register of Pharmacies.²⁹⁵

The Pharmacy Act prohibits the operation of a pharmacy on any premises unless it is registered for that purpose and its operation is under the immediate control, management, and supervision of a pharmacist. The act requires certification of the premises, which must be renewed annually.²⁹⁶ A person aggrieved by a decision of the council with regard to registration as a pharmacist or the certification of premises for the operation of a pharmacy, may appeal to a judge in chambers whose decision is final.²⁹⁷

Belize

Belize has not undertaken any commitments on midwives, nurses, and other paramedical professions (CPC 93191).

The Nurses and Midwives Registration Act CAP 321 provides for registration of nurses and midwives and the recognition of foreign registration where the qualifications and training are of an equivalent standard to that required in Belize.²⁹⁸ Provision is also made for the registration of persons based on reciprocal agreements concerning nurses between Belize and other countries.

²⁹⁴ The act proscribes any person who is not registered as a pharmacist or any other authorized seller of poisons to use any of the following titles: pharmacist; druggist; pharmaceutical chemist; pharmacist; dispenser; or authorized seller of poisons; see Pharmacy Act, section 31.

²⁹⁵ See Pharmacy Act CAP 372D, sections 2, 14 and 16.

²⁹⁶ See Pharmacy Act CAP 372D, sections 15-17. Note that the act prohibits any person, other than a registered pharmacist, from displaying on any premises any sign, title, emblem or representation that includes the description “drug store, ” “drug dispensary,” or “pharmacy,” or any other sign suggesting that premises are registered as a pharmacy; see *ibid*, section 31.

²⁹⁷ See Pharmacy Act CAP 372D, section 25.

²⁹⁸ See Nurses and Midwives Registration Act CAP 321, sections 2, 3, and 5. Note that the act repeals the Nurses and Midwives Registration Act, 1963. See also the Nurses and Midwives Rules (made pursuant to section 5 of the Act). Note that rule 10 provides that persons of “good character who are entitled by reason of registration to practise generally as a nurse or midwife in the United Kingdom *shall* be registered as a nurse or midwife under the Act on the payment of the prescribed fee” (added emphasis), whereas rule 11 provides that persons registered in other foreign countries who have “undergone a sufficient course of study and training similar to that for the time being prescribed by the Council for such nurses and midwives in this country, *may* be admitted to the Register for such nurses and midwives on payment of the prescribed fee *or, at the discretion of the Council, may be required to undergo an examination for the purpose of such registration*” (added emphasis). The distinction in the 1966 Rules appears to go beyond that which is provided in the legislation. The language used in the rules and the act also differ with respect to pronouns; the act uses the reference to “he,” the male pronoun, which, in accordance with the Interpretation Act CAP 1, includes the female gender, while the rules use the word “she,” which, according to the rules of construction, is not similarly inclusive.

Persons may also qualify for registration on a temporary basis (subject to such restrictions as deemed fit) where they enter Belize to work in an approved program.²⁹⁹ A person not so registered may not practice as a nurse or midwife or use nomenclature suggesting that he/she is so qualified.³⁰⁰

The Opticians Act CAP 322 provides that the Medical Council of Belize established under the Medical Practitioners Registration Act is the relevant statutory body which directs the registrar general to register persons for the practice of optometry in Belize.³⁰¹ Nationality and/or residency requirements are not made a condition for registration.³⁰² No person unless duly registered may practice optometry in Belize and no person who is not registered may carry on a business under any title, name or description implying that one is registered under the act.³⁰³

The Chemists and Druggists Act CAP 311 provides for the registration of qualified persons of good character as chemists and druggists.³⁰⁴ Nationality and/or residence are not made

²⁹⁹ See Nurses and Midwives Registration Act CAP 321, section 8.

³⁰⁰ Any person aggrieved by the decision of the council may appeal to the Nursing Appeal Tribunal established under the act. A person who is not duly registered under the act may not use the name or title of professional (or registered) nurse, nurse anaesthetist, nurse practitioner, public health nurse or any nurse specially designated as having an expanded role recognized by the council, or professional or practical midwife or practical nurse, implying that he/she is recognized by law as being a nurse in one of the aforementioned categories; and no individual may use such designation unless that person's name is included in that part of the register relating to the particular category of nursing; see Nurses and Midwives Registration Act CAP 321, section 10.

³⁰¹ See Opticians Act CAP 322, sections 2 and 8; the practice of optometry is defined in the act as the employment of any methods for the estimation of errors of refraction of the human eye, and the prescribing or adapting of lenses to correct such errors.

³⁰² See Opticians Act CAP 322, sections 7 and 8, which provides that persons of good moral character who are qualified or entitled to practice in the UK or hold a diploma, license or certificate granted by any institution recognized by the Council as furnishing a sufficient guarantee of the possession of the requisite knowledge and skill for the efficient practice of optometry may be registered in Belize on payment of the stamp duty prescribed by the Stamp Duty Act; note that the act expressly recognizes the Sight Testing Diploma of the Worshipful Company of Spectacle Makers and the British Optical Association, both of London, England. Where the council declines to direct the registrar to register an applicant, he/she may appeal to a judge in chambers whose decision is final and conclusive and not subject to appeal to any other court; see *ibid*, section 8.

³⁰³ See Opticians Act, section 6. But note that this is without prejudice to, and in no way affects, the legitimacy of activities undertaken by any registered medical practitioner, nor the wholesale supply of frames or retail sale of spectacles kept in stock in a state ready for use. It also does not prevent any registered chemist or druggist from dispensing, selling, or supplying any drugs or applying them to secure local anesthesia for the purpose of removing any foreign body from the eye; see *ibid*, section 13.

³⁰⁴ The qualifications required under the act include persons entitled to be registered in Great Britain or Northern Ireland as a chemist and druggist or as a pharmaceutical chemist, or holding a diploma or certificate from a recognized pharmaceutical school; see Chemists and Druggists Act CAP 311, sections 2-5. Note that the act contemplates a list of pharmaceutical schools recognized by the Board of Examiners being published annually. Additional qualifications provided for in the act include persons having the prescribed working experience and passing examinations held by the Board of Examiners. Persons possessing such qualifications are entitled to obtain from the board a certificate recognizing that they are duly qualified to be registered and, on payment of the prescribed fee, entitled to be registered under the act; see Chemists and Druggists Act CAP 311, sections 4, 11, and 21.

a condition for registration.³⁰⁵ The act also proscribes maintaining a pharmacy unless the premises are under the immediate person control, management and supervision of a registered chemist and druggist.³⁰⁶

Guyana

Guyana has not undertaken any commitments on midwives, nurses, and other paramedical professions (CPC 93191).

The Nurses and Midwives Regulation Ordinance of 1953 provides for the accreditation, licensing and certification of nurses by the Ministry of Health accreditation body and the Nursing Council of Guyana; licensing and re-certification of midwives is undertaken by the Nursing Council of Guyana. New draft legislation is reportedly being prepared in consultation with the Guyana Nurses Association for presentation to Parliament.³⁰⁷

The Guyana Pharmacy Practitioners Act, 2003, requires the Pharmacy Council of Guyana to certify all persons involved in the practice of pharmacy for the purposes of registration.³⁰⁸ The Ministry of Health, as the training institution, is expected to conduct the appropriate program to facilitate untrained persons within the private sector and further strengthen capacity of government pharmacy departments.³⁰⁹

³⁰⁵ But note that the Act authorizes the registrar general to remove from the register the name of any person who has, *inter alia*, ceased to reside in Belize or is absent therefrom for a longer period than 12 months without communicating his/her intention to return; see Chemists and Druggists Act CAP 311, section 14(c). Note that a person whose name has been removed from the register on account of prolonged absence from Belize may appeal to the board to have his/her name restored, see *ibid*, section 15.

³⁰⁶ See Chemists and Druggists Act CAP 311, section 22; see also *ibid*, section 31, which operates as a savings clause with respect to drugs dispensed by doctors, etc.

³⁰⁷ The draft bill will mandate nurses to present credits to the council for their re-registration; currently, nurses are only required to pay a fee every two (2) years for registration, e.g., KNEWS, "Slow Progress in Mandatory Continuing Education for Nurses – Guyana Nurses Association, November 15, 2011; see also http://www.unfpa.org/sowmy/resources/docs/library/R139_2011_GUYANA_Summary_18Jan11.docx The Private Hospital Act CAP 33:03 regulates private hospitals, i.e., buildings where beds are available for the admission for not less than 24 hours of persons who are given treatment and nursing care, and includes a maternity home, convalescent home, or nursing home, but does not include any establishment operated or maintained by the government or a local authority. A building must be licensed following an inspection to be used as a private hospital or described as a place of care or treatment for the sick; see Private Hospital Act CAP 33:03, sections 2-4 and 6. Note that the license must specify the nature of the service that may be provided, e.g., medical or surgical hospital, maternity hospital, or home for convalescent or chronically ill persons, and must indicate the maximum number of patients; see *ibid*, sections 16 and 20. The minister is given the authority to grant licenses and may refuse to renew a license or may revoke a license in certain circumstances, though an opportunity must be given to the applicant to show cause why such action should not be taken; see *ibid*, sections 3, 8 and 9.

³⁰⁸ See Guyana Pharmacy Practitioners Act, 2003, Part V, section 16.

³⁰⁹ See Guyana Ministry of Health website viewed at: www.health.gov.gy/training/cr_pharmacy_asst.pdf.