

## Chapter 6: Investment Climate

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### Openness to Foreign Investment

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The Government of Trinidad & Tobago (GOTT) actively encourages foreign direct investment in almost all sectors. Generally speaking, there are no restrictions or disincentives to investment. In 2004, the U.S.-based Heritage Foundation's economic freedom index rated Trinidad & Tobago fifth in Latin America and the Caribbean and 36th out of 155 countries.

Foreign ownership of companies is permitted and welcomed (Foreign Investment Act, 1990). Trinidad & Tobago currently has one 100-percent U.S.-owned bank, several U.S.-owned air-courier services, and one U.S. majority-owned insurance company. U.S. companies also have interests in electric power companies, a number of oil and gas operations, petrochemical plants, and a desalination plant. Other U.S. investors are presently in negotiations with the Government to build an aluminum smelter and plants for manufacture of petrochemicals and iron and steel. Trinidad & Tobago's judicial system upholds the sanctity of contracts and generally provides a level playing field for foreign investors involved in court matters. However, due to the backlog for cases, there could be major delays in the process. This makes imperative the signing of contracts and use of attorneys for those investing in Trinidad & Tobago. In the wake of concern over possible improprieties in awarding some contracts, the Government of Trinidad & Tobago has requested investigation into the conditions surrounding these contract awards.

The Bilateral Investment Treaty (BIT) with the United States came into force in 1996, and covers the following areas (all provisions apply reciprocally to the United States and Trinidad & Tobago):

- Treatment of investment: requires that the treatment of foreign investments is no less favorable than that accorded to domestic investments ("national treatment").
- Expropriation: prohibits expropriation or nationalization of an investment without just compensation.
- Compensation for damages: requires national treatment for investments suffering losses from war and similar events.
- Transfers: permits financial transfers relating to investments to be made freely and without delay into and out of each country's territory.
- Performance requirements: prohibits performance requirements as a condition for investment.
- Alien entry: liberalizes certain visa regimes relating to entry, sojourn and employment of aliens for establishment and operation of investments of substantial capital amounts.
- Dispute settlement: provides for dispute resolution alternatives, including binding arbitration.

Currently, the applicable "CARICOM and Foreign Investment Act of 1990" extends national treatment to CARICOM citizens, but does not guarantee the same rights to other foreigners. In the absence of a government-granted waiver, the law limits foreign equity participation in local companies to the extent that a foreign investor is permitted to own 100 percent of the share capital in a private company, but a license is required to own more than 30 percent of the share capital of a public company. Current legislation also limits foreign ownership of land to one acre for residential purposes and five acres for trade purposes without a license. To date, however, waivers on corporate equity and land ownership restrictions have been freely granted.

The GOTT generally only gets involved in foreign investments when the investor is seeking government incentives or concessions such as tax holidays, duty-free imports of equipment and materials, or exemption from VAT on inputs. The government also becomes involved when an investor wishes to lease land in one of the government-owned industrial parks, and when a planned activity requires a license, such as mining or drilling. Nationals and non-nationals are generally treated equally with respect to obtaining licenses. Bureaucratic delays in approval of investment packages can be frustrating for investors. These generally are the result of negotiations for memorandums of understanding or framework agreements and incentives or, in the case of petrochemical investors, negotiations for favorable natural gas prices. Environmental approval for large industrial projects can also be extremely time consuming, and many projects begin with only outline approval.

Trinidad & Tobago's Telecommunications Act 2001, as amended, was proclaimed on June 30, 2004, setting the stage for full liberalization of the sector. The Act places full responsibility for the regulation of the sector with the Telecommunications Authority, which was officially launched on July 1. The authority issued a Request For Proposals (RFPs) for cellular licenses in October 2004, and expects to announce names of the new wireless services providers in March/April 2005.

The government has encouraged foreign investment in several state enterprises, which have been partially divested in the last few years. In every case, except for National Flour Mills (where divestment is being undertaken through stock offerings; 51 pct retained by government, 49 pct divested on the local stock market), foreign investors

have purchased large minority holdings in privatized firms through various arrangements with the government.

In general, Trinidad & Tobago has seen a trend towards privatization of key sectors since the early 1990's. Some sectors that have undergone privatization include electrical power generation and the postal service. The present Government has been reviewing its holdings in the State enterprise sector and has agreed in principle to divest those enterprises that do not meet considerations of national importance. To this end, Caroni (1975) Ltd., a sugar producing entity, was closed and emerged as Sugar Manufacturing Company, which would concentrate on sugar manufacturing and sugar refining. However, its operations have been greatly reduced. Another company, Rum Distillers of Trinidad & Tobago Limited, was established to deal with the Caroni (1975) rum division. The new companies are 100 percent owned by the Government of Trinidad & Tobago.

The Government is also in the process of securing a private-sector investor for the cargo-handling operations of the Port Authority of Trinidad & Tobago (PATT) as well as private sector management contractors for certain business units of PATT, including Destination Trinidad & Tobago Limited (The cruise shipping business unit), Trinidad & Tobago Inter-Island Company Limited (the ferry service), the Port of Port of Spain Company Limited (infrastructure company), the Port of Scarborough, Marine Operations and the CARICOM Wharves. Steps are also being taken to sell the assets of Trinidad & Tobago Forest Products Limited (Tanteak) to the private sector.

## **Conversion and Transfer Policies**

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There are no Exchange controls on foreign currency and securities. The repatriation of capital, dividends, interest and other distributions and gains on investment may be freely transacted without limits. The average period for remitting all kinds of investment returns is 24 hours.

### *Tax on Interest earned by an Individual in T&T:*

With effect from January 1, 2004, the requirement for withholding tax on interest paid to resident individuals in respect of loans secured by bonds or other similar investment instruments has been removed. Interest on such loans is, therefore, now tax-free. Where the individual who is in receipt of the interest is 60 years or over, no tax is deducted. Although there was an attempt to remove this tax, the proposed legislation was never enacted. Where the individual is a Trinidad & Tobago nonresident, withholding tax will be applicable at the rate of 20 percent.

### *Remittance of Dividends to nonresident:*

Where the remittance is in respect of dividends paid to a U.S. individual, the rate of tax is 15 pct of the gross dividend. In the case of a U.S. company owning more than 10 pct of the voting control of a Trinidad & Tobago company, the rate will be 10 pct of the gross dividend. For dividends paid to a company with less than 10 pct ownership, the rate of tax will be 15 pct.

## **Expropriation and Compensation**

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No expropriation actions have been taken since the mid-1980s. All prior expropriations were justly compensated. There is no indication of policy shifts that might lead to expropriation in the future.

## **Dispute Settlement**

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In Trinidad & Tobago the High Court of Justice has jurisdiction over all matters involving sums in excess of TT 15,000 and can grant equitable relief such as injunctions and public law remedies. Steps are currently underway to modernize this system, which has been in place without major changes since the 1960s. New Rules of Civil Procedure with case management provisions and fast tracking mechanisms are likely to be promulgated. At present there is no reciprocal enforcement of judgments obtained in the United States. These judgments do, however, form the basis of a debt on which the court can rule summarily. The only grounds on which a foreign judgment can be impeached are: (a) it was obtained by fraud, (b) its recognition or enforcement would be contrary to public policy, or (c) it was obtained in proceedings contrary to natural justice.

Trinidad & Tobago is a member of the International Center for the Settlement of Investment Disputes (ICSID), which facilitates conciliation and arbitration of investment disputes between contracting states and nationals of contracting states. Trinidad & Tobago has also ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which facilitates the registration and enforcement of foreign arbitral awards between contracting states.

The Bilateral Investment Treaty between the United States and Trinidad & Tobago allows for alternative dispute resolution measures, including binding arbitration. In 1996, the Trinidad & Tobago Chamber of Industry and Commerce launched its Dispute Resolution Center to foster mediation training and hear commercial disputes. To date, approximately 700 persons have received mediation training and approximately 13 disputes have been mediated. The number of disputes settled in this manner, although slow at present, is expected to grow as new legislation more frequently provides for and recommends the use of mediation for a variety of disputes (e.g., environmental).

## **Performance Requirements and Incentives**

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There are no performance requirements for investors written into law, but the GOTT strongly encourages, through negotiable incentives, projects that generate employment and foreign exchange; provide training and/or technology transfer; boost exports or reduce imports; have local content; and generally contribute to the welfare of the country. Foreign investment is also screened for its environmental impact.

Foreign investors are eligible for tax holidays and concessions in the manufacturing and hotel industries. Under the Fiscal Incentives Act of 1979 and the Hotel Development Act, both tax and non-tax incentives may be negotiated with the government for investments in the manufacturing, tourism and energy sectors. The government encourages joint ventures between foreign and local corporations. Corporate partners in a joint venture are governed by a joint-venture partnership agreement.

The government of Trinidad & Tobago has sought to streamline the investment

registration system and now permits investors to submit a single application for all the licenses, approvals, concessions and tax benefits necessary to implement a proposed investment project. The Tourism and Industrial Development Company (TIDCO) was formed in 1994 to act as an investment facilitator.

Foreigners entering Trinidad & Tobago to engage in legitimate trade or occupation may do so without a work permit for a single period not exceeding 30 days in every 12 consecutive months. For any period in excess of 30 days to engage in legitimate work, a work permit must be obtained from the Ministry of National Security through the proposed employer. This system has created a hardship for companies involved in large industrial and energy projects, which frequently need technicians for periods of time longer than 30 days.

There are no formal restrictions on the numbers and duration of employment of foreign managers brought in to supervise foreign investment projects, and the issue is specifically addressed in the Bilateral Investment Treaty. However, several foreign firms have alleged that there are inconsistencies in the granting of long-term work permits. These generally fall into two categories: a permit is not granted to an official of a company that is competing with a local firm, or the authorities threaten not to renew a permit because a foreign firm has not done enough to train and promote a Trinidad & Tobago citizen into the position. Some executives of smaller companies have found that their work permits are only approved if they form joint ventures with local firms or set up formal training programs.

#### **Right to Private Ownership and Establishment**

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Private foreign and domestic entities have the right to establish and own business enterprises and engage in remunerative activity. Under the Companies Ordinance and the Foreign Investment Act, a foreign investor may purchase shares in a local corporation, incorporate or set up a branch office in Trinidad & Tobago, or form a joint venture or partnership with a local entity. Businesses may be freely purchased or disposed of. Private enterprises and public enterprises are treated equally with respect to access to markets, credit, and other business operations. A new Companies Act, based on the Canadian Corporations Act, came into force in 1997, and was updated in the Companies (Amendment) Act, 1999.

#### **Protection of Property Rights**

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Property rights are protected under the constitution and common-law practice. Secured interests in property are recognized and enforced. Trinidad & Tobago concluded negotiations with the United States on an Intellectual Property Rights (IPR) agreement in 1994. Trinidad's IPR legislation is WTO consistent and considered to be TRIPs-plus.

Although the new legislation is among the most advanced in the hemisphere and provides for intellectual property protection comparable to that in the United States, it is possible that enforcement will remain lax in the near term though the GOTT is taking steps to correct this deficit. The most visible examples of copyright infringement are pirated copies of music and video DVDs.

#### **Transparency of Regulatory System**

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The Companies Ordinance and the Foreign Investment Act, in general, govern foreign investments. Except as noted elsewhere in this report, these acts carry few restrictive clauses. The U.S. Embassy in Port of Spain is not aware of any investment proposal being denied outright. The only grounds for such denial are supposed to be that a proposal is illegal, contrary to public morals or environmentally unsound. However, Government inaction on a proposal may have the same effect as outright denial.

Foreign investors have complained about a lack of transparency and delays in the investment approval process. Complaints focus on a perceived lack of delineation of authority for final investment approvals between the various ministries and agencies that which may be involved in a project, particularly with regard to environmental impact assessment approvals. Some projects have been delayed for several years and some potential investors have abandoned Trinidad & Tobago as a result. In 2001 the new Certificate of Environmental Clearance Rules came into effect and this placed the environmental approval authority for most projects under the jurisdiction of the Environmental Management Authority (EMA). Following are the categories of projects that will require environmental clearance:

- Agriculture/horticulture;
- Electricity generation, transmission and distribution;
- Engineering operations;
- Food and beverage industry;
- Heavy manufacturing industries;
- Light manufacturing industries;
- Metal smelting and reforming;
- Mineral mining and processing;
- Oil and gas exploitation;
- Telecommunications;
- Tourism and recreational development;
- Transport systems infrastructure;
- Waste management;
- Water and sewage systems;
- Storage and warehousing;
- Other service-oriented activities;
- Hillside development.

## **Efficient Capital Markets and Portfolio Investment**

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Trinidad & Tobago has well-developed capital markets. A full range of credit instruments is available to the private sector, including a small, but well-developed, stock market. There are no restrictions on borrowing by foreign investors. However, due to high commercial bank reserve requirements local credit is expensive by US standards. Loans in foreign currency are, however, much cheaper. Businesses can sometimes negotiate even lower rates.

The legal, regulatory and accounting systems governing credit markets are, on the whole, effective and transparent, although there has been some public discussion of the need to tighten regulations in the insurance industry. The Insurance Act of 1980 (amended in 1996) and Securities Industry Act of 1995 are geared towards improving the market's transparency. Several large international accounting firms are represented

in Trinidad & Tobago. An overarching supervisory agency is supposed to be established shortly.

Trinidad & Tobago has no antitrust or acquisitions and mergers legislation. The Trinidad & Tobago stock exchange operates a takeover and merger code for companies listed on the local stock exchange. The government has established a securities and exchange commission for the purpose of supervising and regulating the securities market and market actors. Foreign investors currently must obtain a license before they can legally acquire more than 30 percent of a publicly held company (this policy is currently under review). There are no cross-shareholding arrangements used by private firms to restrict foreign investment through mergers and acquisitions. The banking system is considered sound.

There are no laws authorizing firms to adopt articles of incorporation that limit or prohibit foreign investment, participation or control. The government and private sector do not seek to restrict foreign participation in industry standards-setting organizations.

### **Political Violence**

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There has been no serious case of political violence since an attempted coup in 1990.

### **Corruption**

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Corruption has traditionally appeared to be moderate, and has not seriously undermined government or business operations. Trinidad & Tobago has a number of laws, regulations and penalties designed to combat corruption and fraud. International drug trafficking, with its concomitant corruption, could pose a threat to the investment climate, especially when money laundering undercuts legitimate pricing policies, but the Government is active in its efforts to combat both illegal narcotics and the influence of money laundering.

With economic activity and growth on the rise, Trinidad & Tobago's active press, trade associations, and business community have increasingly reported allegations of corruption involving government contracts. As elsewhere, competing businesspersons seek to influence decisions in their favor through personal connections. The present government was elected on a strong anti-corruption platform and has established a number of Commissions of Inquiries, as well as investigations that have so far resulted in indictments of several private and former public sector officials. Public perceptions of corruption have increased, according to the Transparency International Corruption Receptions Index 2004, which placed Trinidad & Tobago 51<sup>st</sup> out of 146 countries. T&T was in 43<sup>rd</sup> place in 2004.

Consequently, there is ongoing public pressure on the government to review tender procedures, improve the legal framework, and implement a sustained fight against corruption.

### **Bilateral Investment Agreements**

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Trinidad & Tobago has bilateral investment agreements with the United Kingdom, Ireland, Canada and France among others. The Bilateral Investment Treaty signed with the United States came into force in 1996.

### **OPIC and Other Investment Insurance Programs**

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The Overseas Private Investment Corporation (OPIC), EXIM Bank, and the Multilateral Investment Guarantee Agency (MIGA) have active programs in Trinidad & Tobago. Trinidad & Tobago is among 22 countries in the Caribbean and Central America to participate in a US \$200 million OPIC loan facility administered through Citibank.

### **Labor**

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Labor relations are governed by the Industrial Relations Act (IRA), which provides for recourse to an industrial court for resolution of disputes that cannot be resolved at the collective bargaining table or through conciliation efforts by the Ministry of Labor.

Approximately 15-25 percent of Trinidad & Tobago's workforce is unionized. The IRA provides for the mandatory recognition of trade unions when a union satisfies the Registration Recognition and Certification Board that it represents more than 50 percent of the workers in a specified bargaining unit.

Wages and salaries vary considerably between industries. The national minimum wage is TT 9.00 per hour (approximately US\$1.43) and associated overtime rates. The Maternity Protection Act of 1998 provides for maternity benefits. The Occupational Safety and Health Act was passed in January 2004.

Unemployment was officially estimated at 10.5 pct for 2003, and fell to a historic low of 7.7 percent in the second quarter of 2004. The labor market offers a high proportion of skilled and experienced workers, and the educational level of the population is among the highest in the developing world.

### **Foreign-Trade Zones/Free Ports**

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The Free Zones Act of 1988 (last amended in 1997) established the Trinidad & Tobago Free Zones Company to promote export development and foreign investment projects in a bureaucracy-free, duty-free and tax-free environment. One multiple user and ten single user zones are currently in operation.

Free Zone enterprises may be established in any part of the country. They are 100 percent exempt from:

- Customs duties on capital goods, parts and raw materials for use in the construction and equipping of premises and in connection with the approved activity;
- Import and export licensing requirements;
- Land and building taxes;
- Work permit fees;
- Foreign currency and property ownership restrictions;
- Capital gains, income, corporation or withholding taxes on sales or profits;
- VAT on goods supplied to a Free Zone;

- Duties on vehicles for use only within the Free Zone.

Application to operate in a Free Zone is made on specified forms to the Trinidad & Tobago Free Zones Company (the Company). After recommendation by the Company, the Minister may by Order designate an area a Free Zone, the limits of which are defined in the Order.

Free Zone activities that qualify for approval include manufacturing for export, international trading in products, services for export and development and management of free zones. Production activity involving petroleum, natural gas or petrochemicals and activities involving investment in excess of US \$50 million do not qualify for the program.

## Foreign Direct Investment Statistics

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Economic reform, and trade and investment liberalization have led to substantial foreign investment inflows.

Other large foreign investors include Canada (ammonia/urea), Germany (methanol/iron), India (iron/steel), Norway (ammonia), the United Kingdom, and Spain.

The bulk of foreign investment is in the country's lucrative energy-based sectors. In 1999, 32 percent of U.S. investment was in petrochemicals and 50 percent in oil and gas. U.S. oil companies like by Chevron-Texaco and EOG Resources have heavily invested in oil and gas exploration and production. Other U.S. companies in the upstream energy sector include Exxon Mobil and Fluor Summit. Many non-American oil companies including BP (formerly Amoco), Tractebel (Belgium), Total (France), Repsol (Spain), Talisman (Canada), BHP Biliton (Australia) and British Gas. Investment figures for foreign firms are not available.

There is evidence of a growing interest among investors in the non-oil sectors of the economy, in areas such as information technology, wood and wood products, and the entertainment industry.

Major third country investors:

- *Communications*: Cable and Wireless (UK, telecommunications), Cisneros Group (Venezuela, media/telecommunications)
- *Consumer products*: British-American Tobacco Co. (UK, tobacco products), Courts Furnishings Ltd (UK, furniture, appliances), Lewis Berger Ltd (UK/India, paints), Corimon (Venezuela, paints), Nestle SA (Switzerland, food products), Unilever PLC Dutch, household/personal care products), Fujitsu (Japan, computers/office machines), Kuo-jeng Trading (Taiwan, fish processing), Grace Kennedy (Jamaica, food products)
- *Banking/insurance/accounting*: Scotia Bank (Canada), Commercial Union Insurance (UK), New India Assurance (India), Sagicor (Barbados), Demerara Life Insurance (Guyana), Guardian Life Insurance (Jamaica), PriceWaterhouseCoopers (UK)
- *Industry/construction*: Norsk Hydro (Norway, ammonia), Ferrostaal, Helm (Germany, methanol), Methanex (Canada, methanol), Ispat (India, steel), George Wimpey (UK, construction), Cemex (Mexico, cement), Metalurgica Chirica (Venezuela, metal products)

Major U.S. Investors:

- *Hydrocarbons*: As listed above.
- *Oilfield services*: Anderson Smith Drilling, Atlantic Maritime Drilling, Baker Transworld, Baroid Services, Global Marine Drilling, Tidewater Marine
- *Petrochemical and steel industry/construction*: As listed above, and ALCOA (alumina transshipment), Bechtel (construction)
- *Banking/accounting/insurance*: Citibank, Ernst and Young, American International Group
- *Manufacturing*: Trincast
- *Consumer products*: Colgate Palmolive, Johnson and Johnson, Nabisco, 3M, PepsiCo, Coca Cola, Subway Sandwiches, IBM, Honeywell, Pan American Standard Brands, PriceSmart, Payless Shoe Source
- *Services*: Federal Express, DHL, TNT Express (courier), United Parcel Services, Amerijet (air cargo), Crowne Plaza, McAnn Erickson (advertising), Maersk Sealand (marine cargo), Western Union, American Airlines, Continental Airlines, Mirant Corp. (power generation), General Aviation Service (shipping), Medical Air Services (medical transport).

**Web Resources**

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Ministry of Energy and Energy Industries: <http://www.energy.gov.tt>

Ministry of Finance: <http://www.finance.gov.tt>

Central Bank of Trinidad & Tobago: <http://www.central-bank.org.tt>

Central Statistical Office: <http://www.cso.gov.tt>

The Intellectual Property Office (T&T): <http://www.ipo.gov.tt>

Tourism & Industrial Development Company of T&T: <http://www.tidco.co.tt>

Trinidad & Tobago Environmental Management Authority: <http://www.ema.co.tt>

Trinidad & Tobago Investment Opportunities and Incentives: <http://www.investtnt.com>

Trinidad & Tobago Stock Exchange: <http://www.stockex.co.tt>

Doing Business in Trinidad & Tobago (Taxes): <http://www.trinidadlaw.com>

The American Chamber of Commerce of T&T (AmCham): <http://www.amchamtt.com>

U.S. Overseas Private Investment Corporation (OPIC): <http://www.opic.gov>

U.S. Department of Commerce Trade Compliance Center: <http://www.tcc.mac.doc.gov>