Country Guide
Trinidad and Tobago

Prepared by

Hamel-Smith

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HAMEL-SMITH INVESTOR'S GUIDE TO TRINIDAD AND TOBAGO

This guide is intended to provide a broad overview of the regulations and procedures that affect and govern the conduct of business in Trinidad & Tobago. As the information herein may quickly become dated, and because this publication is only a summary, persons planning a transaction or undertaking in Trinidad & Tobago should seek specific advice with regard to proposed or contemplated ventures.

Nicole Ferreira-Aaron

Foreword

We at Hamel-Smith are extremely pleased to provide you with our updated "Investors Guide" to Trinidad and Tobago. We trust that you find this Guide to be of value and would appreciate receiving your comments and/or suggestions.

Mrs. Nicole Ferreira-Aaron
Managing Partner
M. Hamel-Smith & Co.
Attorneys-at-Law, Trademark & Patent Agents

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CHAPTER 1

TRINIDAD AND TOBAGO AT A GLANCE

The Republic of Trinidad and Tobago comprises two (2) islands which is approximately the size of Delaware in the United States. Trinidad, the larger, has an area of about 4828 square km (1864 square miles). Tobago is smaller, with an area of about 300 square km (117 square miles). Strategically located at the southern end of the chain of Caribbean Islands and just off the north- eastern shoulder of South America, Trinidad is about 11 km (6.8 miles) off the eastern coast of Venezuela, while Tobago is about 32.2 km (20 miles) to the north-east of Trinidad.

Trinidad & Tobago is approximately:

- 620 km (381 miles) from Caracas - flying time: 1 hour and 55 minutes;
- 2620 km (1614 miles) from Miami - flying time: 3 hours and 40 minutes;
- 3556 km (1988 miles) from New York - flying time: 4 hours and 55 minutes;
- 4080 km (2486 miles) from Toronto - flying time: 6 hours and 6 minutes;
- 7090 km (3977 miles) from London - flying time: 10 hours;

Communications: Air, sea and land transportation links are excellent. Both international airports – Piarco in Trinidad, and A.N.R. Robinson in Tobago, are served by several European and North American carriers, and by the country's own Caribbean Airlines. Direct air links with South and Central America are via Brazil, Venezuela and Panama respectively. The two (2) main international seaports are at Port of Spain and Point Lisas, the most important industrial center and heartland of the energy sector.

Telecommunications services are reliable and up to date, with state-of-the-art fibre optic trunk lines, cellular and wireless services. The country is linked to a dedicated digital line, positioning it on the network of global digital highways. The recent upgrading of the telecommunications facilities and the introduction of other service providers in this area has positioned Trinidad as an ideal location for development of a Remote Services Cluster.

Climate: Located just over ten (10) degrees north of the equator and in the path of the Northeast Trade Winds, Trinidad and Tobago enjoys a tropical climate with very little change in temperature during the year. The annual temperatures range between 21°C and 32°C. The average annual rainfall is about two hundred (200) cm. There is a dry season, January to May, and a wet season, June to December. Unlike the rest of the Caribbean, Trinidad and Tobago is fortunate to be south of the hurricane belt.

Time Zone: Trinidad and Tobago is on Greenwich Mean Time minus four (4) hours. In winter it is on US Eastern Standard Time plus one (1) hour and in summer it is on US Eastern Standard Time.

Population: The population of Trinidad and Tobago is estimated at 1.511million (2025)). It comprises a mix of persons from every ethnic background, living in harmony. Religious tolerance allows for active observance of many faiths including, Christian, Hindu and Islam.

Language: The official language is English. Facilities exist for foreign language dealings and translations, as may be required.

Urban Centres: Port of Spain is the largest city and administrative capital of the Republic. San Fernando is the second city and industrial capital. The most important industrial centre is at Point Lisas in Central Trinidad. Scarborough is the administrative capital of Tobago.

Currency: The currency unit is the Trinidad and Tobago dollar (TT$). A managed floating exchange rate is in effect, with some degree of monitoring and control exerted through the Central Bank. The TTD is pegged to the US and has slowly depreciated against the US dollar falling from TT$6.273= US$1.00 in 2002 to TT$6.7793 in January 2026 (est.).

Business Hours: Normal business hours are 8.00 a.m. to 4.00 p.m. with banks closing at 2.00 p.m. Monday to Thursday and at 1.00 p.m. on Friday, reopening at 3.00 p.m. until 5.00 p.m. Banks located in shopping plazas and malls are the exception to this rule with business hours from 10:00 a.m. to 5:00 p.m. p.m. daily. Modern technology allows for banking transactions to continue 24/7, and E-banking is offered by commercial banks.

Education: Trinidad and Tobago has a well-educated population with high levels of literacy. The education system is modelled after the English system. Government schools and Denominational schools (owned and managed by various religious bodies) provide free education at the primary and secondary levels (i.e. up to Form 5 or Grade 12). The Caribbean Advanced Proficiency Examination (CAPE) is offered for post-secondary candidates who require certification and advanced standing. Regional universities and tertiary institutions in the U.K. and the U.S.A. accept CAPE certification for matriculation and entry level programmes, based on the institution's requirements for a particular course of study. Private, fee-paying schools exist at both primary and secondary levels. Two (2) of the private international schools are based on the American and Canadian systems. Tertiary education at The University of the West Indies (UWI) is available at heavily subsidized rates and one of the campuses is in Trinidad. The others are in Jamaica, Barbados and Antigua. Other institutions of further education include but are not limited to the University of Trinidad and Tobago ('UTT'), the Teaching and Medical Science facility at Mount Hope in Trinidad, the Hugh Wooding Law School ('HWLS'), the Arthur Lok Jack Graduate School of Business, the College of Science, Technology and Applied Arts of Trinidad and Tobago ('COSTAATT') and the Cipriani College of Labour and Cooperative Studies ('CCLCS') .

Culture, Sport and Social Life: Trinidad and Tobago's reputation as the Land of Steelpan, Calypso and the Limbo is well-established. Added to and sometimes blended with this are the haunting rhythms of the East as developed by the local Indian population. These are expressions of a vibrant, cosmopolitan people whose ancestors came from every corner of the world. The multi-cultural lifestyle is also reflected in a host of festivals. The annual Carnival is one of the world's biggest street festivals, and an experience never to be forgotten, with the rhythms of calypso music and the magnificent costumes of the masqueraders.

The tropical climate encourages outdoor activities including yachting, sports-fishing, windsurfing, scuba diving, football, cricket and golf. Excellent sport and recreational facilities are available and affordable. There are several art galleries that feature the works of both local and foreign artists. A small, but vibrant theatre and dance group is emerging.

The cultural diversity is further reflected in the wide range of food choices. There is also the choice of international cuisine and popular North American fast foods. The friendly attitude of the population encourages an amicable atmosphere for business. Trinbagonians like to socialise, and foreign visitors are warmly received. At the same time there is a serious- minded, professional approach to international business dealings.

The Business Environment

The Political System: Trinidad and Tobago is a stable democratic nation. General elections are held at least every five (5) years. All changes of Government have occurred through free and fair elections. Orderly and peaceful transitions of power are routine.

Trinidad and Tobago gained political independence from Britain in August 1962. It became a Republic on August 01, 1976 and has remained a member of the British Commonwealth. Trinidad and Tobago follows the Westminster model of Government, with a bicameral parliamentary system. The Parliament, which exercises legislative power, consists of the House of Representatives with forty-one (41) elected members and the Senate which is the Upper House with thirty-one (31) members appointed by the President: Sixteen (16) on the advice of the Prime Minister, six (6) on the advice of the Leader of the Opposition, and nine (9) as Independents. Executive power lies with the Prime Minister and his Cabinet which is appointed from among members of Parliament. The Judiciary is independent of the other organs of Government. Tobago has an elected House of Assembly which controls some of that Island's internal affairs.

The Legal System: The Trinidad and Tobago Constitution provides entrenched protection of fundamental human rights and freedoms. These rights and freedoms are guaranteed to foreign investors in the same manner as they are guaranteed to Trinidad and Tobago nationals. The Constitution also guarantees the independence of the judiciary. Foreigners can expect to have their disputes impartially determined. Delays in the legal system are, however, a serious problem. Efforts are being made to tackle the backlog of cases with some considerable success to date. The recent implementation of new High Court Rules provides for pre-trial applications and meetings with court officials to ensure timely progress of matters.

Unless compromised, almost all commercial disputes are heard and determined by the Supreme Court. There is a three-tier system:

- In the High Court, all civil (non-criminal) trials are determined by a single judge without a jury;
- From the High Court a party can appeal as of right to the Court of Appeal, which sits with three (3) judges; and
- Appeals from the Court of Appeal lie to the Judicial Committee of the Privy Council as of right in almost all cases.

The Privy Council is based in London, England and comprises essentially the same Judges as sit in the House of Lords to hear United Kingdom Appeals.

The law of Trinidad and Tobago is based upon the common law of England. Decisions of the Privy Council are binding on the lower courts. The principles derived from the decisions of the courts of the United Kingdom and other Commonwealth countries, particularly Australia, New Zealand and Canada, though not strictly binding, are persuasive and can be applied. A growing body of local judicial precedent is also evolving. The Caribbean Court of Justice (CCJ) is a regional judicial tribunal for the resolution of trade disputes between member countries of the Caribbean Community. Although the CCJ has an appellate jurisdiction as the final Court of Appeal for Guyana, Belize, Dominica and Barbados, the Privy Council remains the final Court of Appeal for Trinidad and Tobago.

The Financial System: The financial system is well-organized and soundly- regulated. The Central Bank of Trinidad and Tobago determines monetary policy and sets discount rates and reserve requirements. It regulates operations of the commercial banks and other financial institutions. There are eight (8) commercial banks with a total of one hundred and twenty-three (123) branches. Automated Teller Machines (ATMs) are available throughout the country, and telephone and internet banking services have increased. In addition, there are non-bank financial institutions, merchant banks, finance houses, trust companies,

mortgage finance institutions, mutual funds including a Unit Trust Corporation, a secondary mortgage company and more than thirty (30) insurance companies. The Deposit Insurance Corporation (DIC) guarantees deposits up to TT$125,000. There is also the National Insurance System (NIS), the Trinidad and Tobago Stock Exchange (TTSE) and the Central Depository as well as a number of other development finance institutions catering for Central securities, commercial, agricultural and small business development. The securities industry is governed by the Trinidad and Tobago Securities and Exchange Commission (TTSEC).

Internationally, Trinidad and Tobago is a member of the International Monetary Fund (IMF), the World Bank (WB), the World Trade Organization (WTO) the Inter-American Development Bank (IADB), the Caribbean Development Bank (CDB) and subscribes to the General Agreement on Tariffs and Trade (GATT). It is active in a number of regional, hemispheric and international organizations and enjoys a high reputation among members of these bodies.

The Economic System: The Trinidad and Tobago economy is the most diversified in the English-speaking Caribbean. Nevertheless, it remains heavily reliant (accounting for approximately 22.2% of GDP in 2023 and 28.3% of Government Revenue in 2023/2024) on the oil, natural gas and petro-chemical industries.

The country's hydrocarbon resources and, in particular, its natural gas has enabled it to become the most industrialized Caribbean nation. In 2022, gas production was recorded at 2.688 billion standard cubic feet per day (bscf/d). Since then, output has followed a steady downward trend, with average production falling to 2.587 bscf/d in 2023 and 2.537 bscf/d in 2024. As of May 2025, gas production increased to 2.73 bscf/d. In its 2025 Budget, the Government of Trinidad and Tobago projected natural gas production to increase to approximately 3.2bcf/d by 2027. Oil production in 2022 was approximately 58,450 barrels per day ('bpd') compared with 53,726 bpd in 2023 and 50,892 bpd in 2024. As of August 2025, oil production stood at 55,257 bpd. Oil production and refining continue to be important, but LNG, petrochemicals and, to a lesser extent, steel have assumed much greater significance. Trinidad and Tobago is one of the largest methanol producers in the world with a total capacity of approximately 7.75 million metric tonnes annually from its eight (8) methanol plants located at the Point Lisas Industrial Estate. The Government's economic policy is directed to the development of a robust and open market-driven economy. Trade liberalization and public sector rationalization are being pursued. Private enterprise is being strongly encouraged. While there is State involvement in public utilities and in oil, gas and petrochemicals the Government is intensifying its efforts at divesting ownership in these key areas. The Government has made a commitment to actively encourage foreign investment in Trinidad and Tobago. Legislation removing restrictions on foreign investment, removing foreign exchange control and providing various incentives to investors has been enacted.

Foreign Ownership

The Foreign Investment Act Chap. 70:07 ('FIA') provides for the acquisition by foreign investors of an interest in land or shares in local private or public companies and for the formation of companies by foreign investors. In summary, the FIA makes the following provisions:

- A foreign investor is permitted to own one hundred percent (100%) of the share capital in a private company but, prior to the investment; the Minister of Finance must be notified;
- Foreign investors are permitted to own up to thirty percent (30%) in total of the share capital of a local public company without a license;
- A license is required to permit foreign investors to own more than 30% in total of the share capital of a public company;
- A foreign investor is permitted to own one (1) acre of land for residential purposes and five (5) acres of land for trade or business without having to obtain a license;

- No one is permitted to hold land in Trinidad and Tobago or shares in any local company in trust for a foreign investor who requires a license but has not obtained same.

Amendments to the Act are being proposed.

Profit Remittance and Capital Repatriation: There are no restrictions on repatriation of capital, profits, dividends, interest, distributions or gains on investment. Repatriation may be effected through the commercial banking sector. There remains the liability to pay withholding tax, where applicable.

Investment Protection Mechanisms: Bilateral Investment Agreements which guarantee foreign investors a level playing field exist between Trinidad and Tobago and the United States, Canada, China, France, the United Kingdom, Germany, the Republic of Korea, Spain, Mexico, and India. A Bilateral Investment Treaty and an Intellectual Property and Rights Agreement have been entered into with the United States. Highlights of the Bilateral Investment Treaty include:

- A requirement that the treatment of foreign investments be no less favourable than that accorded domestic investments ("National Treatment");
- A prohibition against expropriation of an investment without just compensation calculated as the equivalent to the fair market value of the expropriated investment immediately before expropriatory action;
- A requirement that investments suffering losses from war or similar events be accorded National Treatment;
- A provision to allow financial transfers relating to the investments to be made freely and without delay into and out of each country;
- A provision to ease requirements relating to entry, sojourn and employment of aliens for establishing foreign investment of a substantial capital amount;
- A prohibition against performance requirements as a condition for investment;
- A provision for dispute resolution alternatives, including binding arbitration.

Sensitive Areas: In the past, there has tended to be a bureaucratic approach in the public sector which sees its role as procedural rather than facilitative. A lack of transparency in its operations can sometimes make it difficult to determine the criteria adopted in the decision-making process. However, the Government is actively seeking to sensitize the Public Service to the need to be more service-oriented.

Withholding tax is imposed on the profits of branches of non-resident companies (after making deductions for corporation tax) which are not re-invested (other than in replacement of fixed assets) to the satisfaction of the Board of Revenue. Stamp duties on property transfers and charges to secure loans are very substantial. Company registration is a fairly routine matter for lawyers, and once the corporate name has been approved, the process on average may take up to ten (10) working days. There are requirements for licenses to be obtained in order to conduct banking and insurance activities which are strictly regulated. The acquisition by foreign investors of more than thirty per cent (30%) of the share capital in a publicly owned company and more than five (5) acres of land for trade purposes requires the issue of a license under the FIA.

There is a strong trade union movement, certain segments of which have expressed their opposition to the government's policy of divestment of state enterprises, especially in the gas, petroleum and utilities sectors of the economy.

The price of gasoline sold on the domestic market is fixed by the Government. In addition to the common law protections afforded to the consumer there are a number of statutes which govern consumer protection, but these have largely not been enforced. Nationals of all countries need a valid passport to enter Trinidad and Tobago. An entry visa is required by nationals of countries that have not signed a Visa Abolition Agreement with Trinidad and Tobago, and this may be obtained from a Trinidad and Tobago Consular

Office. Nationals of the Caribbean Community (CARICOM) member states (except Haiti), Commonwealth countries (except Fiji, South Africa, Mozambique, Sri Lanka, New Zealand, Tanzania, Australia, Nigeria, Uganda, Cameroon and Papua New Guinea), and Hong Kong SAR passport-holders may enter Trinidad and Tobago without a visa for an indefinite period. Citizens of European Union Member States and non-EU Schengen countries (Iceland, Liechtenstein, Norway and Switzerland) may enter visa-free for up to 90 days within a 180-day period. In addition, citizens of Argentina, Brazil, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, India, Israel, Japan, Mexico, Nicaragua, Panama, Peru, Russia, South Africa, South Korea, Turkey, the United States and Uruguay may stay visa-free for up to 90 days from the date of arrival. Citizens of Albania, Bosnia and Herzegovina, Montenegro and Serbia may stay visa-free for up to 30 days. Holders of diplomatic or service passports of China and Haiti are also exempt. A mutual visa-waiver agreement with Paraguay was signed in June 2024 but is not yet in force.

CHAPTER 2

INVESTMENT IN THE ENERGY SECTOR

Trinidad and Tobago's hydrocarbon resource and in particular, its natural gas have enabled it to become the most industrialized Caribbean nation. Foreign investment in the Energy Sector accounts for over eighty percent (80%) of the country's export earnings.

The country is well experienced in exploration, production, refining and other process plant type operations, for example, petrochemicals. Gas is used for electricity production, petrochemical, liquefied natural gas, metals, heavy industrial and light industrial use. Projects, such as additional steel and ethylene plants have been discussed, but do not now appear to be on the "front-burner" as a result of the 2008 recession. Trinidad and Tobago is the world's largest exporter of ammonia and second largest exporter of methanol.

In this Chapter, Jonathan Walker and Gregory Pantin, Partners in Hamel-Smith's Dispute and Risk Management Practice Group respectively, provide investors with an overview of the Trinidad and Tobago Energy Sector.

The Role of the Energy Sector in the Economy

The Energy Sector has long been important to the economy. It accounts for approximately twenty-two-point eight percent (22.8%) of the country's gross domestic product in 2023, twenty-eight-point three percent (28.3%) of the Government Revenue in 2023/2024 and represents over eighty percent (80%) of the country's export earnings. Within the energy sector, energy exports grew by 59.6 percent from US$8,525.84 in 2021 to US$14,305.1 million in 2022, as all commodity sub-categories recorded increases. In the first three months of 2023, energy exports declined by 24.2 percent to US$2,683.4 million from US$3,539.3 million in the similar period one year earlier.

The first oil deposits were discovered in 1866 and serious drilling first undertaken in 1907. Crude oil production started in 1908 and the first oil refinery was established in 1912. Exploration for offshore oil commenced in 1954. Production of natural gas has been increasing rapidly since the mid-1970s. For several years, gas has been more important to the economy than oil. Natural gas is used primarily for electricity generation, petrochemical manufacture, LNG production, steel and metal production, cement manufacture and light industry.

The focus of the Ministry of Energy and Energy Affairs over the last two (2) years has been on arresting the decline in and increasing crude oil production. In fact, for the year 2016, there was a slight decrease.

Reserves

As at year-end 2023, the country's non-associated natural gas reserves were stated by DeGolyer & MacNaughton as:

- Proved reserves - 11.1 tcf
- Probable reserves - 4.6 tcf
- Possible reserves - 4.8 tcf

Further, there are potential new discoveries which are termed "unrisked exploratory resources" of 58.84 tcf. Natural gas from most fields in Trinidad and Tobago is primarily "sweet" gas (0.1% - 0.35% carbon dioxide and negligible sulphur).

Oil reserves as at end 2018were as follows:

- Proven – 220.1 million barrels
- Probable – 99.7 " "
- Possible – 135.5 " "

Condensate reserves (associated with natural gas production) as at end 2022 were as follows:

- Proven – 41.51 million barrels
- Probable – 64.22 " "
- Possible – 86.91 " "

Moreover, there are estimates of considerable heavy oil reserves and oil sands acreage which have not previously been considered economically recoverable or exploitable under then market conditions, although recent technological advances and current market conditions may suggest otherwise.

Identification and exploitation of reserves are by means of Exploration and Production (E&P) licenses or Production Sharing Contracts. These are issued by, or executed with the State, usually based on competitive bidding rounds.

Human Resources

Given the maturity of Trinidad and Tobago's energy sector, its natural resources are supported by many skilled and well-trained people. Oil refining operations commenced in the country in 1912 and petrochemical production in 1959, thus large numbers of people have been trained in process plant type operations, as well as in oil and natural gas production. There are significant numbers of service companies which provide support services to the major producers. In addition, many experienced qualified individuals, firms and companies exist to provide services in fields such as architecture, engineering (civil, mechanical, chemical & process, electrical, petroleum) geology, and contracting (all types). In fact, all major projects have been constructed with the significant involvement of local contracting companies, including high pressure pipeline construction, steel fabrication and erection and civil works. In recent years the construction of offshore platforms has been taking place.

Natural Gas

The importance of natural gas to the economy has increased rapidly over the last twenty-five (25) plus years, and it has attracted by far the most significant amount of foreign investment during this period.

Natural gas production in 2024 was recorded at 2.537 billion standard cubic feet per day. All of the natural gas used in Trinidad and Tobago, with the exception of "own use" gas (i.e., gas used by producers for their own purposes) and gas for LNG production, is presently purchased from producers (primarily BP, EOG, Shell) by the National Gas Company of Trinidad and Tobago Limited (NGC). It is transported by NGC and resold to consumers. However, gas used by the LNG plants is sold directly by offshore producers to the LNG facility or to others to be tolled through the facility.

Natural gas is used in the production of LNG, petrochemicals (ammonia, methanol and urea), iron and steel, electricity, natural gas liquids (propane, butane and natural gasoline), cement, scrap iron substitutes and for a host of light industrial manufacturing purposes. An ethylene plant remains an item for consideration as does the possibility of an additional LNG train ("Train X"). This will be dependent however, on the proving up of additional reserves or the settlement of unitization issues to allow the exploitation of cross-border reserves.

Daily gas utilization by sector during 2022 averaged as follows in millions of standard cubic feet per day (mmscf/d):

- Power Generation 262
- Ammonia manufacture 475
- Methanol manufacture 527
- Refinery 0
- Iron and Steel manufacture 40
- Cement manufacture 11
- Ammonia Derivatives 18
- Gas processing 18
- Gas to Liquids 7
- Light Industrial ("Small consumer") 9
- LNG 1219
- TOTAL: 2587

Commencing in 1988, NGC moved rapidly to a system of indexed gas pricing, particularly in the petrochemical sector. With the price of gas, a main cost component, tied to product price, producers are better able to ride out periods of unfavourable market conditions.

Oil

Oil production peaked at 230,000 barrels per day (bpd) in 1978 and declined in 2001. As a result of discoveries, production increased to approximately 145,000 bpd in April 2007. However, since then, production has declined rapidly; with oil production falling to an average of 64,000 bpd in 2018 (up to November 2018) compared with 73,800 bpd in 2016. This negative trajectory has continued into the current decade, with average daily output recorded at 58,450 bpd in 2022, 53,726 bpd in 2023 and an estimated 50,892 bpd in 2024. It is expected that oil production will increase over the coming years, reaching approximately 68,708 bpd by 2027. Should substantial reserves of heavy crude and the recovery of hydrocarbons from oil sands be demonstrated to be economically recoverable, then the reserves to production ratio will further improve. In addition, the State is inviting bids for the exploration of large offshore areas including deep water blocks off the South Coast of Trinidad and the resultant activity should translate into increased reserves and ultimately enhanced production levels.

Petrochemicals

Ammonia

The current players in ammonia are:

- Yara Trinidad Ltd. with one (1) plant;
- Trinidad Nitrogen Co. Ltd. (a joint venture between the State and Yara), with two (2) plants;
- Potash Corporation of Saskatchewan (P.C.S.), with four (4) plants;
- Point Lisas Nitrogen Ltd (formerly Farmland MissChem Limited), a joint venture between Koch Nitrogen and CFI, with one (1) plant;
- Caribbean Nitrogen Company Ltd. (CNC) with one (1) plant (associated with N2000 Ltd.);
- N2000 Ltd with one (1) plant (associated with CNC);
- Methanol Holdings Ltd. with one (1) plant (as part of an AUM complex).

Methanol

At present methanol plants are operated by:

- Methanol Holdings Trinidad Limited with five (5) plants;
- Methanex Trinidad (Titan) Unlimited with one (1) plant;
- Atlas Methanol Company Unlimited (owned by Methanex and BP) with one (1) plant.
- Caribbean Gas Chemical Limited with one (1) plant.

Urea
At present urea plants are operated by:

- PCS owns one (1) Urea Plant (previously State owned);
- Methanol Holdings Limited, with one (1) plant (as part of an AUM complex).

Metals
In March 2016, ArcelorMittal closed its operations following local and international challenges. In July 2024, the facility was acquired by TT Iron Steel Company Limited, which has announced plans to restart production through phased investment. Another project is the production of reduced iron fractionates NGLs extracted from natural gas by the LNG trains. The Plant is capable of extension into Ethane extraction. The Plant has gone through several expansions. For some time, the opportunity to deepen the value added to these products by going into downstream development has been considered.

Liquefied Natural Gas (LNG)
Atlantic LNG's Train One achieved full production in 1999. Train Two started up in 2002, Train Three in the first half of 2003 and Train Four in 2005. At full production, these plants have a total gas demand of approximately 2.3 billion cubic feet per day. Total LNG production fell sharply by 14.7% to 443.5 trillion British Thermal Units (btu) during the period October 2015 to June 2016 from 51.9 trillion btu during October 2014 to June 2015. From January 2017 to November 2017, the total production of LNG from Atlantic LNG's four trains amounted to 22,486,167 cubic meters (m3) which when converted to British Thermal Units, amounted to 507,423,622 mmbtu.

However, in recent years, LNG production has continued to decline due to natural gas supply constraints. Train one has been mothballed since 2020 due to insufficient gas supply, and is expected to be decommissioned, reducing Atlantic LNG's operating capacity to three trains. As of February 2023, Atlantic LNG was only able to source enough gas to operate Trains 2, 3 and 4 at 70% of capacity.

The Role of the Government

In the 1970's, Government stimulated development of the energy sector by participating as an equity investor either on its own or on a joint venture basis. More recently, the State has been divesting itself of its interests except where these interests are being of strategic importance.

Taxation

Petroleum Taxes
Companies involved in the business of petroleum production and refining are liable to pay taxes on profits from the business under the Petroleum Taxes Act Chap. 75:04 , which, pursuant to section 9 and the First Schedule, imposes a Petroleum Profits Tax at the rate of 50% on taxable profits derived from petroleum operations and 35% on taxable profits derived from deep water petroleum operations. There is also a Supplemental Petroleum Tax charged on gross income at scales based on oil prices.

Marketing business which was previously charged to tax under the Petroleum Taxes Act has, with effect from 1st January, 1997 been taxed under the Corporation Taxes Act Chap. 75:02.

Corporation Taxes
Most other Companies in the sector, (Petrochemicals, metals etc.,) will be liable to taxation under the Corporation Taxes Act. See Chapter 7, Taxation, for further information.

Reliefs
Certain reliefs from taxes may be applicable for new projects under various facilities and incentives provided by law. See Chapter 3, Incentives to Invest, for further information.

Additional
Further information on the Trinidad and Tobago Energy Sector is available at https://www.energy.gov.tt and https://www.stcic.org.

CHAPTER 3

INCENTIVES TO INVEST

The Government's economic policy is directed to the development of a robust and open market-driven economy. It is committed to actively encouraging foreign investment in Trinidad and Tobago. Apart from enacting legislation to remove restrictions on foreign investment and to remove foreign exchange controls, the Government has also made a wide range of fiscal incentives available to the foreign investor. These generally take the form of import duty concessions or other tax allowances.

In this Chapter, Miguel Vasquez, Partner in Hamel-Smith's Dispute and Risk Management Department, offers investors an overview of the type of incentives which are available to encourage investment.

Oil and gas resources have been the mainstay of the country's economy for a long time. Recognizing that such resources are finite, in recent years the Government has sought to create an investment climate that attracts higher value investments, especially in the downstream energy and non-energy sectors.

As a result, certain incentives and concessions apply to specific industry sectors while others apply across the board.

Corporation Tax Concessions

Under the Corporation Tax Act Chap. 75:02, tax credits are available to special classes of companies as set out in the following paragraphs.

Approved Small Company

In accordance with Section 16A of the Corporation Tax Act, an approved small company is exempt from payment of Corporation Tax for a period of five (5) years commencing 1st January 2006. In order to qualify, the company:

- Must be locally owned and controlled (nationals must beneficially own shares carrying more than one half (½) of the voting power in the company and have the right to receive more than one half of the dividends or capital distribution);
- Must have machinery, equipment and working capital the value of which does not exceed TT$1.5 million;
- If incorporated on or after January 8, 1988 must not be the result of the splitting or the reconstruction of an existing company;
- Must not have as a shareholder any other company holding shares either directly or indirectly through its nominees;
- Must maintain accounts audited by a member of the Institute of Chartered Accountants;
- Must have potential for creating permanent jobs;
- Must have at least five (5) permanent employees;
- Must make optimum use of locally produced raw materials.

Application is made in writing to the National Export Facilitation Organisation of Trinidad and Tobago ('ExporTT'). If the company meets the criteria the Minister of Trade and Industry will issue a Certificate of Approval through the ExporTT.

Regional Development Area

An approved company carrying on business in a regional development area is entitled to a tax credit equal to twenty-five percent (25%) of the chargeable profits for a period of seven (7) years from January 1st in the year in which the certificate of approval is issued. To qualify, per section 16B of the Corporation Tax Act, the company must:

- be incorporated in Trinidad and Tobago on or after 8th January 1988 and be resident in Trinidad and Tobago;
- be locally owned and controlled, and no other company may hold more than twenty-five percent (25%) of the issued share capital, either directly or indirectly through its nominees;
- must not be formed by the splitting or the reconstruction of a company already in existence;
- carry out its operations in an area designated to be a regional development area, and produce manufactured goods or industrial services at least seventy-five percent (75%) of which are produced in the regional development area;
- hold at least seventy-five percent (75%) of its fixed assets in the development area;
- employ twenty (20) or more workers at least seventy-five percent (75%) of whom work in the regional area and receive more than sixty percent (60%) of the company's total payment in respect of all wages and salaries.
- Operates a system of accounts approved by the Tourism and Industrial Development Company of Trinidad and Tobago ('TIDCO').

A company which satisfies the criteria may apply in writing to the Minister of Finance. A listing of the Regional Development Areas is available.

Approved Activity Company

An exemption from Corporation Tax for a period of five (5) years commencing 1st January, 2006 is also available to an approved activity company. To qualify, according to Section 16C of the Corporation Tax Act, the activity must be capable of:

- earning hard currencies or effecting savings of foreign exchange;
- creating a significant number of permanent jobs or offering prospects for future expansion;
- stimulating technological development or developing new and modern industries; or
- making efficient use of local raw materials.

To qualify as an approved activity company, the company must:

- be incorporated in Trinidad and Tobago on or after 8th January 1988 and be resident in Trinidad and Tobago only;
- be locally owned and controlled and no other company may hold more than twenty-five percent (25%) of the issued share capital either directly or indirectly through its nominees;
- not be formed by the splitting or the reconstruction of a company already in existence;
- employ more than ten (10) persons;
- be engaged in an activity classified as an approved activity and the receipts from that activity must exceed seventy-five percent (75%) of the gross receipts in a year of income; and
- operate a system of accounts approved by TIDCO.

Application is made to the Minister of Finance. A listing of approved activities is available.

Small and Medium Enterprises

Section 3(2) of the Corporation Tax Act stipulates that a Small and Medium Enterprise Company ('SME') is taxed at the rate of ten percent (10%) for the first five (5) years from its listing on the Trinidad and Tobago Stock Exchange where:

- A minimum of twenty-five (25) unconnected shareholders own a total of at least thirty percent (30%) of the new issued share capital of the company; and
- Capital is raised with the issuance of an initial public offering to be followed by a listing on the Trinidad and Tobago Stock Exchange no more than sixty (60) days after allotment of the issue.

A SME, according to Section 3(3) of the Corporation Tax Act, is a company whose:

- Minimum issued share capital is five million dollars ($5,000,000) and maximum issued share capital does not exceed fifty million dollars ($50,000,000) following the initial public offering;
- Minimum and maximum capital base comprises of issued share capital only and does not include retained earnings and accounts transferred from such issued share capital or retained earnings to a reserved account; and
- Minimum number of unconnected shareholders is twenty-five (25).

Approved Property Development Company

In accordance with Section 16(1) of the Corporation Tax Act, an Approved Property Development company is entitled to a deduction of fifteen percent (15%) of the capital cost of any building constructed by it and proved to the satisfaction of the Board of Inland Revenue to have commenced:

i. before 31/12/2005 and completed on or before 31/12/2007; or

ii. on or after 01/01/2008 and is completed on or before 31/12/2014.

That is to be used for commercial or industrial purposes by it, a purchaser or a lessee. Where the period of construction extends over more than one (1) year of income, per section 16(2) of the Corporation Tax Act, the deduction shall be allowed in the year of income in which the building is completed. Section 16(3) of the Corporation Tax Act provides that where part only of the building is to be used for commercial or industrial purposes the deduction may, according to the extent of its non-commercial or industrial use, be pro-rated.

Incentives to Hotel and Tourism

Industries

With a view to encouraging the development of the hotel industry in Trinidad and Tobago and to stimulate tourism development generally, the Tourism Development Act Chapter 87:22 provides incentives to both Hotel Owners and Hotel Operators.

A summary of the major incentives:

- Tax exemption for a period not exceeding seven (7) years in respect of profits from an approved tourism project;
- A tax exemption on profits derived from the initial sale of a villa or condominium, or the site of a villa or condominium that forms part of an Integrated Resort Development which is an approved tourism project;
- An accelerated depreciation of depreciable equipment owned by the owner or operator and used in an approved tourism project;
- A capital allowance in respect of approved capital expenditure incurred by the owner or operator in the creation of a new tourism project of in the expansion of an existing tourism project;
- Carry-over of losses arising out of the operation or renting of an approved tourism project during the tax exemption period. Such losses may be set off against future profits of the operator or owner;

- A tax exemption on dividends paid out of gains or profits where the recipient is a non-resident shareholder who is a national or a non- resident shareholder who is not a national and who is not liable to tax in respect of that dividend in the country in which he is resident;
- A licence to an importer to import vehicles exempt from motor vehicle tax, for use in an approved tourism project,
- Customs duty at the rate of ten percent (10%) where a license is obtained for importation of vehicles under the Act; and
- Customs and Excise Duty Exemption on building materials not otherwise exempt, and articles of hotel equipment to be used exclusively in connection with construction and equipping of a hotel project.

The details of the incentives must be gleaned from a study of the legislation. It should be noted that there are specific investment criteria to qualify for incentives under the legislation. Some areas of tourism are specifically reserved for nationals. Some of the areas of investment are:

Types of Tourism Projects

- Accommodation Facility;
- Marina, Boatyard;
- Recreational Space;
- Convention Centres, Shopping Facilities;
- Historical Landmarks, Heritage Sites;
- Theme Parks/Cultural Centres; and
- Golf Courses.

An application to be licensed as an approved tourism project must be made to the Corporation (the State Authority to which the responsibility for tourism in Trinidad and Tobago is assigned) and if in Tobago, the Corporation shall submit the application to the Tobago House of Assembly for recommendation, together with a proposal for the tourism project containing information as prescribed by the Act. Note that in order to obtain benefits as an approved tourism project, the project shall:

- In relation to international investors, have a minimum capital expenditure as outlined in the Act;
- be constructed or undertaken primarily for use in the tourism industry; and
- be available on a continuing basis for use in the promotion of Trinidad and Tobago as a tourist destination.

Investment in the Oil Sector

Under the Petroleum Taxes Act Chap. 75:04 governing the Petroleum Profits Tax, several incentives are available, including:

- Initial allowance on expenditure of 50%;
- First year allowance on expenditure of 30%;
- Second year allowance on expenditure of 20%;
- Annual allowance on tangible expenditure of 20% calculated on a straight-line basis in respect of any unrelieved balance of expenditure;
- Expenditure on the development of a dry hole shall, with the Minister's approval, be written off in the financial year in which the dry hole is plugged and abandoned;
- Work-over, maintenance and repair work (on completed wells and qualified side-tracks) deductions covering all costs other than tangible cost incurred;
- Heavy oil allowance - sixty percent (60%) for the financial year in which the expenditure is occurred; and eighteen percent (18%) of such expenditure for each of the next five (5) years; and

- Capital allowances of up to one hundred and forty percent (140%) of expenditure (in calculating taxable profits) incurred between January 1st 2013 to December 31st 2017 in respect of the drilling of exploration wells in deep horizon on land (exceeding a true vertical depth of 8,000 feet) or in shallow marine areas (exceeding a true vertical depth of 12,000 feet) where such exploration has been certified by the Minister in writing, but not including expenditure incurred in respect of an exploration dry hole, finance, administrative and other indirect costs.

These allowances are claimed on the entity's tax returns:

- Signature bonuses for the award of a production sharing contract or on issue of an Exploration and Production Licence may be capitalized and amortised on a straight-line basis over five (5) years; and
- Production bonuses are deductible whenever payable.

Further incentives are available in relation to Supplemental Petroleum Tax ('SPT'):

- In computing SPT, an allowance equal in amount to the royalty including over-riding royalty paid on crude oil in respect of which gross income is derived is deductible from gross income;
- Tax credit of twenty percent (20%) of qualifying capital expenditure on:
    - Approved development activity in mature marine or land oil fields; or
    - Acquisition of machinery and plant for use in approved enhanced oil recovery projects.
- The SPT tax rate is computed by discounting twenty per cent (20%) of the tax rate in relation to marine oil fields twenty-five (25) years or older and oil fields with a production level of 1500 barriers or less per day.

Film Industry

There is a production expenditure rebate program providing cash rebates for expenditure accrued while filming in Trinidad and Tobago. The program is administered by the Trinidad and Tobago Film Company ('FilmTT') a state agency under the Ministry of Trade and Industry. National producers are eligible for a 35% rebate on expenditure between TT$100,000 and TT$51,200,000, while non-national producers benefit from a tiered rebate ranging from 12.5% to 35% on expenditure between US$100,000 and US$8,000,000, with an additional 20% rebate available on costs incurred through the engagement of Qualifying Local Labour.

Deductions for Expenditure on Approved Activities

Under the Corporation Tax Act, companies are allowed deductions in determining chargeable income for expenditure in relation to the following activities:

- Training and retraining of employees - up to one hundred and fifty percent (150%) of the reasonably incurred expenses;
- Artistic works including performance arts - actual expenditure subject to a maximum of $3M;
- Granting of scholarships to nationals unaffiliated to a company for accredited and approved tertiary education - the actual expenses incurred;
- Promotion or sponsorship of sporting activities or events or sportsmen - actual expenditure subject to a maximum of $3M;
- Sponsorship by a company of audio-visual or video productions for radio or television for local education or entertainment purposes or reflecting local culture or the incurring of such expenditure by a production company in relation to its own works of such nature - up to one hundred and fifty percent (150%) of the actual expenditure subject to a maximum of $3M;
- Promoting the fashion industry - up to one hundred and fifty percent (150%) of the actual expenditure subject to a maximum of $3M;
- Promotional expenses to create or promote the expansion of foreign markets for the export of architectural engineering, design, quantity surveying or contracting services in connection with the

building industry where performed by a person resident in Trinidad and Tobago for a recipient outside, or the export of goods and agricultural produce manufactured or produced in Trinidad and Tobago and shipped in commercial quantities, up to one hundred and fifty percent (150%) of the actual expenditure.

Concessions under the Income Tax (In Aid of Industry) Act:
Under the Income Tax (In Aid of Industry Act) Chap. 85:04, the annual allowance of twenty percent (20%) is to be calculated on a straight-line basis on the residue of expenditure after deduction of the initial allowance. Under this Act, the following concessions are available to all manufacturing trades:

- Initial allowances of ten percent (10%) of the expenditure on erection of buildings and structures for industrial purposes;
- Initial allowances of ninety percent (90%) on purchase of plant and machinery reduced in certain industries to twenty percent (20%);
- Annual allowances equal to twenty percent (20%) of the expenditure on building structures or five percent (5%) of the expenditure where a person carries on petroleum operations under license issued after 1st January 1970;
- Annual allowances of a reasonable amount for wear and tear on plant and machinery;
- Oil refineries - annual allowances calculated by the manufacturer on one hundred and twenty percent (120%) of the expenditure; and
- Investment allowance for capital expenditure in respect of production business on land equal to one hundred and fifty percent (150%) of the expenditure, that is, twenty percent (20%) in year 1 and twenty percent (20%) in the following five (5) years.
- These allowances are claimed on the entity's tax returns.

Import Duty Concessions
Pursuant to section 56(1)(a) of the Customs Act Chap. 78:01, the House of Representatives passed Legal Notice 217 of 2015, which made full exemption from Customs Duties available from 1st January, 2016 to 31st December 2017 to an applicant who holds a license from the Minister for imports of Machinery and Raw Materials in the following sectors:

- Approved Industry;
- Approved Agriculture, Livestock, Forestry and Fisheries;
- Approved Hotels;
- Approved Mining Purposes; and
- Other approved purposes, e.g., sports and recreational activities for the tourism sector.

Cabinet approval is required for a full exemption and applications are made to the Permanent Secretary, Ministry of Finance. In the Manufacturing/Assembly sectors, partial exemption from Customs Duties is available for imports as follows:

- Machinery and Equipment - Free or twenty-five percent (-free or 25%);
- Processing Raw Material inputs - zero percent (0%);
- Parts for assembly - five percent (5%).

Exemption from import surcharges is available on raw materials, intermediate goods, packaging materials and other inputs which are not locally manufactured. These are granted by Customs at the port of entry on production of adequate documentation. Stamp Duty on imports has been eliminated.

As of 1st January 2025, the Government of Trinidad and Tobago has extended import duty concessions to facilitate the transition to electric mobility and to promote international sporting standards. Specifically, full exemption from Customs Duty (in addition to Value Added Tax and Online Purchase Tax) applies to electric vehicle (EV) parts, batteries and charging stations. Contemporaneously, a broad range of new

sporting equipment (including but not limited to dumbbells, kettlebells, vaulting horses, javelins, tennis and badminton rackets and balls, skipping ropes, and golf clubs) has likewise been designated for full Customs Duty relief.

Renewal Energy Incentives

- Machinery, equipment, materials and parts for the manufacture or assembly of solar water heaters are exempt from Import Duty; and
- Expenditure incurred on the acquisition of plant, machinery, parts and materials for use in the manufacture of solar water heaters or the acquisition of wind turbines, solar photovoltaic systems or solar water heaters has a wear and tear allowance of one hundred and fifty percent (150%).

Export Incentives

Exporters targeting countries other than CARICOM countries can benefit from the following incentives:

- Non-taxable Market Development grant up to the equivalent of fifty percent (50%) of new market development cost (not applicable to market development in foreign investor's country of domicile). Recipients of this grant must meet the criteria set out by the Export Development Corporation which awards the grants; and
- Tax deductions of up to one hundred and fifty percent (150%) of actual promotional expenses in foreign markets (applicable only to companies incorporated and resident in Trinidad and Tobago). The allowance is limited to the creation or expansion of a foreign market.

Free Zones

The Trinidad and Tobago Free Zones Act 1988 (as amended in 1995) established the Trinidad and Tobago Free Zones Company to promote export development and foreign investment projects in a bureaucracy-free, duty-free and tax-free environment for prescribed activities.

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

- Customs duties on capital goods, spare parts for machinery and raw materials, components of articles for use in the construction and equipping of premises and in connection with the approved activity;
- Import and Export duties, taxes or licensing requirements;
- Land and Building Taxes;
- Fees for Work Permits;
- Foreign currency or property ownership restrictions;
- Corporate, capital gains, withholding and value added taxes; and
- Duties on vehicles for use only within the Free Zone.

Other benefits include:

- Exemption from import licensing, or where goods are being shipped other than to Trinidad and Tobago, an exemption from export licensing.

Exemption from income tax, corporation tax, business levy where:

- the approved enterprise is engaged in the construction, sale, lease, rental and management of a Free Zone as an approved activity;
- the approved enterprise is engaged in manufacturing in a Free Zone, or engaged in activities involving international trading in products, including products originating in countries which are members of the Caribbean Common Market;

- the approved enterprise is engaged in exporting services from Free Zone to a territory other than Trinidad and Tobago;
- Exemption from withholding tax on profits of a branch, dividends and other distributions arising from activities in the Free Zone, remitted or deemed to be remitted by an approved enterprise to a non-resident; and
- Exemption from the requirements of the Foreign Investment Act where (i) a person is seeking to register a company to be established in a Free Zone as an approved enterprise or (ii) a person invests in an approved enterprise established in a Free Zone or holds interest in land in a Free Zone.

Investment opportunities include:

- Development and operation of Free Zones;
- Manufacturing (including downstream petrochemicals) for export;
- International Trading in Products; and
- Provision of Services for export (for example, Information Processing and Financial services).

Applications to operate in a Free Zone are made by way of specified forms submitted to the Trinidad and Tobago Free Zone Company. After receiving a recommendation by such entity, the Minister may by Order designate an area a Free Zone, the limits of which are defined in the Order.

Fiscal Incentives Act

Under the Fiscal Incentives Act Chap. 85:01 benefits are granted to large scale manufacturers falling within one (1) of five (5) classifications under the Act.

To qualify the company must meet the following criteria:

- The company must be resident in Trinidad and Tobago, with the central management and control of its affairs situated in Trinidad and Tobago;
- The company must be a manufacturing enterprise, producing approved products as indicated by not being on the list of products on the First Schedule of the Fiscal Incentives Act, Chapter 85:01 (as amended);
- The company must be declared an approved enterprise under Sections 2 and 8 of the Fiscal Incentives Act, Chapter 85:01 (as amended); and
- The company must contribute towards the Trinidad and Tobago economy in terms of employment, linkages, and investment.

Incentives include:

- Exemption from customs duties on the construction of an approved project;
- Exemption from Value Added Tax (‘VAT’), Corporation Tax; and
- Exemption from Income Tax on dividends or other distribution, other than interest, out of profits or gains derived from the manufacture of the approved product during the tax holiday period.

Double Taxation Treaties and Withholding Tax

Pursuant to the Income Tax Act Chap. 75:01, income arising in Trinidad and Tobago is subject to withholding tax in Trinidad and Tobago up to the rate of fifteen percent (15%). Trinidad and Tobago has entered into several Double Taxation Treaties with several jurisdictions. In some instances, these treaties decrease the withholding tax rate.

Recent Alternative Energy and Energy Related Incentives

During the period 2015 to 2025, the Government of Trinidad and Tobago implemented, among others, the following proposals:

- Tax credit of 25% in respect of persons who purchase bonds issued under the National Tax-Free Savings Bonds Regulations, 1977. The credit is limited to 25% of the face value of the bonds where the maturity period is five, seven or ten years. The credit may also be carried forward;
- No Motor Vehicle Tax applies to new or used Electric Cars with an engine not exceeding 159 kilowatts. imported into Trinidad between 1st January 2015 and 1st January 2020.;
- New or used electric cars for commercial use attract no Motor Vehicle Tax if the engine size exceeds 159 kilowatts but does not exceed 179 kilowatts;

No Motor Vehicle Tax applies to new or used Hybrid Cars with an engine not exceeding 1599cc and an electric motor output not exceeding 105 kilowatts.

- The exemption of all electric vehicle chargers, charging equipment, and related accessories from all duties and taxes, effective 1st January 2025. However, electric vehicles whose Cost, Insurance, and Freight (CIF) value exceeds $400,000 will be subject to 10% duty, 12.5% VAT and a tiered rate of Motor Vehicle Tax.

- The increase of the permissible age for importing used private vehicles, powered by gasoline, diesel or CNG, from three (3) years or less to six (6) years or less from the date of manufacture. Similarly, the maximum age for imported light commercial vehicles has been raised from seven (7) years to ten (10) years. These measures will take effect from 1st January 2026.

Wear and Tear Allowance

Under the Income Tax Act, there is an annual wear and tear allowance of ten percent (10%) of the capital expenditure on the construction of a building or structure or in respect of capital improvements made on or after 1st January 1995. There are also annual wear and tear allowances on plant and machinery. In respect of plant and machinery acquired after 1st January 1995, the concept of pooling of such assets was introduced for the grant of wear and tear allowances. The allowance is calculated at the applicable rate to aggregate expenditure incurred on assets within a particular group on a declining basis.

CHAPTER 4

CHOICE OF BUSINESS OF STRUCTURE

A foreign investor can choose from a variety of structures to pursue an investment opportunity in Trinidad and Tobago. There are a number of factors to be weighed in making this choice, including tax.

In this Chapter Melissa Inglefield, Partner gives an overview of the available business structures, their formation requirements and regulations, as well as the advantages and disadvantages. Some of the contractual arrangements entered into between the different entities, and the limitations set by the law on these arrangements are also discussed.

Additional information regarding Company Law in Trinidad and Tobago is available at https://www.trinidadlaw.com

Options for Business Entity/Structure

A foreign investor has various options available for carrying out its investment activity in Trinidad and Tobago. These include:

- forming a For Profit Company with either limited or unlimited liability;
- forming a Non-Profit Company with limited liability;
- registering a branch of a foreign company;
- establishing a partnership;
- establishing a joint venture; and
- by way of acquisitions and mergers.

Establishing an agency arrangement with a local partner is discussed in Chapter 6. It is important for the investor to determine the most appropriate legal structure to achieve its goals. Frequently, taxation is one of the most important factors but other considerations affecting the choice of business structure include the size and complexity of the proposed operation, the security required by financiers, the cost of complying with statutory requirements and whether limited liability is required or desirable.

Incorporation of a Company

Incorporating a company in Trinidad and Tobago is a relatively straightforward process. An incorporated company is a legal entity separate and distinct from its members. A company has perpetual succession, the ability to enter into contracts, the ability to sue and be sued, and both criminal and civil liability. In the case of a trading company, the most common form is that of a company limited by shares. Shareholders may elect to have either limited or unlimited liability.

Limited Liability Company

Where a company is limited by shares, the liability of each shareholder for debts or expenses (in the event of winding up) will be limited to the unpaid amount on his shares (since unpaid shares are now not permitted for new companies under the Companies Act, this is no longer a significant issue). Former members who have not been members for more than one (1) year are excluded from liability.

This is a common type of business structure with well-developed statutory and case law support which provides a foreign investor with a level of certainty of the outcome of any disputes. For foreign investors seeking to strengthen their commercial presence and operations in Trinidad and Tobago, incorporating a local subsidiary may create the impression that the company is rooted locally. This, in turn, may lead to

greater acceptance in the local business environment, especially when compared to a foreign company operating through an agent.

Other main advantages of incorporation of a company are:

- Option of limited liability to the shareholders;
- Ease of transfer of control;
- Perpetual existence;
- Familiarity of business community and public sector with this business form;
- No minimum capitalization requirements.

Disadvantages of Incorporation

The Companies Act imposes formal procedural rules in addition to corporate record keeping and reporting requirements. These requirements, e.g. filing of Statutory Notices of Change of Directors, Secretary and Address, and maintaining of the requisite Statutory Registers, can make the company relatively expensive to administer when compared with other structures.

Furthermore, there are statutory compliance duties with sanctions for non-compliance. Pursuant to the provisions of the Companies Act, it is an offence to file statutorily required corporate documents beyond the time prescribed by the Act, and these penalties have been stringently enforced within recent times. With respect to all late filings except the change of registered address and execution or termination of a unanimous shareholders agreement, the fine imposed after 30 calendar days from the due date of filing is $300.00 every 30 days. With respect to the change of registered address, it is $300.00 for every 15 calendar days not filed and for the execution or termination of the unanimous shareholder agreement, $100.00 for every month, after the fifteen days that the company fails to file the notice.

Forming a Limited Liability Company

The name of a proposed company with limited liability must include the word ‘Limited’ or ‘Ltd.’ and be approved by the Registrar of Companies in advance. The Companies Act requires the preparation and registration of Articles of Incorporation which are the constitutional instruments of the company, together with other statutory forms. Thereafter the Registrar of Companies issues a Certificate of Incorporation.

The Articles of Incorporation are required to set out:

- its proposed name;
- whether the members’ liability is limited or unlimited;
- whether it is a public company;
- the number of directors;
- its classes of shares; any maximum number of shares in each class that the company will be authorized to issue;
- whether the right to transfer shares is restricted;
- whether pre-emptive rights are to be varied and nature of such variations;
- whether the power of directors to make, amend or repeal the Bye-laws is restricted;
- number of intended employees;
- the main area of business activity;
- any restrictions on the business that the Company may carry on; and
- whether it is a non-profit company.

The shareholders of a Company are permitted to enter into a Unanimous Shareholder Agreement which may not only govern the relationship between the shareholders, but also restrict in whole or in part the power of the directors to manage the affairs and business of the Company. The Shareholders’ Agreement can allocate these powers of the directors to the shareholders. In such cases, the shareholders will have all the rights and liabilities of directors to the extent of such restriction and to the same extent, the directors

will be relieved. Where there is such an agreement, written notice of its execution or termination must be filed in the Companies Registry.

Non-Public Companies
With respect to non-public companies (whose shares/debentures are or were not part of a distribution to the public), the following characteristics also apply:

- Minimum of one (1) shareholder; no maximum number of members;
- Shares may be allotted once the certificate of incorporation is received;
- Minimum of two (2) directors; and
- A shareholder's right to transfer shares can be restricted.

This may be contrasted with a public company which must have no fewer than three (3) directors, at least two (2) of whom are not to be officers or employees of the company or any of its affiliates. A director may be an individual or a body corporate, and there are no specific requirements regarding the nationality of directors appointed.

Further, under the Foreign Investment Act Chap. 70:07 ('FIA'), a foreign investor is effectively any corporation incorporated outside of CARICOM (members of the Caribbean Community States) or, even if so incorporated, owned and controlled by a person(s) who are not citizens of CARICOM. Prior to the acquisition of the Shares in a non-public company incorporated in Trinidad and Tobago, it is required to supply a notice of such proposed acquisition to the Minister of Finance and setting out certain statutorily prescribed particulars.

Capitalisation Requirements and Liability of Members
There are no prescribed minimum share capital requirements or debt/equity ratio for a company and a single shareholder company will be permitted. A company affords a convenient facility for securing the requisite capital as well as providing creative ways for profit-sharing among shareholders.

A company is required to maintain a 'stated capital account' for each class and series of shares it issues to which it is required to add the full amount of the consideration for its shares.

In the event of a winding-up, every present or past member is liable to contribute to the assets of the company to an amount sufficient to pay its debts and expenses, and to adjust rights as between past and present members except that:

- a past member who has ceased to be a member for over one (1) year before the commencement of winding up is not so liable;
- a past member shall not be liable to contribute for any debt or liability of the company contracted after he ceased to be a member;
- a past member is not liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made;
- no contribution is required of a past or present member exceeding the amount unpaid, if any, on his shares or the amount undertaken to be contributed in the event of winding-up; and
- any sums due by the company to the member or past member in his character as member, shall not be set-off against the amounts for which he is liable to contribute but any sums shall be taken into account for the purposes of final adjustment of the rights of the members and past members amongst themselves.

Charges
If a locally incorporated company creates a charge on a property situated in Trinidad and Tobago, or if it acquires such property already subject to a charge, the charge must be registered with the Registrar of Companies within thirty days and a register of such charges must be kept at the Registrar. The consequence

of failure to register such charges is that any security on such property conferred by the charge is void against a liquidator and any creditor of the company so far as any security interest thereby purported to create is concerned. However, the charge is valid against the company even if it is not registered and consequently a person who acquires property from a chargee before the company is wound up acquires a good title against the liquidator and the company's other creditors.

Establishment of a Branch

An external company is one where the incorporated body is formed other than under the Laws of Trinidad and Tobago. In other words, a branch of the foreign company will be registered at the local Companies Registry. Registering a branch will increase and strengthen a foreign investor's commercial presence in Trinidad and Tobago.

Within fourteen (14) days after an "external" company has established a place of business, it is required to register at the local Companies Registry. In order to effect registration, a company is required to file with the Registrar of Companies the following documents:

- The Charter, memorandum and articles or other corporate instruments defining the constitution of the Company;
- An affidavit or solemn declaration verifying the accuracy of the corporate instruments;
- A Power of Attorney in favour of a locally incorporated company, or two (2) or more persons resident in Trinidad and Tobago empowering them to accept service in Trinidad and Tobago of legal process and notices;
- A statutory declaration by an attorney at law;
- The prescribed fees; and
- Particulars in relation to its incorporation, its share capital, address and directors.

A branch office of an external company is required to file with the Registrar of Companies an annual return within thirty (30) days of the anniversary date of its registration. Any changes of directors or alteration in its constitutional documents or objects or restriction of its business must be filed within thirty (30) days of such change.

It is relatively simple to set up a foreign branch office. However, there may be tax disadvantages for trading branches. The branch and the local subsidiary both pay corporation tax at the same rate. A non-resident company is liable for corporation tax on income arising or derived from any trade or business carried on by it in Trinidad and Tobago. The local subsidiary has a distinct advantage over a branch in relation to the ability to obtain the fiscal benefit of a tax holiday under the Fiscal Incentives Act Chap. 85:01.

The after-tax profits of a branch, whether or not remitted abroad, are deemed to be distributed and repatriated and subjected to withholding tax to the extent that they are not re-invested to the satisfaction of the Board of Inland Revenue ('BIR') other than in replacement of fixed assets. Profits of a locally incorporated or resident company, on the other hand, are subject to withholding tax only to the extent of actual remittances abroad as dividends. Residence for tax purposes is where the central management and control takes place. In other words, by deferring the time of declaring dividends the local subsidiary can defer the withholding tax to be paid by its parent shareholder, which can be advantageous to companies that do not want immediate use of the dividends.

Overseas Head Office charges for payments that are directly related to the branch are deductible for tax purposes, subject to a limitation on the deductibility of such expenses. Subject to the above, the taxable profits of a branch of a foreign company in Trinidad and Tobago are calculated similarly to those of a locally incorporated company. As with locally incorporated companies, if a foreign branch office creates a charge on a property situate in Trinidad and Tobago, or if it acquires such property already subject to a

charge, the charge must be registered within thirty days with the Registrar of Companies and a register of such charges must be kept at the Registrar. Failure to so register the charges has similar consequences.

Partnership

The Partnership Act Chap. 81:02 provides for the creation of partnerships, where the parties carry on business with a common view to making a profit without incorporation. In the absence of an agreement to the contrary between the parties, the Partnership Act will govern many aspects of the business of the partnership and the relationship between the members. The parties will often enter into a partnership agreement, which is designed to avoid some of the implications of the Partnership Act and specifically exclude or vary the interests, rights and duties of the partners. A partnership agreement may be oral, written (best practice), or implied from the parties' conduct.

In Trinidad and Tobago, a partnership is not a separate legal entity in law, and partners have joint and several unlimited liability for all debts and obligations of the partnership. Even the unauthorised action of one partner may bind other partners to third parties as the law regards each partner as an agent of the others. On winding up of the partnership, each partner must pay his respective share of the partnerships' debts.

There can be a partnership between individuals, or between individuals and companies, and between two (2) or more companies. There are no accounting, auditing or disclosure rules regarding partnerships. Limited liability partnerships are not an available vehicle for effecting business in Trinidad and Tobago. Partnerships have fewer formal requirements than a company. They are relatively easy to dissolve and wind up, unlike a company which is more complex to liquidate. However, there are certain characteristics of a partnership that can be inconvenient compared to a company. For instance, the partners have a fiduciary duty to act in good faith vis-à-vis the other partners and the partnership. Also, subject to provisions in the partnership agreement (if one exists), the addition of a new partner may require dissolution and liquidation of the partnership.

Joint Venture

The parties to a joint venture may wish to structure the arrangement as a joint venture Company, a Partnership Agreement or a purely contractual arrangement in the form of a Joint Venture Agreement. In order to do so, the participants should contemplate the options and depending on the circumstances select the option that will create the most appropriate vehicle. Factors that govern this determination include that parties want to:

- select the option that affords them the most effective taxation and financial structure;
- minimise the joint venture parties' risk or exposure.

Where a Partnership Agreement or a purely contractual arrangement is selected by the parties to a joint venture, this is usually in respect of an isolated short-term operation. Where an ongoing operation is envisaged, it is normal to form a joint venture company.

In a joint venture conducted through the vehicle of a separate legal entity, the form of articles or by-laws will depend on the arrangements made between the parties. The form of articles or by-laws may be a combination of the following:

- Majority shareholders with no provision being made for minority protection;
- Deadlock arrangements where the company's actions require unanimous agreement between the parties. In the event of disagreement, the parties may make arrangements for one party to buy out the other or for the Company to be dissolved; or
- Minority shareholders who insist on some minority protection, usually veto on certain key topics. Often this is achieved by creating different classes of shares. A minority shareholder may also include a 'piggy-back' option to be bought out in the event that the majority shareholder elects to sell his shares to a third party.

Alternatively, a joint venture company may use standard articles which are then subject to the terms of a joint venture/shareholder agreement setting out in detail the arrangements between the parties. In using this method, a greater amount of privacy is retained between the parties. Regardless of the specific form selected, certain considerations are vital to the success of a joint venture, including:

- The nature and duration of the transaction, and the goals of the parties to the joint venture;
- Selecting a suitable joint venture partner in terms of having compatible goals and complementary characteristics. It is often advisable to conduct due diligence investigations and be familiar with the operations of the proposed partner;
- Financing and financial management - the amount and type of financing, respective financial contributions of the parties, limits to the financial commitment of the parties, and the recourse of the other participants where one participant fails to join in future financing;
- The proportions of respective parties' interest;
- Organising and preparing for the eventualities that may affect the joint venture;
- Whether there is to be any restraint on competition;
- Confidentiality amongst the joint venture parties;
- A dispute resolution process for disputes arising among the parties, particularly at the management or directorship level; and
- Exit from the joint venture - address the various types of events of default and how these are to be dealt with.

Beneficial Ownership Compliance

The Companies (Amendment) Act 2019 (the 'Amendment Act') was proclaimed in its entirety as at 30th May 2019. This Amendment Act serves to amend the Companies Act with the primary objective of "unmasking …beneficial ownership" of companies. The Amendment Act seeks to achieve this in two ways:

- By prohibiting the issue of bearer shares, bearer share certificates, share warrants and bearer share warrants by companies incorporated, or by companies registered as external companies, in Trinidad and Tobago; and
- By ensuring that the ultimate beneficial owners of a company are disclosed and recorded in a company's records and in the records of the Companies Registry.

The most significant and critical change introduced by the Amendment Act is the disclosure and reporting regime now in place in respect of the beneficial ownership of interests in a locally incorporated company. This regime places obligations and criminal penalties for failure to comply with those obligations on: (a) beneficial owners; (b) shareholders; and (c) all companies incorporated in Trinidad and Tobago (and their directors and senior officers), save and except for public companies which are exempted from the obligations relating to disclosure of beneficial ownership set out in the Amendment Act.

Some of the most significant obligations imposed on beneficial owners, shareholders and local companies (including their directors and officers) include:

- an obligation on each local company to determine the identity of, and obtain certain information in relation to, all persons holding a beneficial interest in such company. In order to assist companies in identifying their beneficial owners, the Amendment Act requires companies to issue a notice once annually to its shareholders requiring that certain information be submitted by each such shareholder.
- an obligation on persons who previously held beneficial ownership in a local company to submit a declaration to such company where there has been a change of beneficial ownership.
- an obligation on beneficial owners and shareholders of a local company to submit a declaration to such company upon receipt of a notice from such company and, in the case of beneficial owners, upon becoming a beneficial owner of the company. Such declaration must disclose the nature of his/her/its interest in the company; and information surrounding the legal holder and the beneficial owner of the shares.

- an obligation on a local company to file returns with the Companies Registry in respect of, and to maintain a register of beneficial owners which records declarations received from shareholders or beneficial owners.
- an obligation on a local company to file a return with the Companies Registry in respect of the issue or transfer of shares in a local company.

Each of these obligations are required to be completed within prescribed timeframes. Where a person fails to comply with its obligations, the Amendment imposes strict monetary and criminal penalties, making an offender liable on summary conviction to (1) a fine of $10,000 and a further fine of $300.00 for every day in which the offence continues; and (2) to imprisonment for 3 years. Where a company is liable, each director and officer of the company will also be liable for such penalties.
Notably, failure to make the required declaration will result in the beneficial owner being prevented by law from enforcing is or her rights of ownership in respect of his/her share(s), save for his/her rights to dividends which is preserved under the Companies Act.

Acquisitions and Mergers
The acquisition of an existing business is most commonly achieved by the purchase of shares in an existing local company. As the change of ownership in the shares does not generally affect the target company's assets and liabilities, it is important that the investor conducts in-depth due diligence inquiries and incorporates in the share purchase agreement extensive warranties and indemnities so that it can recover an appropriate part of the purchase price if the company proves to have liabilities or other deficiencies which were not anticipated. Further, the transfer of shares in a non-public company will be subject to stamp duty at the rate of $.5 per $1000 or 0.5% of the higher of (a) the market value and (b) the consideration for the transfer. No stamp duty is applied to the trading of shares of a public company on the Stock Exchange. In the case of a public company trading shares off the Stock Exchange, stamp duty will be charged at the rate of 5%.

As the employees constitute one of the most important elements in a take-over, an investor will want to ensure that any pension scheme operated by the existing business is properly funded. An acquirer must also consider whether the company's employees are unionised and whether there are pending claims by employees for severance, wrongful dismissal or other employment-related matters. Additionally, the investor will generally wish to restrain the vendor from carrying on a competing business in the immediate future following a sale. It should be borne in mind that the ability to carry forward losses for tax purposes may not be available after the acquisition of the shares in the target company as the BIR has the discretion to disallow such claims in certain circumstances.

Other key considerations include whether there are pending legal claims and ensuring that the company is in compliance with the local regulatory regime, especially environmental and occupational health and safety laws. Such claims and non-compliance can significantly impact a target company's finances and operations. Where shares are listed on the Stock Exchange, specific requirements under, the Companies Act, the Foreign Investment Act and the Securities Industry (Take-Over) By-laws 2005 will apply and will have to be taken into consideration in a take-over. There are no anti-trust laws limiting acquisitions, but the Government has expressed an intention to introduce anti-monopolisation legislation. Under the Companies Act, a substantial shareholder of a public company is required to notify the company of such acquisition within fourteen (14) days after he becomes aware that he is a substantial shareholder.

Alternatively, the acquisition of a business may be achieved by the purchase of the assets including the goodwill of the business. The assets purchase agreement will incorporate warranties relating to the business and the assets, though less extensive than in a share purchase, as the investor will only be liable for those liabilities expressly assumed by it and need not warrant against unexpected liabilities of the business. Where after the sale the business is conducted primarily with the same employees and conducting the same

business, it will be treated as a successor organisation and therefore will be liable for termination benefits which accrued to employees prior to the take-over, unless this is settled by the vendor at time of the sale.

It is important to bear in mind that as from the date of the asset purchase agreement, risk in the assets being purchased passes to the investor and accordingly arrangements must be made to transfer the benefit of insurance cover. The allocation of the purchase price between trading stock and fixed assets can be an issue of primary concern as the vendor will generally wish to ensure that as much of the purchase price as possible is treated as a capital gain while the preference of the purchaser tends towards allocating the expenditure to trading stock.

The Value Added Tax ('VAT') Act Chap. 75:06 provides that on the transfer of assets of a business as a going concern, only the sale of stock-in-trade gives rise to VAT, the transfer of other assets being VAT exempt. On the closure of a business the disposal of assets other than real property attracts VAT.

Tax Considerations

As indicated, taxation in general may be one of the more important factors determining the final structure of the enterprise. Tax issues are addressed in greater detail in Chapter 7: Taxation.

CHAPTER 5

TRADING AND COMPETITION

A foreign investor needs to be aware of the prohibitions on unfair competition in Trinidad and Tobago.

Unfair competition may arise through the dumping of goods into the local market, or through unfair competitive practices conducted by dominant business enterprises. Legislation has been introduced to afford a remedy to local manufacturers who face unfair competition in the form of (1) imports of dumped or subsidized goods where the local manufacturer suffers material injury caused by such imports; and (2) anti-competitive practices. Fair Trading legislation has been introduced to promote and maintain effective competition; however, much of this legislation has not yet come into force, but will only require proclamation by the President, and as such, can be brought into force at practically a moment's notice.

This chapter presents an overview of the legislative controls and restrictions on unfair competition.

Anti-Dumping

Dumping and Subsidy Defined
Dumping occurs where a foreign entity exports into Trinidad and Tobago goods at a price which is lower than the price it would normally charge for the same goods in its own domestic market.

A subsidy is deemed to exist where a foreign government or public body provides a financial contribution to an entity which exports to Trinidad and Tobago, thereby affecting the price at which such goods may be sold in Trinidad and Tobago.

The act of dumping and the provision of subsidies may have the effect of causing injury to local manufacturers who are unable to compete with the price of goods imported into the country.

Anti-Dumping Legislation
The following pieces of legislation have been introduced in Trinidad and Tobago to combat the effects of such anti-competitive activities:

- The Anti-Dumping and Countervailing Duties Act, Chap. 78:05 (the 'Act');
- The Anti-Dumping and Countervailing Duties Regulations; and
- The Anti-Dumping and Countervailing Duties (Subsidies) Regulations.

The Anti-Dumping Authority
The Anti-Dumping Authority established by the Minister of Trade and Industry pursuant to Section 17(1) of the Act is under a duty to:

- investigate the existence, degree and effect of alleged dumping or subsidisation of goods;
- ascertain whether any imported goods cause or threaten to cause material injury to any industry in Trinidad and Tobago or materially retard the establishment of any new industry;
- identify goods liable for any duty (see below);
- submit findings to the Minister of Trade as to the margin of dumping or the margin of subsidy; and
- make recommendations to the Minister regarding directions and determinations.

Material Injury and Causation
The mere act of dumping or foreign subsidisation is not prohibited. What is prohibited is such action which has caused material (or actionable) injury to the production in Trinidad and Tobago of identical or similar goods by local manufacturers. It cannot automatically be presumed that dumped or subsidised goods are the cause of injury. In fact, the Anti-Dumping Regulations list a number of factors which may cause injury, but which will not be attributable to the dumped or subsidised goods.

Investigations of the Anti-Dumping Authority
The Anti-Dumping Authority may initiate an investigation on its own initiative, or at the direction of the Minister of Trade. The Authority may also receive a complaint in writing, by or on behalf of local producers of identical or similar goods who have been injured by the dumped and subsidised imports. Certain information, as prescribed by the Regulations, must be set out in the complaint. The Authority then decides whether to initiate an investigation.

Before the Anti-Dumping Authority can initiate an investigation, it must satisfy itself that it has sufficient prima facie evidence of:

- dumping or the giving of a subsidy, and of the quantum;
- actionable injury; and
- a causal link between such imports and the alleged actionable injury.

Imposing Anti-Dumping/Countervailing Duties (taxes)
Where it has been determined that dumping or subsidization has occurred which has caused material (or actionable) injury, as a first step the foreign exporters shall be given the opportunity to cease exporting at dumped prices.

Where the Minister of Trade and Industry on the recommendation of the Anti-Dumping Authority has determined that dumping or subsidisation has occurred which has caused material (or actionable) injury, (and that the foreign exporters have not within thirty (30) days ceased exporting as requested) the Minister may impose certain duties. In the case of dumping, the Minister may impose an "anti-dumping duty"; and in the case of subsidization, the Minister may impose a "countervailing duty".

The rate of the anti-dumping duty shall not exceed an amount that is necessary to prevent dumping, and in any event shall not exceed the margin of dumping. Similarly, the rate of the countervailing duty shall not exceed an amount that is necessary to prevent actionable injury being caused, and in any event shall not exceed the amount of the subsidy given on the goods.

Remedies against Imposition of Duties
A person aggrieved by an order imposing duty may appeal to the Tax Appeal Board. As a body deriving its powers from statute, should the Anti-Dumping Authority fail to comply in material respects with its enabling legislation or the requirements of natural justice, it could be subject to Judicial Review of the exercise of such powers before the Supreme Court on any or all of the grounds of illegality, irrationality or procedural impropriety.

Anti-Competition

Anti-competitive Practices
Anti-competition (also known as antitrust) laws are aimed at protecting trade and commerce from unfair business practices. Such laws have three (3) primary objectives, namely:

- Supervising the mergers and acquisitions of large corporations, to restrain, prohibit or provide limited approval to transactions that are likely to threaten the competitive process;

- Prohibiting agreements or practices that restrict free trading and competition between business entities; and
- Prohibiting abusive monopolistic practices by an entity dominating a market. Such practices may include preventing others from engaging in competitive conduct, exclusive dealing, market restriction, etc.

Anti-Competition Legislation
The Fair-Trading Act, Chap. 81:13 (the 'Act') is aimed at establishing a Fair-Trading Commission, promoting and maintaining fair competition in the Trinidad and Tobago economy, and ensuring that competition is not distorted, restricted or prevented, to the detriment of the community.

Previously, only Parts IV, V and VI of the Act were in operation, having been proclaimed by Legal Notice No. 98 of 2007 with effect from 26th April 2007. Part II was subsequently brought into operation by Legal Notice No. 43 of 2014, effective 31st January 2014. These Parts address the establishment, powers, and functions of the Fair-Trading Commission, the appointment of Commissioners and other key personnel, as well as the financial administration of the Commission.

More recently, pursuant to Legal Notice No. 41 of 2020, Parts I, III, VII, VIII and IX were proclaimed to come into operation on 10th February 2020. These parts cover preliminary matters, core competition provisions (including mergers, anti-competitive agreements or practices and monopolies), judicial powers, the Community Competition Commission, and other miscellaneous provisions. Accordingly, the entire Act is now fully in force.

Prospective Protection against Unfair Trading

Part III of the Act is of particular significance to foreign investors as it prohibits or controls certain mergers, anti-competitive agreements and monopolistic behaviour.

The Anti-Competition Provisions under Part III of the Act are considered below:

- **Mergers:** The Act prohibits all anti-competitive mergers but enables the Commission to grant permission for mergers of enterprises if the proposed mergers are not detrimental to the consumer or to the economy. It also empowers the Commission to take steps for the determination of mergers which have been effected without obtaining permission under the Act. Further, it empowers the Commission to initiate an investigation into mergers for which no permission has been granted.
- **Anti-competitive Agreements:** The Act creates the offence of entering into or giving effect to horizontal agreements or vertical agreements and enables the Commission to agree with businesses which have entered into anti-competitive agreements before the coming into operation of the Act, to phase out and terminate the agreements.
- **Monopolies:** The Act provides that an enterprise has monopoly power in a market if, by itself or together with an inter-connected company, it has sufficient economic strength that would enable it to operate in the market without effective constraints from its competitors or potential competitors. Such an enterprise will be deemed to have abused that power if it impedes the maintenance or development of effective competition in a market. The Commission has the power to initiate an investigation if it has reason to believe that an enterprise has monopoly power in a market and has abused or is abusing that power (only if the Commission is satisfied that the enterprise concerned controls more than forty percent (40%) of the market).

The Fair Trading Commission
Under Part II of the Act, the Commission exists in the form of a company. The Commission may, of its own initiative or by request of any interested person, initiate investigation of suspected anti-competitive

behaviour by business enterprises. It also has the power to make an application to the Court for the determination of any contravention of the Act.

The Act does not apply to the following:

- Combinations of activities by employees for their own reasonable protection as employees;
- arrangements for collective bargaining;
- agreements regarding intellectual property;
- professional associations;
- activities required or authorised by any treaty or agreement to which Trinidad and Tobago is a party;
- companies that fall under the purview of the Telecommunications Authority Act 2001;
- banks or non-bank financial institutions that fall under the purview of the Securities Industry Act 1995; and
- any other business or activity declared by the Minister by Order subject to affirmative resolution of Parliament.

CHAPTER 6

AGENCY, DISTRIBUTORSHIP AND FRANCHISE

Since the liberalisation of the Trinidad and Tobago economy, tariff and non-tariff barriers to the importation of goods and services have been progressively removed. There are a number of ways in which products may enter the country, and a foreign investor needs to be aware of the means by which his goods can be distributed.

This chapter gives an overview of the legal and practical concerns regarding business relations with local entities.

Legal Framework
Subject to what is stated below, there is no specific legislation governing conditions of agency, distributorship, licensing and franchise arrangements. Agreements for the appointment of agents are governed by common law principles by which the parties are virtually free to negotiate the terms of the contract, provided such terms are not illegal or in breach of public policy or otherwise in restraint of trade. There are no statutory restrictions or regulations governing the length of the term of appointment, the period of notice required for termination or the level of commission to which an agent is entitled.

A foreign investor is free to enter into representation, agency, distribution and franchising agreements with local persons. Royalties and commission rates are not regulated and may be freely agreed upon by the parties, although their deductibility for tax purposes by the local representative may be subject to downward adjustment by the Revenue Authorities.

An agent does not acquire any additional rights as an employee beyond those stated in the contract. It is usual to specifically state that the agent is not to be regarded as an employee or partner of the principal. Commercial factors will assist in determining the type of representation most suitable, for instance:

- Where a mass-produced item requiring no specialized skill or input by the seller is involved, a distributorship is most practical;
- Where the product involves highly specialized technology and requires in-depth knowledge or is to be tailored to meet the purchaser's requirements then a greater degree of communication between purchaser and manufacturer is required, and a marketing agent may be the most appropriate representative;
- If, on the other hand, the market is unfamiliar to the manufacturer, it would be prudent to appoint a local distributor who is prepared to take the risk of operating in such a market, and who would be more familiar with the customers' requirements.

Appointment of Agents

Sales Agency Agreement
A typical sales agency agreement would describe the extent of the agent's field of operations and the extent to which the principal accepts limitations on its freedom of action thereby permitting the agent the opportunity to exploit the markets. Such limitation would however be subject to the right to withdraw exclusivity in certain circumstances, for instance, if sales targets are not achieved. The division of responsibilities between principal and agent presents a wide range of possibilities and requires skillful negotiation.

The provisions in a Sales Agency Agreement regarding payments of the agent's commission and accounting between the parties should be drawn to minimise their tax liabilities including the expenses of VAT and to take advantage of applicable double taxation treaties.

Marketing Agency Agreement
The form and content of this agreement will be similar to the Sales Agency Agreement. However, in the Marketing Agency Agreement, no authority is vested in the agent to contract on behalf of the principal and therefore his function stops short of signing contracts and accepting orders.

In an appropriately drawn Marketing Agency Agreement, an overseas supplier will not be deemed to be trading within Trinidad and Tobago with the consequence that he incurs no liability to Trinidad and Tobago tax on sales of the product. Consequently, it is important that the structure of the relationship be arranged in such a way as to minimize the tax liability.

Registration of Agency Contract
While there is no general legislation regulating commercial agency, distributorship, licensing or franchise arrangements in Trinidad and Tobago, attention should be drawn to the Registration of Local Agents of Foreign Governments or Foreign Enterprises Act, Chap. 19:08. This Act requires an agent carrying on business on behalf of a foreign government or a foreign enterprise to ensure that the contract is in writing, is subject to the laws of Trinidad and Tobago, and that a copy is lodged with the Board of Inland Revenue (BIR) within sixty (60) days of execution of the contract. In addition, the Agent must register with the Registrar General. The Agent must also make a declaration that there is no other contract between the parties, and this declaration is also lodged with the BIR. Where there is no written contract or where the contract is not subject to the laws of Trinidad and Tobago, the penalty on summary conviction is a fine of TT$20,000 and imprisonment for five (5) years. In practice, the Act appears not to be actively enforced by the authorities, but its requirements remain in force and should be observed where applicable.

Distributorship
In appointing a distributor, the terms dealing with the extent of the territory of the distributor, the extent of his protection from competition from products supplied by the manufacturer to others, and the limits on the distributor's freedom to supply outside the specified territory will be the essence of the distributorship agreement. The supplier normally uses a distributor when it wants to enter into a new market with which it is unfamiliar. The terms of the agreement may also specifically address minimum sales targets, passing of risk, training and familiarization of the distributor with the product, after sales maintenance service (depending on the product), termination of the agreement and consequences of termination, for example, disposal of stock upon termination.

In the absence of specific terms addressing termination, a term which is usually implied is the one requiring the provision of reasonable notice of termination in accordance with public policy considerations regarding restraint of trade and the unfair contract terms provisions. This is however based on common law principles of contract because the Unfair Contract Terms Act Chap. 82:37, presently in force, does not address the issue.

It is common to find that the distributor holds stocks of the products, but this is not essential. In the absence of a provision addressing the disposal of stock on termination whilst the distributor will not be entitled to any specific compensation he may generally be entitled, under common law principles, to any stock ordered and paid for prior to termination but not yet received. The distributor may even be able to claim for a reimbursement from the manufacturer in lieu of any stock ordered.

The same principles regarding taxation apply to a Distributorship Agreement as for a Marketing Agency Agreement, and therefore the agreement and the relationships should be so structured as to minimize the tax liabilities of the parties.

Franchising

There are an increasing number of franchises in Trinidad and Tobago. Franchise agreements generally entitle the franchisor to exercise continuing control over the way in which the franchisee carries on the franchise business and will usually oblige the franchisor to provide the franchisee with advice on such matters as location, training, advertising, sources of supply for products and equipment, negotiation with suppliers and financial management. In consideration of the rights so granted and the continuing advice and support given, the franchisee agrees to pay to the franchisor a continuing royalty on gross sales and often agrees to purchase products and services exclusively from the franchisor. The Franchise agreement will also grant to the franchisee certain rights of use with respect to the Franchisor's trademarks and/or business names. In certain Franchise agreements, the Franchisee is also charged with the responsibility of registering the Franchisor's trademarks, logos and business names in the territory where the franchise is being operated.

As an alternative to direct franchising, the proprietor of a franchise system may by means of a Master Licence delegate responsibility of recruiting, appointing and supervising franchisees to a master franchisee in Trinidad and Tobago.

Generally, royalty payments payable to non-resident franchisors will be subject to withholding tax. The rates are based on the country of residence of the franchisor and the applicable double taxation treaty (if any) between Trinidad and Tobago and that country. If there is no treaty, the statutory rate of withholding tax applies. The current rate is 15%.

Intellectual Property

An important consideration that should be addressed by every prospective investor is the issue of the ownership and control of intellectual property rights that may be associated with the proposed business activity. This issue should encompass the legal and regulatory regime relative to trademarks, service marks, patents, copyrights and trade secrets. For further details about the intellectual property regime in Trinidad and Tobago, see Chapter 8.

Restraint of Trade

In drafting agency, distributorship, licensing and franchise agreements, the common law doctrine prohibiting covenants in restraint of trade should be borne in mind. Under this doctrine such covenants are *prima facie* unenforceable at common law as being in breach of public policy and enforceable only if they are reasonable with reference to the parties concerned and not injurious to the public interest. If covenants are drafted in a manner that permits severance by the Courts, the offending clauses will be struck out and the remainder of the contract will be enforced by the Courts. The Unfair Contract Terms Act prevents a party from imposing on a consumer a clause which excludes liability from negligence on its part unless the term is justified as being reasonable in the circumstances. It also prevents parties from choosing the laws of another jurisdiction as the governing law of a contract, if the sole reason for doing such is to avoid the provisions of the Unfair Contract Terms Act.

As of 2020, the Fair-Trading Act, Chap. 81:13, has been fully proclaimed and is now in force. The FTA establishes the Trinidad and Tobago Fair Trading Commission and provides the framework for promoting and maintaining fair competition in the market. It prohibits all anti-competitive agreements and practices that distort competition in the market. The Act applies to all commercial activity within Trinidad and Tobago, including agency, distributorship, licensing, and franchise arrangements that may have the effect of substantially lessening competition. Parties engaging in such arrangements must therefore ensure that

contractual terms comply with the provisions of the FTA and the guidance issued by the Fair-Trading Commission.

CHAPTER 7

TAXATION

There are important tax issues which affect all aspects of foreign investment in Trinidad and Tobago, including the very decision to invest and the choice of structure to pursue the investment. As part of the undertaking to improve the conditions for investment, there has been a series of tax reforms including increases in the rate of Corporation Tax.

In this Chapter, Jonathan Walker and Miguel Vasquez, Partners in Hamel-Smith's Dispute and Risk Management Group provides the foreign investor with an overview of the taxes levied in Trinidad and Tobago including deductions, rates and incentives by way of exemptions and allowances. They also describe the reduction or elimination of double taxation by Treaty arrangements.

The Principal Taxes

The principal direct taxes levied in Trinidad and Tobago are:

Business Levy: The business levy is payable quarterly at the rate of 0.6% of the gross sales and receipts of the company in excess of $360,000 per annum. Payments of Corporation Tax are set off against the business levy liability of the company in the following year when returns are filed. The self-employed individual taxpayer is entitled to a tax credit against his business levy liability for a year of income of any payment made in respect of his income tax liability for that year up to a maximum of his business levy liability. There are certain exemptions from the business levy, i.e., the first three (3) years from registration of a company or commencement of a business. In addition, no liability accrues in respect of gross sales giving rise to exempt income or gross sales not exceeding $500,000.00 unless there are reasonable grounds to believe that the gross sales of the company will exceed that amount.

Corporation Tax: A tax at the rate of thirty percent (30%) on the chargeable profits and short-term gains of companies accruing in or derived from Trinidad and Tobago. However, companies engaged in the following activities are charged tax at the rate of thirty-five per cent (35%):

- Financial institutions licensed under the Financial Institutions Act Chap. 79:09;
- liquefaction of natural gas;
- manufacture of petrochemicals;
- physical separation of liquids from a natural gas stream and natural gas processing from a natural gas stream;
- transmission and distribution of natural gas;
- wholesale marketing and distribution of petroleum products;
- long term insurance companies are subject to reduced Corporation tax at 15% of chargeable profits, and
- any other activity prescribed by Order of the Minister of Finance.

Green Fund Levy: A tax on the gross sales and receipts of companies and unincorporated associations at the rate of 0.3%. The rate of 0.15% is imposed on Small to Medium-Sized enterprises for five years following listing. The tax is paid quarterly into a Fund for distribution to organizations and communities for projects which relate to the remediation of reforestation and conservation of the environment. This tax is not a deductible claim by the payer.

Health Surcharge: A tax levied on individuals at two (2) rates based on income:

- $469.99 and under per month - $4.80 per week;

- Over $469.99 per month - $8.25 per week.

Income Tax: Personal income in Trinidad and Tobago is subject to tax on chargeable income at a rate of twenty-five percent (25%) for amounts up to TT$1,000,000.00, and at a rate of thirty percent (30%) on any portion of chargeable income exceeding TT$1,000,000.00.;

Petroleum Profits Tax: A tax at the rate of fifty percent (50%) on the profits earned by businesses in the course of petroleum operations falling under the Petroleum Taxes Act Chap. 75:04, while a reduced rate of thirty-five percent (35%) is applicable to profits from deep water petroleum operations;

Supplemental Petroleum Tax: A tax levied on the weighted average price on the disposal of crude oil. Varying rates are imposed from 0–55%.

Unemployment Levy: A tax at the rate of five percent (5%) on the profits of companies which are subject to the Petroleum Taxes Act;

Withholding Taxes: A tax based on various income payments to non- residents. Rates vary from five percent to fifteen percent (5% - 15%) and may be reduced further by Double Taxation Treaties.

Asset Levy (Commercial Banks and Insurance Companies): A levy of 0.25% is to take effect from January 1st 2026 on the assets of commercial banks and insurance companies operating in Trinidad and Tobago. The levy will not apply to financial institutions and insurance companies operating under the Special Economic Zones Act, 2022.

Indirect Taxes

The principal indirect taxes are:
Customs and Excise Duties: A tax at varying rates on imports and manufactured goods;

Financial Services Tax: A tax at the rate of fifteen (15%) on financial transactions with banks, etc.

Motor Vehicles Tax: A tax at varying rates levied on sale of motor vehicles;

Stamp Duty: A tax at varying rates on instruments such as deeds of lease, conveyances, mortgages and share transfers;

Value Added Tax: A tax on imports and on the commercial supply of goods and prescribed services levied at 12.5% of the value of the supply. A commercial supply is a supply made in the course of business for a consideration.

Taxation of Corporations

Under the Corporation Tax Act Chap/ 75:02, corporations or companies include unincorporated associations but not partnerships. Resident corporations are taxed on their world income. Branches of non-resident corporations are taxed only on branch profits. There is a restriction on the deductibility of management charges and Head Office expenses. Branches are subject to withholding taxes on after-tax profits (less investments) whether remitted or not.

Residence is determined by central control and management of the affairs of the company and this is usually, but not necessarily, where the Board of Directors meets to make strategic decisions. Local subsidiaries of non-resident corporations may, themselves, be non-resident if control and management take place abroad.

All expenses wholly and exclusively incurred in the production of a company's income are allowed except where specifically disallowed. Major expenses not allowed are domestic and private expenses, capital expenses and certain payments to non-residents unless withholding taxes have been accounted for and paid over to the Board of Inland Revenue. In computing the tax liability, no deduction is allowed for interest paid unless the recipient is liable to Trinidad and Tobago tax thereon or specifically exempt under the Income Tax Act Chap. 75:01 or some other law.

Other Matters Impacting on the Corporate Tax Situation

Interest is treated as a distribution in cases where it is payable in respect of certain securities of a company, for example:

- securities convertible directly or indirectly into shares; or
- securities issued by a company to a non-resident company of which it is a subsidiary or where both are subsidiaries of a third company.

Certain tax treaties (such as the U.S. Double Taxation Treaty) provide for the reversal, in certain circumstances, of the effect of these provisions so as not to treat such payments as dividends. The consequences of interest being treated as a distribution are that:

- the interest so paid is not a deductible expense for tax purposes;
- the withholding tax rate applicable to such remittances is the rate appropriate to distributions; and
- such interest may only be paid out of profits.

In the case of management charges paid to a non-resident company or person, the deductible amount is normally restricted to the lower of the amount between those charges or two percent (2%) of the paying company's total outgoings and expenses (excluding the management charges and tax depreciation allowances). The withholding tax due on such management charges must also have been paid to obtain any deduction for tax purposes. Management charges include technical fees, head office charges and shared costs charged by head offices, foreign research and development fees.

When business transactions between a non-resident company and a resident company over which it exercises substantial control have been so arranged that the resident company earns no profit from the transactions concerned, or less than it might normally be expected to earn, the Board of Inland Revenue may regard the profit shifted abroad as taxable income of the non-resident company subject to tax in Trinidad and Tobago. The tax is collected from the resident company as if it were an agent of the non-resident company.

The Board also has a general power to disregard any artificial or fictitious transactions that reduce the amount of tax payable by a person and to assess the parties involved accordingly.
The Government has announced its intention to include a transfer pricing regime based on the principles embodied in the OECD (Organization for Economic Co-operation and Development) Guidelines.

Incentives

Incentives take many forms e.g. capital allowances, tax exemptions, or loss reliefs. Under the Income Tax (In Aid of Industry) Act Chap. 85:04 there are capital allowances on industrial buildings and machinery and plant. These take the form of initial allowances on new buildings and structures required for the purposes of the trade of manufacturing or on plant and machinery acquired. The latter is significant and is now ninety percent (90%) of the cost price except for businesses engaged in production of sugar, petroleum

or petrochemicals which receive an allowance limited to twenty percent (20%). There are special provisions for the petroleum sector.

Wear and Tear allowances are granted under the Income Tax Act in accordance with the Seventh Schedule. Various classes of assets receive allowances varying from ten percent to forty percent (10% - 40%) on the aggregate expenditure representing the written down value of the plant and machinery in a year of income. Tax exemptions or reductions under the Customs Act Chap. 78:01 relate to customs duties on imports for the manufacturing industry.

Losses
Operating losses which cannot be set off against profits from other sources for the same year can be carried forward and set off against what would otherwise have been chargeable profits for the succeeding years. Operating losses from trade or business cannot be set off against losses from profession or vocation, management charges or employment income.

Unrelieved losses of one company may not be transferred to, and carried forward by, a new company in the case of a corporate reorganisation. There are rules preventing a company from carrying forward its own losses after ownership of the majority of its shares changes hands, unless the Board of Inland Revenue is satisfied that the change was not for the purpose of avoiding tax.

Subject to several conditions, group relief is available for trading losses suffered by a member of a Group which may be claimed by another member as a set off against its chargeable profits provided that the tax payable shall not exceed twenty-five (25%) of tax if no relief had been granted. The only capital losses relieved are those arising from acquisition and disposal of an asset within twelve (12) months (short- term losses). Such losses can only be set off against future income from a short-term capital gain.

Taxation of Individuals

The individual who is resident and domiciled in Trinidad and Tobago is subject to tax on his world-wide income. In the case of income arising outside of Trinidad and Tobago to persons who are not ordinarily resident or not domiciled in Trinidad and Tobago, tax is payable on the amount received in Trinidad and Tobago; but where the employment or office of such person is exercised in Trinidad and Tobago, gains or profits from such employment are taxed in Trinidad and Tobago whether received in Trinidad and Tobago or not.

Salary and emoluments are subject to a withholding called 'Pay As You Earn' (P.A.Y.E.) which is deducted by the employer at time of payment of salary or other emoluments. Salary of non-residents arising here also attracts P.A.Y.E. but may be exempt under restricted provisions in Double Taxation Treaties. Pension plans, individual retirement plans, savings plans and profit-sharing plans which are not approved by the Board of Inland Revenue under the Income Tax Act do not secure tax benefits under the law for the employee. There is an income tax rate of twenty-five percent (25%) or thirty percent (30%) depending on whether chargeable income exceeds $1,000,000.00, and a personal allowance of ninety thousand dollars ($90,000) for every resident.

Value Added Tax ('VAT')
VAT is a tax of twelve and a half percent (12.5%) on the value of imports and commercial supplies of goods and specified services. The value of goods imported into Trinidad and Tobago is the total of:

- the value of the goods determined according to the Customs Act (c.i.f.); plus
- any duties, taxes (other than VAT) and other charges that are charged and payable upon entry of imported goods.

There are special provisions for re-imports.

Output tax is the amount claimed from a person in respect of tax on commercial supplies made to that person in the tax period. A taxable person is entitled to a credit for so much of his input tax as is allowable. This may be said to comprise tax incurred by him in respect of specified supplies and imports.
All businesses earning a gross income of five hundred thousand dollars ($500,000.00) per annum and over are required to be registered as VAT traders. Registration is with the VAT Office, Board of Inland Revenue. VAT returns are due at the end of every 2-month period (six (6) times per annum) and must be submitted within twenty-five (25) days from the end of the period. The difference between output tax and input tax results in VAT payable or refundable.

Certain services are exempt, e.g. medical, dental, bus and taxi services, education as specified in the Act, real estate, brokerage, residential rents, financial services, betting and gambling, postal services. No credit is given for input tax paid in respect of an exempt service provided. The Act provides a formula to apportion input tax in order to determine the portion applicable to exempt services. Certain items are subject to zero rating - a variety of basic food items, agricultural imports including fertilizers, herbicides and fungicides. Other examples of zero-rated items are: natural gas, crude oil, services supplied for a consideration payable in a currency other than that of Trinidad and Tobago to a person who is neither a resident of Trinidad and Tobago nor within the territory at the time the services were performed.

In the 2025 Budget, the Minister of Finance announced the Government's intention to review the existing VAT system and, if feasible, replace it with a sales tax regime. However, no legislative or administrative measures to effect such a change have been implemented to date.

Stamp Duty
Stamp Duty is levied on instruments of all types, for example, deeds of conveyance, mortgages, debentures, trusts, leases, insurance policies, annuity policies, agreements, and share transfers. The duty is paid at the Board of Inland Revenue and an embossed or machine stamp is affixed to the instrument. The rates vary from twenty-five dollars ($25.00) on a trust deed to four dollars ($4.00) per one thousand dollars ($1,000.00) on mortgages and charges where the loan amount is over $850,000.00 and no conveyance is presented with the mortgage or where it involves commercial and land purposes only. For rates in respect of Residential and Non-residential Transfers, see Chapter 9: Real Estate.

Other Taxes

Custom Duties
These are levied at varying rates on customs entries in respect of imported goods according to their classification in Schedules to the relevant legislation. There are exemptions in relation to specific goods. In all cases the basis is the c.i.f. value of the goods at the time of import.

The rates of Customs Duties (as per Common External Tariff) have been reduced gradually since 1995. Rates vary from zero percent (0%) to forty percent (40%) on specified items. The returns are made on specified forms at the port of entry to the Comptroller of Customs and Excise and goods are released after the taxes are assessed and paid.

Motor Vehicles Tax
Import duties on motor vehicles are imposed by reference to engine capacity. The rates vary from twenty-five percent to forty-five percent (25% to 45%). Public transport and goods vehicles attract a ten percent (10%) rate of duty. As of 2025, new and used electric commercial vehicles (not older than three (3) years) with an engine output of 179 kW or less, new and used hybrid commercial vehicles (not older than three

(3) years) with an engine capacity of 1,599 cc or less and an electric motor output not exceeding 105 kW, and all new and used CNG commercial vehicles (not older than three (3) years) with an engine capacity of 1,599 cc or less are fully exempt from Customs Duties, Motor Vehicle Tax, and VAT. Effective 1st January 2026, Electric vehicles whose Cost, Insurance, and Freight (CIF) value exceeds TT$400,000 will be subject to a ten percent (10%) duty, twelve point five percent (12.5%) VAT and a tiered rate of Motor Vehicle Tax. Tractors for use in agriculture, mobile drilling derricks; carriages for the use of disabled persons, electric and hybrid vehicles of a certain engine size; and firefighting vehicles are some of the vehicles exempt from duty. A transfer fee is imposed on the transfer of used vehicles.

Withholding Taxes

Dividends
While dividends may only be paid out of profits, there are no special capitalisation requirements before a dividend can be paid. A local resident company which receives dividends from a locally controlled company (inter-company dividends) does not suffer any withholding tax and the dividends are not subject to further corporation tax. Withholding tax is levied on dividends paid to non-residents, whether companies or individuals. Generally, the rate for individuals and companies is ten percent (10%), but dividends paid to a company owning fifty percent (50%) or more of the voting power of the company paying the dividends is subject to withholding tax at five percent (5%).

Under the 1995 Double Taxation Treaty between countries which are members of the Caribbean Community (CARICOM), dividends are taxable only in the country in which they arise. The rate of tax is zero per cent (0%).

Interest
Interest paid to non-residents not carrying on a trade or business in Trinidad and Tobago is subject to withholding tax of fifteen percent (15%) whether paid to a company or an individual. Tax treaties may reduce these rates. Interest paid in respect of savings accounts in banks and financial institutions and interest on bonds is exempt where paid to resident individuals.

Other Payments
Several other types of payment to be made to non-residents not carrying on a trade or business in Trinidad and Tobago are subject to a final withholding tax of fifteen percent (15%) whether paid to a company or an individual. Tax treaties may reduce or eliminate the tax. These payments include:

- Royalties;
- Management charges (including charges for the provision of personal services and technical and managerial skills);
- Rentals for real estate and other property;
- Annuities;
- Premiums (other than those paid to insurance companies), commissions, fees and licenses.

Tax Treaties

Trinidad and Tobago has concluded double taxation treaties with Brazil, Canada, China, France, Germany, India, Italy, Spain, Sweden, Switzerland, Luxembourg, the United Kingdom, Venezuela, the United States and CARICOM. The object of the treaties is the elimination of double taxation either by clarifying taxing rights between the states and/or, by providing a tax credit in the country of residence where the income has been taxed at source. As well as containing provisions to alleviate double taxation, the treaties also provide for the exchange of information when this is necessary to prevent fiscal evasion.

The following rates of withholding tax apply to non-treaty Countries:

Individuals: Ten percent (10%) on dividends and fifteen percent (15%) on royalties, interest and other payments;
Companies: Ten percent (10%) on dividends, five percent (5%) to a parent company and fifteen percent (15%) on interest, royalties and other payments.

The result is that these rates are, in many cases, lower than the rates provided in the treaty.

Corporate Tax Planning

Use of double taxation treaties should be considered since these generally override the provisions of the tax legislation. Relief is given by way of tax credits, exemptions or deductions. Some treaties have non-discrimination clauses which have the effect, for example, of precluding assessments of branch profits to withholding taxes. The absence of such a clause, for example, could impact on the business structure, whether to incorporate as a company rather than a branch.

The various incentives to certain sectors e.g. the construction sector and the Income Tax (In Aid of Industry) Act provide assistance in tax planning. To enjoy many of these incentives, the company must be incorporated and resident in Trinidad and Tobago. See Chapter 3: Incentives to Invest, for further information. In liquidation, distributions to corporate shareholders in excess of their paid-up share capital are exempt from tax.

Other factors which impact on the business structure are treatment of interest paid to non-resident parent companies as distributions; lower treaty rates of taxes on interest paid to Banks, local provisions with respect to deductibility of items such as management charges. Management charges are restricted to two percent (2%) of outgoings and expenses (excluding depreciation and the management charge) when paid to a non-resident not trading in Trinidad and Tobago. Provisions prevent deductibility of interest paid to recipients who are not chargeable to tax unless they are exempt by a specific law.

Individual Tax Planning

Resident individuals receive a personal allowance of $90,000 per year. Contributions to approved pension funds and deferred annuity contributions are limited to $60,000 per year. In addition, there are allowable interest claims of up to $30,000 for first time homeowners and $72,000 for educational expenses outside of Trinidad and Tobago (excluding Regional Institutions).

All income from employment is taxable whether received in Trinidad and Tobago or not. In the case of a resident who is neither ordinarily resident nor domiciled, other income arising outside of Trinidad and Tobago is taxed only if remitted here within the year of income. Since a person becomes resident after he is present for 185 days in a tax year, tax planning opportunities may arise.

CHAPTER 8

INTELLECTUAL PROPERTY

Today's commercial environment is one where businesses understand the benefit of maximizing the commercial value of their intellectual property rights. In this chapter, Fanta Punch, Partner in M. Hamel-Smith's Intellectual Property practice group, provides a broad overview of Intellectual Property law in Trinidad & Tobago.

Since June 2000, Trinidad & Tobago has been fully compliant with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) by the World Trade Organisation (WTO). Trinidad & Tobago is also a member of the Madrid Protocol, which entered into force in the country on 12th January 2021. The Intellectual Property Office is the regulating authority which manages all intellectual property rights in Trinidad & Tobago.

Intellectual Property legislation in Trinidad & Tobago governs: -

- Trademarks;
- Patents;
- Copyright;
- Industrial Designs;
- Integrated Circuits;
- Geographical Indication; and
- New Plant Varieties.

Trademarks

Trademarks in Trinidad and Tobago were previously governed by the Trade Marks Act, Chap. 82:81. In 015, this Act was repealed and replaced by the Trade Marks Act, No. 8 of 2015 ('TMA'), which was proclaimed and came into force on 25 June 2020. The TMA provides for the registration of trademarks in respect of goods and services. Variations of a trademark may be registered as series marks thereby garnering protection for each variation but lowering the costs of renewal. Collective trademarks and certification trademarks can also be registered. The former Act continues to apply in relation to licences granted before the commencement of the TMA.

Well-known Marks

There is also protection under the TMA for well-known marks that have not yet been registered. To determine if a trademark is well-known, account is taken of the knowledge of the trademark, including knowledge of the mark in Trinidad and Tobago. Well known marks are protected by preventing other traders from registering marks which are identical with or confusingly similar to the well-known marks as they relate to:

a) identical or similar goods and services; or
b) whose use would indicate a connection between the owner of the well-known mark and the applicant of the confusingly similar mark.

Only the legitimate owner of a well-known mark would be permitted to register the trademark.

Registration

An applicant for a trademark must list the classes of goods and services intended for use with the trademark. A single application may be used for multiple classes of goods and services. At present, the IPO uses the 11th Edition of the Nice Classification to classify goods and services, which includes 45 classes (Classes

1–34 for goods and Classes 35–45 for services). As a result, careful attention must be paid to the selection of classes, particularly when preparing applications based on foreign filings, to ensure compliance with this classification. Applications claiming priority may be filed at the IPO within six (6) months of the filing date of an application for the same trademark in a country that, like Trinidad and Tobago, is a signatory to the Paris Convention.

Duration
Trade and service marks are registered for a period of ten (10) years and may be renewed on application within six (6) months of expiry for an unlimited number of further ten (10) year periods, upon payment of the prescribed fee. While use is not a prerequisite to renewal, a mark may be removed from the Register upon an application by a third party for lack of *bona fide* intention to use the mark and three (3) years non-use, or non-use of the mark for a continuous period of five (5) years.

Infringement
The proprietor of a registered trademark has the exclusive right to use the mark in relation to the specified goods and/or services as well as the right to initiate infringement proceedings against traders using confusingly similar marks.

A party that infringes a registered mark may be prevented from further acts of infringement by way of injunction and may be liable to pay damages to the registered proprietor in appropriate cases.

Assignment
Registered and unregistered trademarks may be assigned with or without goodwill by filing the prescribed forms and upon payment of the requisite filing fee. A trademark may be assigned for all or some of the goods listed in the specification. The Controller has a discretionary power to refuse a request for a trademark assignment if there would be any confusion among consumers in relation to the source of the goods.

An assignment or assent of a registered trademark must be made in writing and signed by or on behalf of the assignor or the assignor's personal representative. Where the assignor or personal representative is a body corporate, the requirement for execution may be satisfied by the affixing of the company's seal. An assignment that does not comply with these formalities is ineffective.

Trademarks which are conditionally accepted for registration subject to an association with other similar trademarks must all be assigned together and not separately, but they are for all other purposes deemed to have been registered as separate trademarks.

License
A licensee of a trademark may be recorded on the Trademark Register as a registered user of the trademark. Use of the mark by the registered user will be deemed to be used by the registered proprietor.
There is no direct requirement for licensing agreements to be registered. A trademark however, may be removed from the Register if it has not been used for five (5) years. If the license agreement is not registered then the licensee's use of the mark will not count as *bona fide* use, and as such the marks will be susceptible to an application for their removal in the event that only the licensee uses the mark and not the proprietor. It is recommended that licence agreements be registered.

Passing Off and Unfair Competition
Unregistered trademarks are protected from unauthorized use partly by the common law action of passing off and by legislation. To prove an action in passing off, the injured party must show that:

a) the unregistered trademark has obtained goodwill and built up a reputation through use;
b) the trademark or a similar mark has been used in the course of trade or business dealings, such use being likely to cause confusion by the general public; and

c) the proprietor of the unregistered trademark has suffered some loss or damage.

Additionally, a party who has done an act which is found to be contrary to honest practices will also be found liable under the Protection of Unfair Competition Act Chap. 82:36 ('PUCA'). Under the PUCA legislation, any act or practice in the course of industrial or commercial activities that causes or is likely to cause confusion with respect to another's enterprise, activities, products or services, shall constitute an act of unfair competition.

The Act lists a number of factors that may cause confusion, including the use of a trademark, whether registered or not; and further states that unfair competition may arise when there is damage or the likelihood of damage to another's goodwill or reputation, or through the dilution of the goodwill or reputation attached to a trademark, whether registered or not. Acts of unfair competition are also those acts that can mislead the public, in particular, in relation to products or services offered and acts that can discredit another's enterprise or activities. The remedies available to a successful party who brought an action for unfair competition would not be dissimilar from those available under the common law, such as injunctions, damages. The disclosure, acquisition or use by a third party of a trade secret without the consent of the person lawfully entitled to the trade secret shall also constitute an act of unfair competition.

A trade secret is defined as any information:

- which is not generally known among or readily accessible to persons who normally deal with such information;
- has commercial value because it is a trade secret; and
- has been the subject of reasonable steps by the right holder to keep the information secret.

Patents

The Patents Act Chap. 82:76 provides that inventions must satisfy the criteria of novelty, inventive step and industrial applicability. An invention is new if it does not form part of the 'state of the art'. 'State of the art' is all matter that was available to the public before the priority date of the invention, by written or oral description, by use or in any other way. An invention is deemed to involve an inventive step if it is not obvious to a person skilled in the art.

Patents will not be granted for:

- A discovery, scientific theory or mathematical method;
- Any literary, dramatic, musical or artistic work or any other aesthetic creations;
- A scheme, rule or method for performing a mental act, a game or doing business;
- Diagnostic, therapeutic and surgical methods for treatment of humans or animals;
- The presentation of information; and
- An invention the commercial exploitation of which would be contrary to public order or morality or which is prejudicial to human, animal or plant life or health, or to the environment, provided that such refusal is not based on the sole ground that the commercial exploitation is prohibited by a law in force in Trinidad and Tobago.

International Priority Applications

Trinidad and Tobago allows for the filing of patent applications claiming priority under the Paris Convention as well as National Phase applications under the Patent Co-operation Treaty (PCT) system.
Under the Paris Convention, the Trinidad and Tobago application must be filed within twelve (12) months of the date of filing of the patent whose priority is claimed;

- Under the Patent Co-operation Treaty (PCT) system, applications for the protection of inventions may be filed through a single international application, with national phase applications for the other countries where protection is sought;

- An applicant must enter the national phase in Trinidad and Tobago within thirty-one (31) months of the priority date of the international application. If an International Preliminary Examination is not requested the applicant must enter the national phase in Trinidad and Tobago within thirty (30) months of the priority date of the International Application.

Duration
The period of protection of a patent is twenty (20) years from the filing date without the possibility of extension. A prescribed annuity fee is payable for each year from the second year, in order to maintain the validity of the patent.

Utility Certificate
Issuance of a utility certificate affords protection to an owner of a useful innovation who may otherwise be unable to meet the criteria for patentability. The criteria for the grant of a utility certificate are:

a) Novelty; and
b) Industrial applicability.

At any time before a patent is granted or before an applicant is notified that his patent is refused, an applicant for a patent may request that his patent application be treated as a request for a utility certificate or that his request for a utility certificate be treated as an application for a patent. A utility certificate is valid for ten (10) years.

Voluntary/Non-Voluntary Licences
A patent or utility certificate may be licensed or assigned by the proprietor. The licence contract must be in writing and may be recorded in the Register. If the licence contract is not recorded, the licence is ineffective against third parties, unless otherwise decided by the Court.

The Patents Act has provision for non-voluntary licences. At any time after the expiration of three (3) years from the date of grant of a patent, or four (4) years from the date of the filing, whichever is later, any interested person may apply to the Court for the grant of a licence under the patent on any of the following grounds, namely:

- That a market for the patented invention is not being supplied; or
- A market for the patented invention is not being supplied on reasonable terms.

A non-voluntary licence is not exclusive; and cannot be assigned otherwise than in connection with the goodwill of the business in which the patented invention is used. It is limited to the supply of the patented invention predominantly in Trinidad and Tobago. An interested party may apply to the Court to terminate the non- voluntary licence, where the circumstances for the grant of the non- voluntary licence have ceased to exist. A non-voluntary licence shall not be granted under the Patents Act unless the person applying for the licence has taken all reasonable steps to obtain the licence from the patentee and has been unable to obtain same. A non-voluntary licence shall not be granted for a patent for an integrated circuit.

Copyright

Original literary, musical, artistic and dramatic works are protected by copyright by the sole fact of their creation irrespective of its mode or form of expression. The original owner of copyright in a work is the author who created the work. If a work is created in the course of employment, the employer is the owner of copyright unless provided otherwise by agreement. There are special provisions, which specify the owners of copyright in works of joint authorship, collective works, audio-visual works and the owners of neighbouring rights in performances, sound recordings and broadcasts.

No formal requirements, such as registration, are necessary to secure protection of copyright. It is however advisable to include a copyright notice on every copy of the published work to give reasonable notice of copyright ownership.

Duration
Copyright is typically protected for fifty (50) years after the death of the author. In some cases, however, the duration of protection may last between twenty-five (25) to one hundred (100) years from the making of the work.

Derivative Work
Copyright protection subsists in derivative works such as translations, adaptations, arrangements and other transformations or modifications of works, collections of works and collections of mere data (databases) and work of mas. Collections of works and databases are granted copyright protection only if such collections are original by reason of the selection, co-ordination or arrangement of their contents. The protection of the derivative work is without prejudice to any protection of a pre-existing work incorporated in or utilized for the making of the derivative work.

Moral Rights
Moral rights are granted to the author, namely, the right to be identified as the author of the work, the right to not have the author's name indicated prominently on the copies and in connection with any public use of the work, to not have his name indicated on the copies and in connection with any public use of his work the right to use a pseudonym and the right to object to derogatory treatment of the work.

Moral rights cannot be transferred during the life of the author. Upon the author's death moral rights may be transmitted by testamentary disposition or by operation of law. Moral rights may be waived in writing by the author provided that the waiver states specifically the right to be waived and the circumstances of the waiver.

Neighbouring rights are granted to various entities for the fixation, broadcast, rental, distribution and reproduction of the work.

Infringement
An action for copyright infringement may be filed before our local courts. The court may grant injunctive relief, impound copies of the infringing works, order forfeiture and seizure of all infringing works, make an award of damages, order an account of the infringer's profits and/or order the destruction of the infringing copies. In respect of the same infringement the court cannot order an account of profits and an award of damages. There are also criminal penalties for copyright infringement for profit-making purposes and the constabulary has special powers to deal with copyright infringement.

Assignment and Licence
Copyright and neighbouring rights are transmissible in whole or in part by assignment, by disposition and by operation of law as personal or moveable property. An assignment of copyright or neighbouring rights is not effective unless it is in writing and signed by or on behalf of the assignor.

A licence granted by the owner of copyright or neighbouring rights is binding on every successor in title to his interest except a *bona fide* purchaser for value without notice (actual or constructive) of the licence or a person deriving title from such a purchaser. The rights of the licensee or assignee are limited to the terms of the relevant assignment agreement. An exclusive licensee has the same rights against a successor in title who is bound by the licence in the same manner as the original licensor.

Industrial Designs

The Industrial Designs Act, Chap. 82:77 affords protection to designs that satisfy the requirements of universal novelty and conformity with public order and morality. Novelty is not defeated by any disclosure by the applicant or his predecessor in title or an unauthorised third party, which occurred one (1) year prior to the filing date or priority date. Priority may also be claimed upon filing provided that an application for the same industrial design was filed in another country that is a signatory to the Paris Convention, within six (6) months of filing locally.

Duration

The duration period of protection is five (5) years from the date of the filing or the priority date. Renewal of the registration is granted for two (2) further 5-year periods upon payment of the prescribed fee.

Infringement

A registered owner may initiate legal proceedings for actual or imminent infringement. The remedies available to a registered owner on request to the court are essentially injunctive relief and damages in appropriate cases. A right holder may apply to the court for relief in the event of actual or imminent infringement. The remedies available are in essence injunctive relief and damages.

Assignment and Licence

The owner of a registered industrial design or an application therefore may assign the design or grant licences in respect of the design. A copy of each licence contract concerning a registered industrial design, or an application, therefore, shall be submitted to the Controller who shall keep its contents confidential but shall record it and publish a reference thereto. An unrecorded licence contract is ineffective against third parties. Similarly, any change in the ownership of the registration of an industrial design, or in the ownership of an application therefore, shall be in writing and shall upon the request of any interested party be recorded and, except in the case of an application, published by the Controller. A change in the ownership shall not be effective against third parties until the Controller has recorded same in the Register.

Integrated Circuits

Under the Layout-Designs (Topographies) of Integrated Circuits Act Chap. 82:79, original layout-designs of integrated circuits are protected against reproduction, importation, sale or other distribution in a commercial setting. A layout-design is original if it is the result of the creator's own intellectual effort and was not commonplace among creators of layout- designs and manufacturers of integrated circuits at the time of its creation.

Provision is made, however, for the protection of a layout-design that consists of a combination of elements and inter-connections that are commonplace but only if taken together as a whole it satisfies the conditions of originality. The right to protection of such a design belongs to its creator or his successor in title. Where two (2) or more persons have jointly created the layout-design, protection shall vest in such persons jointly.

If the essential content of the application for the registration of an integrated circuit has been taken from the layout-design of another person without his consent, that person may, in writing, request the Controller to transfer the application to him. If the application has already resulted in a registration, that person may, within three (3) years from the publication of the registration in writing, request the Controller to transfer the registration to him and to rectify the entry in the Register accordingly.

Duration

The term of protection is ten (10) years calculated either from the date of first commercial exploitation or in the absence of such, from the filing date.

Infringement
A right holder may apply to the Court for relief in the event of actual or imminent infringement. The remedies available are in essence injunctive relief and damages.

Assignment and Licence
A change in the ownership of a protected layout-design is required in writing, and it is advisable that such change be recorded otherwise it will have no effect against third parties. Upon registration of the layout-design, any licence contract concerning a layout-design shall be submitted to the Controller who shall keep its contents confidential but shall publish a reference thereto. The licence contract is ineffective against third parties until such submission has been made.

Geographical Indications

Geographical Indications that are used to designate a product that originates from a particular region and whose quality, reputation or characteristics are essentially attributable to that region are protected under the Geographical Indication Act Chap. 82:78 ('GIA').

Protection is not dependent upon registration although registration would raise the presumption that it is a geographical indication within the meaning of the GIA. A number of exclusions exist, and these are not afforded protection under the GIA. These exclusions refer to those geographical indications that do not correspond to the definition within the Act, those that are contrary to public order and morality and those which have fallen into disuse in their country of origin. Only producers who carry on their activity in the geographical area as specified by registration have the right to use a registered geographical indication, in the course of trade, with respect to the products specified in the Register, provided that such products possess the quality, reputation or other characteristic specified in the Register.

Plant Varieties

The Protection of New Plant Varieties Act Chapter 82:75 provides protection in the form of plant breeder's rights in respect of new plant varieties and related matters. Protection is afforded to a variety provided it is new, distinct, homogenous, stable and given a variety denomination which is acceptable for registration under section 24 of the Act.

Duration
There are three (3) separate periods of protection relative to different species of plants ranging from fifteen to eighteen (15-18) years following the grant of protection. An annual fee is payable for the whole period of protection which shall fall due at the beginning of the calendar year to which it relates and shall be payable by 31st January every year.

Assignment and Licence
An application for the grant of a plant breeder's right may be assigned or may otherwise be transferred. The assignment or transfer shall be in writing and shall be signed by the parties.

An assignment or transfer is registered in the Register on the applicant's request and upon payment of the prescribed fee. No assignment or transfer to a successor in title shall have effect against a third party until after such registration.

CHAPTER 9

PROPERTY TAXES

"Real Estate … purchased with common sense, paid for in full, and managed with reasonable care, it is about the safest investment in the world." - Franklin D. Roosevelt

Whether you are buying or selling real estate in Trinidad and Tobago, there are a number of factors that should be considered at the outset, particularly if you are a foreign investor, in order to ensure that your transaction runs smoothly.

In this Chapter, Melissa Inglefield, Partner and Candice Fleming-Mahadeo, Consultant, both of the Transactional Department provide an overview of the main topics which should be considered when dealing in real estate in Trinidad and Tobago:

1) The provisions in the legislation which permit a foreign investor to acquire land for residential and commercial purposes in:
    a) Trinidad; and
    b) Tobago.

2) The two land title systems governing the ownership of land in Trinidad & Tobago:
    a) Old Law System; and
    b) R.P.A System.

3) The New System of Land Title which the Government proposes to bring into force and the process by which land is transferred under this new system.

4) The procedure involved in transferring real estate including:
    a) Agreements for Sale;
    b) Documents Required;
    c) Searches and Title; and
    d) Completion.

5) Transfer taxes on the sale or transfer of real estate;

6) Property Taxes;

7) The Requirements for Land Use and Development.

Acquisition of Real Estate in Trinidad

In Trinidad, the Aliens (Landholding) Act, Ch. 58:02 was repealed in 1990 and the Foreign Investment Act Chapter 70:07 relaxed the restrictions on ownership of real estate by foreigners and improved the conditions for foreign investment.

A foreign investor, as defined under section 2 (1) of the Foreign Investment Act Chapter 70:07, is:

a) an individual who is not a national of Trinidad and Tobago or another Member State of the Caribbean Community (as established under the Revised Treaty of Chaguaramas);

b) any firm, partnership or unincorporated body of persons of which at least one-half of its membership is held by persons who are not nationals of Trinidad and Tobago or another Member State; or
c) any company or corporation that is not incorporated in Trinidad and Tobago or another Member State or if so, incorporated is under the control of persons to whom (a) or (b) apply or is deemed to be under the control of a foreign investor as outlined in section 2 (2) of the Foreign Investment Act Chapter 70:07.

Generally, the Foreign Investment Act Chapter 70:07 (sections 6 & 7) allows foreign investors in Trinidad (including individuals and companies) to purchase without a foreign investment licence:

- up to one (1) acre of land for residential purposes; and
- up to five (5) acres for commercial purposes.

In addition, a foreign investor may do the following without a foreign investment licence:

- incorporate a private company in Trinidad and Tobago to hold the real estate; or
- acquire all the shares in a private company incorporated in Trinidad and Tobago where the sole asset that the private company owns is real estate once such real estate does not exceed the limit set out above.

The Foreign Investment Act Chapter 70:07 is available for download here, via the website of the Ministry of Legal Affairs. However, the legislation requires that the purchase price for the acquisition by the foreign investor must be paid in an internationally traded currency through a bank or other entity authorized by law as a dealer in that currency. One exception to this is in the case of a purchaser that is a locally incorporated company (but a foreign investor due to its shares being owned by foreign investors), where such purchaser finances the consideration from capital reserves or retained earnings.

Additionally, on the vesting of land, the foreigner must, through his Attorney/Agent, deliver to the Minister of Finance, a Notice specifying the particulars of the transaction, including:

- the foreigner's name;
- address;
- nationality and any former nationality;
- the purpose for which the property is acquired;
- the name and address of Vendor;
- the date and registration particulars of the deed and/or instrument by which he became the owner of the property; and
- evidence of his/her payment in foreign currency.

It should also be noted that the Minister of Finance may by Order prescribe areas in Trinidad in which a foreign investor may not acquire land without obtaining a licence pursuant to section 6(2) of the Foreign Investment Act Chapter 70:07. Currently, however, no areas in Trinidad have yet been identified. Foreigners may exercise the option to acquire either leasehold or freehold title to land sought.

There are additional exemptions under section 8 of the Foreign Investment Act Chapter 70:07, which prescribe those instances where land may be acquired by a foreign investor in Trinidad without a licence; these are as follows:

- on an annual tenancy or for any less interest for the purposes of his residence, trade or business but not exceeding five (5) acres of land in all;
- under an intestacy, or as a beneficiary or executor under a Will, for a period of one (1) year from the date of the death of the testator or intestate, or for such extended time as the President may grant;

- in pursuance of his/her rights to foreclose or enter into possession as a mortgagee for a period of one (1) year from the acquisition of such land or for such extended time as the President may grant;
- as a judgment creditor for a period of one (1) year from the date of his acquisition of the land or for such extended time as the President may grant; or
- jointly with his spouse, where that spouse is a citizen of a CARICOM member country who is resident in Trinidad and Tobago within the meaning of section 5 of the Immigration Act, (Chapter 18:01).

Mortgages are granted primarily upon satisfactory evidence as to the value of the property and the fact that the title to the property is free from all encumbrances. If a foreign investor wishes to purchase land in excess of the stipulated acreages mentioned above, (s)he must apply for a licence from the President of Trinidad and Tobago in order to do so. An application for a licence under the Foreign Investment Act Chapter 70:07 must indicate inter alia the proposed land use and must comply with the controls and restrictions of the relevant planning and environmental authorities. The application form for a licence is available for download. It should be noted that the licence does not grant a proprietary right and cannot be assigned to another foreign investor from the website of the Ministry of Finance and can be found by clicking on the following link: "Application Form to Hold Interest in Property under the Foreign Investment Act, 1990".

Acquisition of Real Estate in Tobago

All foreign investors desirous of purchasing any land in Tobago are required to obtain a licence effective as of February 16, 2007 pursuant to The Foreign Investment (Tobago Land Acquisition) Order, 2007.
In the 2009/2010 Budget, the Government indicated the need to spur foreign investment and economic activity in Tobago. The Government held extensive discussions with the Tobago House of Assembly and other stakeholders with a view to:

- protecting the land ownership rights of nationals of Trinidad and Tobago; and
- reducing the processing time for the grant of licences.

Six regions on the island of Tobago were designated as tourism-related development areas:

- Arnos Vale and Culloden Estate;
- Bacolet Estate;
- Buccoo and Golden Grove Estate;
- Englishman's Bay;
- Lowlands (including the Tobago Plantations Development) and Diamond Estate; and
- Mount Irvine and Grafton Estate.

Currently, the application process is known to be very lengthy.

Land Title Systems

There are two (2) systems of law under which land is held in Trinidad & Tobago:

- the old law or common law system of conveyancing; and
- the Torrens system of registered conveyancing or the Real Property Act Chapter 56:02 (R.P.A.) system of conveyancing.

Old Law System

Most of the land in Trinidad & Tobago is still held under the old law system which is based on the English common law as modified from time to time by statute, including the Conveyancing and Law of Property Act Chapter 56:01. Under this system, the original deeds are lodged at the Deeds Registry of the Registrar General's Department. Searches are conducted at the Registrar General's Department to trace the Vendor's title and confirm whether the Vendor holds good and marketable title to the property.

The Purchaser's Attorney or private Search/Title Clerk prepares an 'Abstract of Title' which comprises:

- a list of documents;
- facts;
- events setting out the history of ownership of the property; and
- all dealings with the property over a period of at least twenty (20) years.

The first document contained in the Abstract is called the Root of Title. Thereafter, in order for good title to be constituted there must be, in chronological order, a chain of title that continues from the root to the Vendor, free from all encumbrances and without any breaks in the chain of title.

Title to property may be either freehold or leasehold. If the property is leasehold, the term of years can vary from 25 years and up to 999 years. In either case, the Purchaser's Attorney will confirm what documents may be required in order to effectively vest the title to the property in the Purchaser.

R.P.A. System

The R.P.A. system is based on the Torrens System (after Sir Robert Torrens who invented it) and is used in Australia, New Zealand and several other countries. In Trinidad & Tobago, the R.P.A. system exists alongside the old law system and it is not uncommon to find one property consisting of lands held under both systems. All dealings with land or property under the R.P.A. system are endorsed on a document called a Certificate of Title, the original of which is kept in the R.P.A. Registry of the Registrar General's Department, with a duplicate being held by the owner of the property or by such other persons who may have an interest in the property (e.g. a mortgagee). Under the R.P.A. system, once a person's interest in property has been endorsed on the Certificate of Title, that interest is said to be indefeasible. This effectively means that the title is guaranteed by the Government of Trinidad and Tobago through the establishment of the Land Assurance Fund. Any person who has been fraudulently deprived of his/her interest in land can claim compensation from the Fund.

Proposed New Registered System

The Government has passed three pieces of legislation which it proposes to bring into force in the future which are intended to revolutionise the system of registration of land in the country. These are:

- the Land Adjudication Act, 2000;
- the Registration of Titles to Land Act 2000; and
- the Land Tribunal Act 2000.

These three pieces of legislation were further amended and assented to in 2018. However, they are yet to be proclaimed by the President of Trinidad and Tobago and remain inactive to date.

Land Adjudication Act 2000

The Land Adjudication Act 2000 will regulate all first registrations of land, and the adjudication process will be compulsory and final. This process will begin by the Minister designating and declaring an adjudication area. After a particular area has been adjudicated, any person who may have a right to land will be invited to come forward and make claims to establish these legal rights and/or interests. It is the intention that over the course of a ten (10) year period, every parcel of land in Trinidad & Tobago will be adjudicated. Upon adjudication, a unique identification number will be assigned to each record delineated on a parcel identification map.

Registration of Titles to Land Act 2000

The Registration of Titles to Land Act 2000 will create a new land register which is intended to replace, during the said ten (10) year period, all deeds, leases and certificates under the existing laws. A fundamental principle of the new register is that it will record ownership of land or entitlement to rights and interests in land as a fact as opposed to evidence that must be deduced from a chain of documents. The advantages of

the new land registry are that dealings will be less costly for persons and efficiency with transfers would improve.

Land Tribunal Act 2000
The Land Tribunal Act 2000 will create a new court for real property matters. However, initially, its function will primarily be to only hear appeals to decisions of the Adjudication Officer and the Land Registrar. The forum is intended to be a less formal setting and less expensive. The Tribunal will be presided over by a qualified Attorney at Law and assisted by various land professionals and appeals against decisions of the Land Tribunal will be made to the Court of Appeal.

The Government anticipates that the new system of registration will be more efficient for the documentation and enforcement of real property rights in Trinidad & Tobago. However, as the introduction and implementation of the Act will require significant time and work by the Government, it is not expected this will be done in the near future.

Procedure for Transfer of Real Estate

Agreements for Sale of Property
Agreements for sale are usually the first step in acquiring land. The purpose of entering into the agreement is to provide the Buyer with an opportunity to carry out due diligence on the related property, such as conducting title searches and verifying that all rates and taxes have been paid up to date.
Trinidad & Tobago law prescribes that an agreement for sale must be:

- made in writing; and
- duly signed by both parties (the Vendor and the Purchaser).

While there is no fixed form of contract, an agreement for sale usually contains:

- a description of the property;
- the price;
- the names of the parties;
- provision for the payment of a deposit on the agreed price as a sign of good faith, with the balance of the price being paid on completion of the Purchaser's due diligence and on the transfer of the property; and
- provisions by which the deposit will be forfeited if either party fails to complete the purchase within the stipulated time.

Where a real estate agent is employed to sell land on behalf of an owner, the agent often prepares the Agreement for Sale. It is advisable; however, that the Purchaser ensures that the agreement is approved by an Attorney-at-Law before it is signed. Alternatively, the vendor or purchaser may engage an Attorney-at-Law to prepare the agreement. Where a real estate agent has been retained by the owner, a commission, usually in the order of three to five per cent of the purchase price, is payable by the owner.

The Documents Required
In order to facilitate the smooth and timely conclusion of a purchase transaction, the parties concerned are required to submit to the Purchaser's Attorney copies or originals of the following documents, where applicable:

- The Agreement for Sale dated and signed by the parties;
- The title document: either the Deed by which the Vendor acquired the property or the Instrument and/or Certificate of Title if the property is held under the R.P.A;

- Releases of all outstanding mortgages on the property together with statements from the mortgagees as to the amount required to effect the releases, including confirmation of the legal costs payable in respect of such releases;
- Current bills and receipts for Water and Sewerage Rates and Lands and Buildings Taxes and a WASA Clearance Certificate;
- Receipt of PIN from the District Valuation Division in the name of the Vendor;
- If the Property is leasehold, Land Rent and Condominium Management Charges (if applicable), Consent of the lessor and the Share Certificate of the vendor's interest in the management company (if applicable);
- If the Vendor is a company, a signed, sealed and dated by laws of the Company and the current filed copy of the Annual Return; and
- If the property is to be developed by the Vendor before completion of the sale (or has recently been developed), the planning approval (Development Final Approval or Completion Certificate from the Local Regional Authority) for such development.

Searches and Title

As soon as the relevant documentation is received, the Attorney will engage the services of a Title/Search Clerk to conduct a search of the records at the offices of the Registrar General. These searches will indicate the history of ownership of the property and verify whether the property is subject to any (and, if so, what) encumbrances. On average such a search takes between two (2) to three (3) weeks and costs between TT$2,000 and TT$3,000. Whilst the search is in progress, the relevant Deeds/Instruments may be prepared by the Purchaser's Attorney.

Completion

Once it appears to the Attorney that the Vendor's title is in order, the relevant transfer documents may be finalised. Such documents typically consist of a Deed/Memorandum and an instrument of mortgage (where the Purchaser obtains financing for the acquisition) whereby ownership in the property will be transferred from the Vendor to the Purchaser and the Purchaser to Mortgagee respectively.

The Vendor may choose to appoint his own Attorney-at-Law to revise the documentation on his behalf, in which case he should notify the other parties involved of the identity of that Attorney-at-Law. Alternatively, arrangements can be made for the Vendor to execute the transfer documents at the office of the Purchaser's Attorney-at-Law. When the relevant transfer documents have been signed by all the parties involved, the balance of the purchase price is paid to the Vendor and the sale transaction finalised.

Transfer Taxes – Stamp Duty

The next stage in the process of purchasing land is the stamping of the documents by the Board of Inland Revenue. Stamp duty is payable as per the Stamp Duty Act and its Regulations, depending on the type of property and the nature of the transaction.

Residential Transfers (including a dwelling house)

Where the consideration for the sale or disposal of the property is:

	Consideration	**Rate**
Up to	$850,000.00TT	0%
Next	$400,000.00TT	3%
Next	$500,000.00TT	5%
Over	$1,750,000.00TT	7.5%

Residential Transfers (land only)

Where the consideration for the sale or disposal of the land is:

	Consideration	Rate
Up to	$450,000.00 TT	0%
Next	$200,000.00 TT	2%
Next	$200,000.00 TT	5%
Over	$850,000.00 TT	7%

Non-Residential Transfers (Commercial & Agricultural)

Non-Residential Transfers refer to commercial and agricultural properties. The stamp duty payable is:

	Consideration	Rate
Up to	$300,000.00 TT	2%
Next	$100,000.00 TT	5%
		on the full amount
Over	$400,000.00 TT	7%
		on the full amount

First Time Homeowners

The Stamp Duty payable is:

	Consideration	Rate
Up to	$2 million TT	0%
Next	$250,000.00 TT	5%
Over	$2.25 million TT	7.5%

Once the appropriate stamp duty has been paid, as certified by an embossed stamp affixed by the Board of Inland Revenue, the original transfer documents are lodged with the Registrar General's Department and a registered copy will be delivered to the Purchaser as proof of his ownership of the land. The registration fee payable for the old law system is typically TT$100.00 and TT$50.00 for the R.P.A. system.

Property Taxes

Property Tax is governed by the Property Tax Act 2009 Chapter 76:04, the Valuation of Land Act Chapter 58:03, as amended by Act No. 17 of 2009 and the Finance Act 2023, Act No. 15. of 2023. The former statute repealed the Land and Buildings Taxes Act Chapter 76:04 and Part V of the Municipal Corporations Act Chapter 25:04.

Prior to the enactment of the Property Tax Act 2009 Chapter 76:04, the collection of taxes from properties within the cities (Port of Spain and San Fernando) and the Boroughs (Chaguanas, Arima and Point Fortin), known as 'house rates,' was governed by the Municipal Corporations Act No. 21 of 1990, while the Inland Revenue Division collected land and buildings taxes for the rest of the country pursuant to the Land and Buildings Taxes Act Chapter 76:04. Although the Property Tax Act 2009 Chapter 76:04 was intended to come into operation from January 1, 2010, there has been a hiatus on its implementation, which resulted in a moratorium on the payment of land and Buildings taxes or house rates for the years 2010 to 2015.

On March 27th 2024, the Government assented to the Property Tax (Amendment) Act, 2024 and it was later proclaimed. The Act reduced the rate of residential property tax, extended the time for the issuance of notices of assessment in 2024 only and granted the Minister of Finance the authority to extend time limits by Order.

The Government has signalled its intention to repeal the Property Tax Act and suspend the collection of property taxes for the year 2025 and onwards. However, this change has not yet been enacted into law and the Government is still in the process of finalising the change.

Land Use and Development

Land use and development is controlled by the local Regional Corporations and the Town and Country Planning Division. Permission is required to:

- subdivide land;
- alter land use;
- carry on development or construction;
- repair property; or
- conduct renovations to property.

Plans must first be submitted for the approval of the Town and Country Planning Division. If the plans do not contain any defects that infringe planning and/or building regulations, outline approval is granted subject to the approvals of the other controlling authorities such as:

- The Water and Sewerage Authority (if the area is metered);
- Drainage Division (Ministry of Works and Transport);
- The Highways Division (in some instances);
- The Fire Services;
- Environmental Management Authority (EMA); and
- The local Health Authority.

Final approval from the Local Authority by the issuance of a Development Final Approval or Completion Certificate is granted when all the Authorities have certified that the necessary infrastructural works have been put in place and all regulations have been complied with.

A Certificate of Environmental Clearance (CEC) is required from the EMA for:

- clearing;
- excavating;
- grading; and
- land filling on any area more than 2 hectares (approximately 5 acres) during a two (2) year period.

In some instances, the EMA may require an Environmental Impact Assessment be undertaken prior to determining an application having considered the nature and type of development that is proposed. See Chapter 10 for additional information on Environmental Approval.

CHAPTER 10

ENVIRONMENTAL APPROVAL

Environmental approval is a prerequisite for any major industrial or developmental activity. This approval takes the form of a Certificate of Environmental Clearance ('CEC') issued by the Environmental Management Authority (EMA). Obtaining a CEC within a reasonable timeframe can be an uncertain and a major hurdle for developmental activity. Unfamiliarity with the procedure also results in the process becoming inordinately delayed.

In this Chapter, Gregory Pantin and Cherie Gopie, Partners in Hamel-Smith's Dispute and Risk Management Practice Group provide the overview of the process for obtaining a CEC.

The Legal and Institutional Framework
The Environmental Management Authority ("EMA") and the Environmental Commission (the "Commission") were established under the Environmental Management Act Chapter 35:05 of the Laws of Trinidad and Tobago (the "EMA Act").

Subsidiary legislation under the EMA Act currently includes:

- The Certificate of Environmental Clearance (CEC) Rules;
- The Noise Pollution Control Rules;
- The Environmentally Sensitive Species and Areas Rules;
- The Water Pollution Rules;
- The Air Pollution Rules; and
- The Waste Management Rules.

The EMA is the body responsible for managing, regulating and coordinating matters related to the environment. The environment includes all land, area beneath the land surface, atmosphere, climate, surface water, groundwater, sea, marine and coastal areas, seabed, wetlands, and natural resources within the jurisdiction of Trinidad and Tobago.

One of the EMA's major regulatory powers is its authority and discretion to grant a Certificate of Environmental Clearance ("CEC"). This power is derived from the EMA Act and the Certificate of Environmental Clearance Rules passed thereunder. These Rules guide the assessment of small and large-scale developmental projects which may have both positive and negative environmental effects.

The Certificate of Environmental Clearance (Designated Activities) Order, 2001, as amended defines the forty-four (44) activities which require a CEC. However, not all CECs are alike, as the environmental concerns of each are project specific. Whether you are establishing, modifying, expanding, decommissioning or abandoning a project, the CEC Rules clearly lists forty-four (44) activities that by law require a CEC before these projects can begin.

During the assessment of these applications, the EMA takes into consideration foreseeable impacts which may arise out of any new or significantly modified construction, process, works or other activity as outlined by the Order. At the preliminary phase of the assessment of the proposed project, if potential significant environmental and human health impacts have been identified, the applicant may be asked to conduct an Environmental Impact Assessment ("EIA").
Once an EIA is required, the applicant must consider all the environmental impacts of a project on baseline environmental receptors in detail, by first identifying these impacts and then by using appropriate methods

to investigate and predict the extent of these impacts. An applicant is also required to document, through the EIA process, how their project's negative impacts can be avoided as much as possible through project design. The EIA should also establish mitigation measures where impacts cannot be totally avoided. The process provides an opportunity for all stakeholders, including the public, to participate in the identification of issues of concern, practical alternatives, and opportunities to avoid or mitigate adverse impacts. At the end of the process, the findings are compiled into an EIA Report and submitted to the EMA.

Procedure for Obtaining Environmental Clearance

Applications for CECs are usually made directly to the EMA by submission of the prescribed form together with the applicable fee. The application should include detailed information on both technical and non-technical terms, in addition to maps and illustrations that clearly describe the proposed activity.

For activities requiring the express grant of planning permission under the national legislation dealing with planning, the application must be lodged with the relevant government.

Applications are screened on both an administrative and technical level. Within ten (10) working days of receiving the application the EMA ought to acknowledge receipt of a CEC application and may:

- determine and notify that the proposed activity does not constitute a designated activity and thus does not require a CEC;
- request further information;
- confirm requirement for a CEC with or without an EIA;
- notify that an EIA is required in compliance with a TOR;
- notify that the claim for confidentiality is upheld or rejected

Where the EMA determines that a CEC is required, the timeframe for a determination of whether or not to grant the CEC primarily depends on whether the EMA determines that:

a) a CEC is required but an EIA is not; or
b) both a CEC and EIA are required.

If an EIA is required for processing a CEC application for any of the designated activities, then the applicant is so notified and the process for establishing the terms of reference for the EIA begins. The EMA prepares Draft Terms of Reference (TOR) for the EIA and provides same to the applicant within twenty-one (21) working days of notification by the EMA of the requirement for the EIA. The applicant must then engage in consultations with stakeholders as may be appropriate based on the draft TOR and make any representations for amendments to the draft TOR within twenty-eight (28) working days. At the end of that period, the EMA has a further ten (10) working days to issue the final TOR which will guide the EIA. However, depending on the nature of the designated activity or activities, the timeframe for a determination may also be significantly impacted by the applicant's ability to provide requested information to the EMA. The EMA, when considering applications, is entitled to request further information which, upon each request for further information, may effectively 'reset' the timeframe for determining the matter.

Accordingly, it is best to be mindful that the timeframes outlined below are not always helpful in project managing the process particularly where other business decisions may hinge upon a determination from the EMA, even on preliminary matters such as whether or not an EIA is required. Subject to Rule 6 (1) of the CEC Rules, a determination with respect to a CEC Application will be made:

- Within thirty (30) working days after the date of acknowledgement of the receipt of the application if no further information or EIA is required;
- Within thirty (30) working days after the receipt of further information requested in Rule 4(1)b) and if no EIA is required;

- Within eighty (80) working days after the submission of an EIA Report provided that no further information is required.

Where the Authority considers that it is unable to make a determination within the period specified above, it shall notify the applicant in writing of an extended date by which the determination would be made and the reasons for the delay.

Duration and Scope of the CEC

The CEC is granted for a particular activity - thus where the activity has changed a new CEC application will have to be made. It is imperative that the applicant comply with the terms and conditions of the CEC as well as any prescribed mitigation measures. Accordingly, great care should be taken in outlining the scope of works and possible mitigation measures to ensure that a CEC, once granted, appropriately meets the developer's technical and business requirements.

A CEC is valid for a period of three (3) years from its effective date and where it has expired a new application is required to be made. An application for a new CEC will be required prior to the expiration of three (3) years where the conditions upon which the CEC was granted have changed. The CEC must also be placed in public view at the site of the activity for which it was issued. An applicant has the right to appeal the decision of a refusal to grant a CEC or the conditions attached to an issued CEC. This appeal shall be instituted by filing a Notice of Appeal with the Registrar of the Environmental Commission within twenty-eight (28) days of the service on the person seeking to Appeal the decision of the Authority and serving a copy thereof to the Secretary of the Authority or other respondent. It is essential that applicants consider very carefully the conditions attached to a CEC to ensure that they are appropriate for the particular project to ensure that any appeal may be dealt with expeditiously and not cause undue delay once works have commenced pursuant to the CEC.

The Commission has specific powers under the EMA Act as well as all the powers inherent in a superior court of record. The Notice of Appeal shall describe the specific dispute and specify the grounds of appeal and shall be in such a form as may be prescribed by Rules of the Commission.

Environmental Liability

For persons other than an individual, damages for failure to comply with applicable environmental standards are capped at ten thousand dollars ($10,000.00) for each violation, and in the case of a continuing violation five thousand dollars ($5,000.00) for each day that the violation is not remedied.

The intentional or reckless release of any pollutant or hazardous substance by any person is a criminal offence which carries a penalty of one hundred thousand dollars ($100,000) and imprisonment for two (2) years.

In addition to the above power of imposing sanctions, the EMA has significant powers to halt activities and projects or prevent potential violations, which may result in a violation of any environmental requirement and may even result in assessments for compensation by the Environmental Commission.

Avoiding the Uncertainty of Time

Procuring a CEC can become a protracted process whether or not the EMA requests an EIA. If no EIA is required, inadequately presented applications may result in repeated requests for further information which will extend the timeframe for a determination since the thirty (30) working day timeframe for a response is counted from the date of submission of a duly completed application. Depending on the requirements of the TOR, the applicant will need to hire one or several environmental consultants. The ability of the consultants to deliver an EIA within set timeframes and up to the EMA's standards should be carefully considered in selecting an appropriate environmental consultant/firm. Failure by these environmental consultants to deliver the required information to the EMA can result in delays in acquiring approval since the EMA has eighty (80) days from receipt of the complete EIA Report within which to respond.

Maximizing one's ability to achieve a determination on a CEC application requires significant preparation and collaboration on the part of the applicant with the EMA. As far as possible, an application that is prepared in a problem-solving manner and with co-operation with the EMA, may avoid an extended time loop of requests for information.

Other Approval Agencies

Obtaining a CEC does not mean that approval from other statutory authorities will automatically follow. The EMA Act provides that no authority can issue a permit or approval for an activity for which a CEC is required prior to the grant of such CEC. However, this does not obviate the need for approval from other regulatory authorities for any given undertaking, as approval from the relevant agencies remains a necessary pre-requisite to start-up of operations.

Investor Awareness

A lender, a bank or a financial institution that either directly provides financing to a borrower company in Trinidad and Tobago or invests in the commercial paper (bonds, notes and the like) that a Trinidad and Tobago company may issue, may wish to know whether the environmental infrastructure and standard in Trinidad and Tobago is comparable to international standards. Generally, in addition to obtaining a CEC (as described above), there are provisions which require the issuing of permits with respect to water, air and noise pollution, the release and handling of hazardous substances and the release and treatment of waste disposal. The first point of concern for a foreign lender is that the local laws may not reflect the general international environmental standards, although there are standards such as contained in the Noise Pollutions Control Rules, Water Pollution Rules, Air Pollution Rules and the Waste Management Rules (operational on May 31, 2022).

Additionally, there is growing interest by some environmental groups in relation to certain development activities which in some cases may impact upon the risk profile for consideration by a financier even though the activities are allowed by the EMA. To the extent that a foreign lender's internal policy may be to provide financing upon conditions which may include a borrower's agreement to adhere to international environmental standards, this may be resisted since it may be a higher standard than what may strictly apply in Trinidad and Tobago. Bearing this in mind, to balance potentially two (2) differing points of view, one may consider the hybrid of requiring the adherence to local standards and, if it is a new development, compliance with the terms of any CEC that may be granted. This may or may not be a deal breaker.

Environmental Liability on Your Investment

As noted above, failure to adhere to an environmental requirement, which includes applying for the various permits and certificates and adhering to the conditions upon which such permits/certificates are granted, carries substantial fines.

A lender may need to be aware that the doctrine of lender liability does not exist as a specifically identifiable legal doctrine in Trinidad and Tobago, and as such no legislation or local case law to date specifically treats with lender liability. It is important to note in this regard, that our legal system is based on an adoption of the English legal system and thus the common law in Trinidad and Tobago is influenced by the English common law where the doctrine of lender liability does in fact exist. To that extent, it is possible that a foreign lender may find itself liable for a local borrowing company's environmental liability where the lender acts as:

- a lead bank in a syndicated loan facility;
- a shadow director of the borrower; or
- a financier of the polluter or the company in breach of the applicable environmental standards.

Environmental liability can be attached to the lender under the doctrine of "direct lender liability" where a lender becomes responsible for the environmental liabilities of its client. The issue of "direct lender

liability" may arise where a lender becomes an occupier of contaminated land through the exercise of its remedies against the borrower, for example, by becoming a mortgagee in possession or foreclosing its mortgage over the land. It may also arise where the lender can be considered to be in a position where it exerts control over a borrower, for example, where it can be said that the lender has some control on the policy making (or finds himself in a position with powers akin to that of a director) or if the lender acts in a fiduciary capacity, including management involvement in the day-to-day operations of industrial or commercial facilities, which causes environmental harm, the lender may incur liability to clean up the contaminated land and to compensate 3rd parties for any loss suffered as result of the environmental harm.

The limits and standard of such liability can be gleaned from the House of Lords decision in the Cambridge Water Company Ltd v Eastern Counties Leather Plc [1994] 1 All ER 53 which stated that liability in relation to historical activities is now less likely under common law principles. The House of Lords acknowledged that it would be unjust to impose retrospective liability for historical contamination at common law. However, where the damage is not historical and liability would not be retrospective, the ruling of the case affirmed that the courts will impose strict liability where reasonably foreseeable damage is caused.

Locally the EMA Act provides at Section 71:
Where a violation of any environmental requirement has been committed by a person (other than an individual), any individual who at the time of the violation was a director, manager, supervisor, partner or other similar officer or responsible individual, or who was purporting to act in such capacity, may be found individually liable for that violation if, having regard to the nature of his functions in that capacity, the resources within his control or discretion, and his reasonable ability to prevent the violation-

a) the violation was committed with his direct consent or connivance; or
b) he, with knowledge, did not exercise reasonable diligence to prevent the commission of the violation.

Section 70(2) of EMA Act further provides that it is an offence for any person who knowingly or recklessly allows or undertakes any activity in designated sensitive areas, or with respect to designated sensitive species, which may have an adverse effect on the area or species so designated, which carries the fine of one hundred thousand dollars ($100,000.00) and imprisonment for two (2) years. Therefore, assuming that a lender exercises some degree of control over the borrower and its decisions and policy making, for example by appointing a director on the borrower's board, the lender may be found to be liable for the violation that was committed.

Conclusion
Any investor who contemplates doing business in Trinidad and Tobago should become aware of the local environmental infrastructure. An investor does not wish to find himself without the requisite consent or license, nor does he wish to invest in a company that is not in compliance with the country's environmental laws.

CHAPTER 11

EMPLOYMENT AND INDUSTRIAL RELATIONS

Apart from its political stability, strategic location and significant natural resources (particularly natural gas), Trinidad and Tobago is attractive to foreign investors because it has a skilled and productive labour force. The population is well-educated with high literacy levels. As the most industrialised Caribbean nation, Trinidad and Tobago has a human resource base with experience in a wide variety of activities including all aspects of the oil, gas and petrochemical industries.

Gregory Pantin and Catherine Ramnarine, Partners in Hamel-Smith's Dispute and Risk Management Practice Group, provide an overview of the basic rules regarding hiring employees, and establishing terms, conditions and benefits of employment.

Recruitment

Recruiting Employees Locally

Personnel may be hired through private employment agencies which charge for their services, or by placing advertisements in the newspapers. As well, there are several labour contractor companies which handle employment of an entire workforce for a flat fee.

Employees may also be recruited through the Ministry of Labour which operates several employment exchanges throughout Trinidad and one (1) in Tobago. Potential employees register with the Exchange which maintains a data bank of persons skilled in all types of trade and who have technical and technician qualifications.

Recruiting Foreign Personnel

Generally, foreigners may enter Trinidad and Tobago without a work permit either (i) as a tourist or visitor; or (ii) to engage in a legitimate profession, trade or occupation for a single period not exceeding thirty (30) days in every twelve (12) consecutive months. Entry is on the basis of a "certificate" stamped in the passport allowing entry for a specified period. A person who wishes to remain for a longer period as a tourist or visitor is required to submit to an examination and an Immigration Officer may extend, limit, or vary the time or conditions of the entry stated on the certificate.

If a person wishes to stay in Trinidad for a period exceeding thirty (30) days to engage in a legitimate profession, then he must obtain a Work Permit which may be sought by the prospective employer and which is issued for a fixed period. Generally, Work Permits will not be granted to non-residents unless there are no locals who are capable of filling the specified post. Work Permits are issued for a specific timeframe during which a local resident will be expected to be trained to assume the post held by a foreign employee.

Special provision is made for nationals of Caribbean Community (CARICOM) member states, of which Trinidad and Tobago is a member. The Immigration (Caribbean Community Skilled Nationals) Act allows for the entry, without work permit requirements, of CARICOM nationals falling within certain categories of skilled labour including graduates of recognised universities, media workers, artistes, musicians and sportspersons. Entry is on the basis of a Certificate of Recognition of CARICOM Skills Qualification. A CARICOM national must first obtain certification from their home state, which entitles them to entry into Trinidad and Tobago for six (6) months, during which time they must apply for certification from Trinidad and Tobago. Once they have obtained such certification, they are entitled to indefinite entry.

Terms and Conditions of Employment
Employment relationships are in general governed by:

- The provisions of the employment contract and/or collective agreement where applicable;
- Common law principles; and/or
- Legislative provisions governing specific situations.

Ideally, employment contracts should be in writing, however there is no general rule to this effect. In practice, they are often partly oral and partly in writing. Frequently the basic terms and conditions of employment are set out in a letter of appointment which usually contains a job description or indication of the required tasks along with a general provision that the employee is to do such other tasks as may be required. Where employees are represented by a recognised majority union, the terms of any collective agreement between the employer and the union may also govern the employment relationship.

Careful consideration should be given to the terms of the contract of employment as it provides the opportunity to clarify many important matters such as the period of Notice which will be required on termination, as well as the conditions which the employer considers necessary for the protection of its intellectual property rights and trade secrets. Where appropriate, the contract may include restrictive covenants prohibiting an ex-employee from setting up a business in competition or working for a competitor within a defined area for a specified period of time.

Though such clauses are prima facie void as contrary to public policy, they may be enforceable if they are reasonable as between the parties as well as reasonable with reference to the public interest. A restraint purporting to operate after termination of the employment will not be reasonable unless it protects certain proprietary interests of the employer which are recognised by the law. Even where these recognised interests are concerned, the restriction imposed upon the employee must not be greater than is reasonably necessary for the protection of that interest otherwise they will be void.

The basic principle of contract law that a contract cannot be varied without the consent of the other party applies to contracts of employment. Care should therefore be exercised in drawing up all contracts of employment. Also, proper procedures should be followed whenever it becomes necessary to re-negotiate any aspect of the employment relationship. In addition to the contract of employment, certain terms of employment and/or duties and rights of the employer and employee may also be prescribed by statute or implied under the common law, including those relating to, for example, minimum wages, retrenchment and severance, maternity protection and health and safety.

Wages

Minimum Wages
Wages and salaries vary considerably between industries. However, the Minimum Wages Act empowers the Minister responsible for labour to make Minimum Wage Orders in relation to specific trades. The current general minimum hourly wage (exclusive of gratuities, service charges and commissions) as prescribed by the Minimum Wages (Amendment) Order 2023 is TT$20.50 or approximately US$3.02. Industry specific Orders have also been issued in relation to employees in the restaurant and catering, petrol station, security, shop and household assistant trades.

Equal Pay
The Equal Opportunities Act generally prohibits employers from discriminating against employees or prospective employees on the basis of their sex, race, ethnicity, geographical origin, religion, marital status or disability. While the Act does not expressly speak to equal pay, it does generally prohibit employers from discrimination in the terms and conditions of employment afforded to their employees.

The Act contains several exceptions to the general prohibition against discrimination in employment such as where being of a particular race or sex is a "genuine occupational qualification" for employment or where, having regard to the nature of the employment, a disabled person would pose a risk to himself or others, be unable to carry out the requirements of the job or require special services or facilities that it would pose unjustifiable hardship to the employer to provide. These exceptions are of general application and do not specifically treat with equal pay. However, in considering whether an exception applies so as to justify the selection or exclusion a particular category of employee from particular kinds of work it is important for an employer to consider the potential impact of same on an employee's potential earnings and whether, in that context, it would amount to unjustifiable discrimination against a protected class.

Hours of Work

Under the Minimum Wages Act and Minimum Wages Order, 2014 the normal working hours exclusive of meals and rest breaks are: eight (8) hours per day; forty (40) hours per week and/or 173.3334 per month. Employees are entitled to a meal break and rest period during the day. Employees who are required to work beyond the normal hours are entitled to overtime which is calculated in accordance with a prescribed statutory formula outlined in the Order. The Order applies to employees who receive an hourly rate of at least 1.5 times the minimum wage.

Trade Unions

As a general rule, employees are entitled to join a trade union. The Industrial Relations Act prohibits an employer from making employment conditional on the employee not being a union member and/or from dismissing, threatening to dismiss, altering a worker's position or otherwise prejudicing him because he is or proposes to become a union member.

The Act provides for the certification and formal recognition of majority unions for certified "bargaining units" at the workplace. A trade union which represents more than fifty per cent (50%) of the workers in a given bargaining unit is entitled to be certified as the recognised majority trade union for that bargaining unit. Under the Act, the employer and the recognised majority trade union are required in good faith to treat and enter into negotiations with each other for the purposes of collective bargaining. The Act provides a mechanism for the registration of collective agreements. A registered collective agreement is binding and directly enforceable, but only by the Industrial Court.

The Act also provides for the compulsory arbitration of trade disputes between an employer and its employees connected with the dismissal, employment, non-employment, suspension, refusal to employ, re-employment or reinstatement of any such employees and includes disputes connected with the terms and conditions of employment. Under the Act, a trade dispute can only be initiated by (i) the employer (ii) the recognised majority union for the bargaining unit to which the employee belongs or (iii) where there is no recognised majority union, any union in which the employee or employees who are parties to the dispute are members of good standing. For employees who are not members of a trade union, or matters falling outside the jurisdiction of the Industrial Court, disputes are usually settled amicably or by traditional legal action for breach of the contract of employment.

Holidays and Vacation

Vacation leave is generally governed by the terms of the employment contract or collective agreement. In general, in practice employees are typically entitled to between two to five (2-5) weeks paid vacation after completing one (1) full year of service, depending on the nature of the job and the particular market practice within the industry. Upon termination employees are entitled to payment in lieu of accrued vacation.

Employees are generally entitled to paid time off on national public holidays and to be paid at overtime rates if they work on national public holidays. There are fifteen (15) official national public holidays in

Trinidad and Tobago. Additionally, although not official public holidays, most businesses close on Carnival Monday and Tuesday.

Workmen's Compensation

Under the Workmen's Compensation Act, an employer is liable to pay compensation for injury or death of an employee arising from a workplace accident. The value of such compensation is calculated using a prescribed formula and depends in part on a medical assessment of the employee's permanent partial disability. Where death or serious and permanent disablement occurs, the employer remains liable even though the accident may have been caused by the employee's own serious and wilful misconduct. The sums payable for workmen's compensation are relatively modest. However, the payment of workmen's compensation to an employee does not prevent the employee from pursuing any other course of action that he might have against the employer (e.g. for negligence). The Court, in assessing the damages to be paid to the employee, will however take into account the amount paid to him as workmen's compensation.

Safety and Health

An employer has a general common law duty to take reasonable care for the safety of his employees during the course of their employment, including a duty to provide competent staff, proper plant and equipment, a safe workplace and a safe system of work.

Occupational Safety and Health Act (OSHA)

In addition to this general common law duty, the Occupational Safety and Health Act ("OSHA") sets out a legislative framework governing health and safety in the workplace. The purview of the Act extends beyond traditional industrial establishments and includes shops, offices and other places of work.

OSHA imposes a duty on employers to ensure the safety and health of their employees as well as persons not in their employment but who nevertheless may be affected by their business undertaking. Aside from imposing this general duty, OSHA lays down a series of regulations in five (5) main areas, namely:

- Safety: which includes regulations relating to the provision of protective clothing and devices, removal of dust and fumes and safeguarding of machinery;
- Fire: which includes regulations relating to the provision of a means of escape in case of fire;
- Health: which includes provisions relating to cleanliness, lighting, overcrowding, noise and vibration and the medical examination of employees;
- Welfare: which includes provisions relating to drinking water, washing facilities, canteens, restrooms and first aid appliances; and
- Employment of Young Persons.

Compliance with these regulations is critical as, aside from carrying certain criminal penalties, OSHA bestows upon workers the right to refuse to work where there is a safety or health danger.

Along with prescribing a general code for health and safety, OSHA also imposes an obligation on every employer to make a suitable and sufficient annual assessment of:

- The risks to the safety and health of his employees to which they are exposed whilst they are at work; and
- The risks to the safety and health of persons not in his employment arising out of or in connection with the environmental impact of his undertaking for the purpose of identifying what measures are necessary for compliance.

In addition, OSHA imposes reporting obligations on employers to give notice of accidents and occupational diseases to the OSH Agency established under OSHA. In the event of a workplace accident causing death or critical injury, an employer is required to immediately notify the Chief Inspector, to submit written notice with particulars of the accident within forty-eight (48) hours and, save in exceptional circumstances, ensure preservation of the scene. Where an employer is advised by or on behalf of an employee that the employee

suffers from an occupational disease, it must give notice to the Chief Inspector within four (4) days of being so advised. The Act contains a Schedule specifying the diseases and/or medical conditions that are considered occupational diseases for the purposes of the Act.

Equal Opportunities

The Equal Opportunity Act prohibits discrimination in employment and establishes a Commission and Tribunal to investigate and determine discrimination complaints. The Act prohibits discrimination on the grounds of "status", which includes: (i) sex (but not sexual preference or orientation), (ii) race, (iii) ethnicity, (iv) origin, including geographical origin, (v) religion, (vi) marital status, (vii) disability (including mental or psychological disease or disorder). Age is not a protected category under the Act.

Discrimination occurs where an employer treats one employee or prospective employee less favourably than another due to his "status" or a characteristic that appertains or is generally imputed to people of that status. In particular, discrimination can arise during recruitment, in the terms and conditions of employment, opportunities for promotion, transfer, training, benefits, facilities or services that are afforded to an employee or where an employer dismisses or subjects an employee to any other detriment because of his status.

An exception applies in cases where:

- Being of a particular race or sex is a "genuine occupational qualification" for employment e.g. for reasons of authenticity in a dramatic performance;
- Being of a particular religion is required for employment in a religious shop;

In the case of disability:

- The disabled person would not be able to carry out the inherent requirements of the job;
- The disabled person would require special services or facilities in order to perform the job and it would be an "unjustifiable hardship" for the employer to provide them;
- Due to the nature of person's disability and the work in question, he would pose a substantial risk to himself or an unreasonable risk to others.

Complaints made under the Act are heard and determined by the Equal Opportunity Tribunal, a superior Court of record with the power to make such declarations, orders and awards of compensation as it thinks fit.

Tax

Employed persons in Trinidad and Tobago are required to pay (i) Income Tax and (ii) Health Surcharge Tax. The incidence of these taxes falls on the employee. However, the employer is responsible for deducting same from the employee's earnings and remitting it to the Board of Inland Revenue ("BIR") and is required to register with the BIR for this purpose.

Income tax is deducted on a Pay As You Earn (PAYE) basis based on the employee's chargeable income, determined after various tax credits and deductible factors are considered. Tax Returns must be submitted annually by April 30 following the tax year, and all employers are required to remit the PAYE payments on a monthly basis.

Health Surcharge Tax is applied toward the funding of public health care services. The amount of tax payable varies depending on the income of the employee, but generally does not exceed TT$8.25 (about US$1.30) weekly. Independent contractors are responsible for the determination and submission of their own tax which must be submitted on a quarterly basis to avoid accumulation of interest.

National Insurance

The National Insurance Board ("NIB") operates a compulsory scheme of National Insurance, known as "NIS", for all employed persons between the ages of sixteen (16) and sixty-five (65). Contributions are paid partly by employers (two-thirds) and partly by employees (one-third). However, the employer is responsible for deducting and remitting the contribution to the NIB and will be subject to penalties and interest if it fails to do so. Employers are required to register with the NIB within fourteen (14) days of hiring their first employee.

Contributions are calculated based on a prescribed formula set out in the National Insurance Act. In essence, the Act establishes several "earning classes", each of which carries an "assumed average weekly earnings". Earnings include more than just basic wage or salary and include acting allowances, overtime, stipends, allowances, commissions, production or efficiency bonuses, payments for standby duty, danger or dirt money and allowances for dependents. The contribution payable in respect of an individual employee is based on the assumed average weekly earnings for the earning class into which he belongs and a statutory rate which is revised from time to time. Effective September 2016, the statutory rate was increased to 13.2% of the insurable income.

The Government has proposed to reform the NIS Scheme by gradually increasing contribution rates by 6% over a two-year period commencing from 2026, and by raising the retirement age for full retirement benefits from 60 to 65 commencing in 2028.

Participation in the NIS Scheme entitles employees to receive benefits including sickness and invalidity benefits for employees rendered incapable of working, maternity grants, retirement grants, pension, funeral grants and survivor benefits. No contributions are payable while employees are receiving any short-term benefits.

Termination of Employment

There are two parallel regimes for the determination of employment disputes, including those relating to termination. The requirements for valid termination and the basis upon which termination can be challenged differ between the two (2) regimes.

The Industrial Court established under the Industrial Relations Act has jurisdiction to hear and determine, by way of compulsory arbitration, "trade disputes" between an employer and its work force, including disputes relating to termination of employees. The Court exercises its jurisdiction in accordance with the principles of equity, good conscience and good industrial relations practice. However, this specialist Court does not replace the traditional jurisdiction of the High Court to hear and determine claims for breach of the employment contract or unfair dismissal.

In order to access the Industrial Court's jurisdiction, an employee must fall within the definition of "worker" under the Act, which excludes several categories of individuals, for example, those who might be described as part of management. Under the Industrial Court regime, a worker's employment can only be validly terminated for valid reason connected with his capacity to perform the work for which he was hired or founded on the operational requirements of the employer's business, in general - misconduct, poor performance, incapacity or redundancy.

Additionally, unless there are exceptional circumstances, the Court requires that prior to termination, an employer engage in a fair and reasonable disciplinary process with the following characteristics:

- an appropriate and proper investigation is conducted of all the relevant circumstances;
- the worker is told precisely the nature of the allegation made against him and given a fair opportunity to make representations including any representations as to mitigating factors; and

- the employer objectively and fairly considers the facts, circumstances and the worker's representations prior to making a decision, including considering the principle of progressive disciplinary action,.i.e., whether a punishment short of dismissal is more appropriate and meets the objectives of punishment and deterrence.

In the event that the Court finds that a worker has been unfairly dismissed, it can grant the worker reinstatement and/or monetary damages including both compensatory and punitive damages. The Industrial Court is empowered to make an award that it considers fair and just having regard to the interests of the persons immediately concerned and the community as a whole, the substantial merits of the case before it and the principles of good industrial relations practice.

An award or finding of the Industrial Court can only be challenged on grounds that the Industrial Court lacked or exceeded its jurisdiction, that the order was obtained by fraud, that it was erroneous in point of law or that there was some specific illegality in the course of the proceedings. A finding by the Industrial Court that a worker was dismissed in circumstances that were not in keeping with the principles of good industrial relations practice is not open to appeal. For employees falling outside the definition of "workers" or otherwise precluded from accessing the Industrial Court regime, redress is limited to the High Court.

The High Court is governed by common law principles, which generally allow an employer to terminate an employee provided that it is done in compliance with the employee's terms and conditions of employment under the employment contract. As a general rule under the common law, employment contract for an unspecified or indeterminate term is terminable on the provision of 'reasonable' notice or payment in lieu thereof. The High Court is empowered to order monetary damages for wrongful dismissal, including exemplary damages where the conduct of the employer in carrying out termination is considered unreasonable or harsh.

Redundancy

In addition to the general principles of good industrial relations practice, redundancy, retrenchment and severance is governed by the provisions of the Retrenchment and Severance Benefits Act. The provisions of this Act only apply to employees falling within the statutory definition of "worker" under the Industrial Relations Act who have completed at least one (1) year of service.

The Act outlines a specific process that an employer should utilize when it proposes to terminate five (5) or more employees on the grounds of redundancy, including the provision (save in exceptional circumstances) of forty-five (45) days' notice in writing to each of the workers, the recognised majority union and the Minister with responsibility for labour. The Act prescribes minimum severance benefits payable to workers on redundancy as follows:

- For workers with more than one (1) but less than five (5) years continuous service - two (2) weeks' pay at the basic rate if he is an hourly, daily or weekly rated worker or one-half month's pay at his basic rate if he is a monthly paid worker and
- Three (3) weeks' pay at the basic rate if he is an hourly, daily or weekly rated worker or three quarter's month's pay at his basic rate if he is a monthly paid worker for each additional year of service.

Severance benefits under the Act are applicable only upon termination for redundancy and not on termination for any other reason.

Severance benefits are treated as priority payments in a winding up. There is a tax exemption on severance benefits of up to five hundred thousand dollars ($500,000.00) with the remainder being separately chargeable to tax at the employee's average rate for the year preceding Employment is terminated.

Dispute Resolution

The form which this takes depends to a great extent upon whether the employment contract is in respect of a "worker" as defined in the Industrial Relations Act. Where a trade dispute arises, "workers" may fall into one (1) of two (2) categories:

- Workers represented by a union which is registered under the Act as the recognised majority union; and
- Workers who are not represented by a recognised majority union but who are members in good standing of one or more registered trade unions.

Where workers are represented by a recognised majority union, any dispute resolution process contained in the collective agreement must first be applied. Where the dispute remains unresolved, either the employer or the recognised majority union can report it to the Minister of Labour not more than six (6) months after the issue giving rise to the dispute arose (subject to any extension of time granted by the Minister on application). In the event that the Minister is unable to resolve the dispute, a Certificate of Unresolved Dispute is issued which enables either party to commence formal proceedings at the Industrial Court.

The Industrial Relations Act has established procedures for settlement of both "rights" and "interest" disputes. A Non-Recognised Majority Union can only pursue "rights disputes" and is not entitled to take strike action. Unrepresented workers cannot report a dispute to the Minister and consequently cannot take strike action in accordance with the Act.

CHAPTER 12

TELECOMMUNICATIONS

The Telecommunication industry is regulated by the Telecommunications Authority of Trinidad and Tobago ("the Authority") under the Telecommunications Act. Currently there are two (2) mobile operators in Trinidad and Tobago. In this chapter, Fanta Punch, Partner in the firm's Dispute & Risk Management Department gives an overview of the legal and regulatory framework for the telecommunications sector.

The Statutory Framework
The Telecommunications Act 2001 (as amended by the Telecommunications (Amendment) Act, 2004), came into force on June 30, 2004. The Regulations and Policies effected include the: Telecommunications (Fees) Regulations, Telecommunications (Interconnection) Regulations, Telecommunications (Access to Facilities) Regulations, Telecommunications Tenders Rules, Telecommunications (Universal Service) Regulations, Telecommunications (Accounting Separation) Regulations, Price Regulations Framework for Telecommunication Services in Trinidad and Tobago, Costing Methodology for the Telecommunication Sectors, and List of Telecommunication equipment which have been certified and approved for use in Trinidad and Tobago and Consumer Complaints Handling Procedure.

The Telecommunications Act was enacted to 'establish a comprehensive and modern legal framework for an open telecommunications sector by permitting new providers of telecommunications services to enter the market and compete fairly.' This is in keeping with the Telecommunications Annex of the General Agreement of Trade in Services (GATS) in which the Trinidad and Tobago Government has committed to establishing a competitive telecommunications environment in Trinidad and Tobago.

Regulation of Industry
The Telecommunications Act established the Telecommunications Authority of Trinidad and Tobago (the "Authority") as an independent body to regulate the industry. According to the Telecommunications Act, the Authority has been established 'with transparent regulatory processes to guide the sector's transformation from virtual monopoly, in which Telecommunications Services of Trinidad and Tobago is the principal provider of telecommunications services, to a competitive environment, to monitor and regulate the sector so transformed and, in particular, to prevent anti-competitive practices.'

Telecommunications Concessions and Licenses
The Telecommunications Act prescribes two (2) types of instruments for authorizing telecommunications and broadcasting operators to provide networks or services in Trinidad and Tobago: concessions and licenses.
Applications for concessions and licenses may be made via two (2) methods:

- General Application; and
- Response to Request for Proposal.

Currently the Authority only accepts General Applications on a 'first come - first served' basis in relation to the provision of services or for the operation of networks in the following markets:

- Subscription television;
- Domestic fixed telecommunications services;
- Subscription radio;
- International telecommunications provided that such applications propose to roll out new networks and/or facilities; and
- Cable-based television services.

There is, however, a moratorium in relation to all applications for the provision of services or for the operation of networks in the following markets:

- Domestic mobile telecommunications services;
- Free-to-air television services; and
- Free-to-air radio services.

Concessions

Any person wanting to operate a public telecommunications network or provide a public telecommunications service or a broadcasting service, must be granted a concession to do so by the Government Minister in charge of telecommunications upon an application made to the Authority. A concession is not required for the operation or provision of any private or closed user group network or service.

Concessions require the concessionaire to pay annual fees to the Authority and impose conditions regarding matters such as universality, anti-competitive conduct and market dominance, public emergency telecommunications services, numbering resources, quality of service and access to facilities.

Concession application fees range from one thousand Trinidad and Tobago dollars (TT$1,000) for niche or minor territorial virtual networks, to thirty-two thousand Trinidad and Tobago dollars (TT$32,000) for domestic mobile networks and services. Annual concession fees are based on revenues.

Licences

Any person wanting to operate or use any radio communication service or any radio transmitting equipment, including that on board any ship, aircraft or other vessel in the territorial waters or airspace of Trinidad and Tobago must be granted a license to do so by the Authority. The same applies to any person requiring the use of telecommunications spectrum.

Where the operation of a public telecommunications network or the provision of a public telecommunications or broadcasting service requires use of spectrum, the required license applications are processed as part of the concession application.

Where radio transmitting equipment is used for a private or closed- user group communication service, licenses are required for the radio transmitting equipment employed although a concession is not required. Licence application fees are thirty-two thousand dollars (TT$32,000) for cellular mobile spectrum licences, and not more than five hundred dollars (TT$500) for all other types of licences. Annual licence fees vary widely, ranging from ten dollars (TT$10) per KHz pair for FM radio station licenses to five hundred and forty-two thousand, one hundred and sixty dollars (TT$542,160) per MHz pair for cellular mobile spectrum licences.

Fair and Open Competition

In an effort to promote fair and open competition, the Act provides for equal treatment of all similarly situated operators and providers of services except where special treatment is necessary for the introduction of competition. Specific obligations are imposed on operators or providers whose dominance is established in a particular market in accordance with the criteria laid down in the Act.

Application of service neutrality

The Authority has expressed its intention to ensure minimal barriers to entry and competition in converged telecommunications markets by adopting, as far as practicable, a service and technology-neutral approach to authorising telecommunications networks, and public telecommunications and broadcasting services. In

furtherance of this, certain of its concessions authorise the concessionaire to provide any telecommunications service that can be provided on the relevant network.

These are:

- its network-service concession (network-based), which authorises a concessionaire to own or operate a public telecommunications network in addition to providing public telecommunications services over that network; and
- its virtual network-service concession (service-based), which authorises a concessionaire to provide public telecommunications services, without an authorisation to own or operate a physical public telecommunications network, in a manner that is transparent to the end user. This type of concession is required where an entity is capable of providing multiple services (e.g. data, image, voice, and video) over a single transmission medium that has been leased or otherwise obtained from an authorised network operator.

The concept of service neutrality does not apply to:

a) concessions to own or operate a public telecommunications network without the provision of public telecommunications or broadcasting services,
b) concessions to provide a specific public telecommunications service without an authorisation to own or operate a telecommunications network; or
c) concessions to provide a broadcasting service.

Network Interconnection

Concessionaires must ensure that their system can interconnect with other providers in order to allow users of one provider to communicate with users of another provider and to have access to the services of such other provider. The Act requires the Authority to establish guidelines and standards to facilitate interconnection and has provisions dealing with such matters as interconnection agreements, number portability, dialling parity and telephone number access. The Authority has produced the Telecommunications (Interconnection) Regulations with the intention of ensuring that there is fair competition and interoperability among telecommunications service providers. It also has prepared a Costing Methodology for the Telecommunications Sector Document.

In March 2008, TSTT and Digicel were interconnected. The incumbent operator, TSTT, is required to offer a standard form of interconnection or Reference Interconnection Offer to the operators/service providers. While required to offer a standard Reference Interconnection Offer, TSTT is entitled to negotiate prices and the technical and other terms and conditions for the element of interconnection. In conducting these negotiations, all concessionaires are required to offer the same terms and conditions of any concluded interconnections agreement to any other concessionaire on a non-discriminatory basis.

Pricing

Although the Act states that prices for telecommunications services are to be determined by providers in accordance with the principles of supply and demand in the market, it permits the Authority to establish price regulation regimes including setting, reviewing and approving prices:

- If there is a dominant service provider in the market; or
- If a provider cross-subsidizes one of its telecommunications services with another such service provided by it; or
- If the Authority detects anti-competitive pricing or acts of unfair competition.

The Authority may also regulate the prices of a dominant service provider by establishing caps on its prices. Prices and terms and conditions for public telecommunications services must be published.

Spectrum

The Act provides that the Authority shall regulate the use of the spectrum in order to promote the economic and orderly utilization of frequencies for the operation of all means of telecommunications. In accordance with the Act, the Authority published a proposed a Spectrum Plan for Accommodation of Public Mobile Telecommunications Services and another for the Accommodation of Broadband Wireless Access Services.

CHAPTER 13

RESOLVING COMMERCIAL DISPUTES

One of the factors which make Trinidad and Tobago attractive to foreign investors is the fact that they can expect any disputes in which they may become involved to be determined impartially by a judiciary whose independence is protected by the Constitution of Trinidad and Tobago.
In this Chapter, Catherine Ramnarine, Partner in Hamel-Smith's Dispute and Risk Management Department, provides an overview of the civil litigation process, including some of the procedures which may apply when a party needs to obtain prompt relief in urgent commercial cases.

The Legal System

Sources of Law
Trinidad and Tobago has a traditional common law system (similar to that of the UK) that is based on:

The Constitution
The Constitution is the supreme law of Trinidad and Tobago. Fundamental human rights and freedoms, including rights to liberty, expression, and property, freedom of association and freedom of the press are expressly recognised and entrenched by the Constitution. The enjoyment of these rights is constitutionally guaranteed not only for citizens but also for foreign individuals and legal entities.

Legislation
Statutes enacted by the Trinidad and Tobago Parliament are, in general, modelled after UK legislation, the major exception being the Companies Act (which is based on the Canadian model).

Common Law
The doctrine of precedent (legal principles derived from decided cases) applies in Trinidad and Tobago and ensures, as far as possible, consistency in legal decisions. Decisions of the Supreme Court and the Privy Council are binding upon all local courts, while those of the UK and to some extent other Commonwealth Courts, especially Australia, New Zealand and Canada, are considered highly persuasive.

The Courts
Most commercial disputes (unless they are resolved 'out of Court' by negotiations between the parties, mediation or some other form of alternative dispute resolution) will be heard and determined by the Supreme Court, which comprises:

- The High Court where all civil (non-criminal) trials are determined by a single Judge without a Jury; and
- The Court of Appeal; (generally consisting of a panel of three Appeal Judges.)

Decisions of the Court of Appeal can be appealed to the Judicial Committee of the Privy Council in the United Kingdom, which is the highest appellate Court of Trinidad and Tobago. Such appeals lie as of right in most matters.

The Judiciary
The Judiciary is independent from the executive and legislative branches of Government. The Judges of the High Court and Court of Appeal are appointed by the Judicial and Legal Services Commission (an independent body) while the Judges of the Judicial Committee of the Privy Council are essentially the same Judges who sit in the House of Lords in the United Kingdom.

Choice of Law
It is possible for a contract to expressly provide that it is to be governed by the law of a country other than Trinidad and Tobago. Such a clause would generally be recognised and given effect by the Trinidad and Tobago Court provided that the relevant choice of law is bona fide and legal and there is no reason for avoiding the choice on grounds of public policy.

The Civil Litigation Process

The New Civil Proceedings Rules
The 'new' Civil Proceedings Rules ("CPR") came into force in September 2005, geared towards improving the efficiency of the litigation process and expediting the resolution of disputes. One important by-product of this is the need to 'front load' case preparation. It is important that comprehensive instructions, including relevant documentation and records, are provided at a very early stage and, in most cases, prior to an action being filed.
Settlement of disputes is also encouraged and facilitated under the CPR, as is the increased use of technology.

The Litigation Process Generally
Before the Commencement of Litigation - The Pre-Action Protocols:

The Practice Direction on Pre-Action Protocols ("the Protocols") issued by the Supreme Court outlines the steps that parties should take in relation to prospective legal claims. The Protocols are, in general, aimed at encouraging the early exchange of information about the claim between the parties, so as to:

a) enable the parties to avoid litigation by exploring the possibility of settlement before litigation is commenced; and/or
b) support the efficient management of those disputes that do proceed to litigation.

Non-compliance with the Protocols may be taken into account by the Court when awarding costs for or against the parties at the conclusion of litigation. Before commencing litigation, the party suing (the Claimant) is required to write to the party being sued (the Defendant) giving details of the claim. The Defendant is required to provide a detailed response within a reasonable time which is generally taken to be about twenty-eight (28) days.

The Claimant's letter should:

- Give sufficient details to enable the defendant to understand and investigate the claim;
- Enclose copies of the essential documents on which the claimant relies;
- Require a prompt acknowledgment;
- Require a full response within a reasonable period (generally one (1) month);
- Request and ask for copies of any essential documents which the Claimant wishes to see; and
- State whether the Claimant wishes to enter into mediation or another alternative method of dispute resolution.

The Defendant's response should:

- Give detailed reasons why the claim is not accepted, identifying which of the Claimant's contentions are accepted and which are in dispute;
- Enclose copies of the essential documents on which the Defendant relies;
- Enclose copies of the documents requested by the Claimant or explain why they are not enclosed;
- Identify and request copies of any additional essential documents which the Defendant wishes to see; and
- State whether the Defendant is prepared to enter into mediation or another alternative method of dispute resolution.

If the Claimant receives no or no satisfactory response to its letter, or if the parties are unable to resolve the matter at the Pre-Action stage, the Claimant may commence litigation proceedings. The Pre-Action Protocols require significant case preparation and disclosure by both the Claimant and the Defendant prior to the commencement of litigation. This affords an opportunity for some disputes to be resolved in a cost effective and timely manner without having to resort to litigation. However, it also necessitates the front loading of cases and the provision of detailed, comprehensive instructions, documents and records at a very early stage.

Initiating a Claim

The Claimant commences litigation by filing a 'Claim Form' and a 'Statement of Case' at the High Court. The Claimant's Statement of Case must set out all the facts on which he relies, identify or annex copies of all documents necessary to prove its case, and contain a 'statement of truth' by or on behalf of the Claimant certifying its contents. It is the Claimant's responsibility to ensure that the Claim Form and Statement of Case are personally served on the Defendant. If the Defendant is not in the country, a special application for permission to serve him out of the jurisdiction must be made to the Court.

Disputing a Claim

A Defendant who has been served with a claim must, if he disputes it:

- Within eight (8) days of being served, file an 'Appearance' giving notice of his intention to defend the claim; and
- File a 'Defence' within twenty-eight (28) days of service. The Defence must include a short statement of all the facts on which the Defendant relies to dispute the claim against him and must state which of the allegations in the Statement of Case he admits and which of them he disputes. Copies of all documents necessary to the Defence must also be annexed. As a general rule, a Defendant will not be allowed to rely on any allegation(s) which he did not mention in his Defence unless the Court gives him permission to do so. The parties may agree to a single extension of time for filing the Defence up to three months after the date of service, but any further extensions of time can only be made by Court Order.

The Claimant may file a Reply to the Defence if he obtains the Court's permission to do so.

Once the first Case Management Conference (CMC) has taken place, neither party will be allowed to amend the Statement of Case or Defence unless he can prove that there is a good explanation for the change not having been made earlier and the application to make the change is made promptly. This underscores the importance of early case preparation and the need to provide detailed instructions, including supporting documentation, as early as possible.

Case Management and Pre-Trial Directions

One of the innovations of the CPR is the introduction of case management, which is intended to enable the Court to deal with cases as justly and efficiently as possible. A docket system is used under which an action is assigned to one Judge who actively manages it from case management to final disposition at Trial.

Case Management Conference (CMC)

Once a Defence has been filed, the action will be assigned to a Judge and a CMC will be scheduled. The general rule under the CPR is that a party (or where that party is a company, a person who is in a position to represent its interests) must attend the CMC.

The CMC does not take place in 'open' Court and more closely resembles (as the name suggests) a conference between the parties, their attorneys-at-law and the Judge rather than a formal hearing. Notwithstanding this, the Judge is empowered to make a wide range of orders at the CMC and will typically fix timetables for the progress of the case, make directions for the disclosure and inspection of documents or filing of Witness Statements and/or hear and determine any applications made by the parties.

Disclosure of Documents
Each party is required under the CPR to 'disclose' (by the filing of a 'List of Documents') all documents that are or have been in his control which are directly relevant to the action. This includes not only documents on which that party intends to rely, but also documents that tend to adversely affect his case and/or support the other party's case. Either party can inspect and take copies of the documents listed in the other party's List of Documents. Certain documents, including communications between a party and his legal advisor are privileged from production. As a general rule, a party will not be allowed to rely on documents that were not disclosed.

Witness Statements
The general practice under the CPR is for parties to file 'Witness Statements' (statements made by their intended witnesses of the evidence that they intend to give at Trial) prior to the Trial of the matter. This is intended to enable each party to assess the strength of the other party's case and to reduce the time that the actual Trial takes. A Witness Statement (once put into evidence at Trial) stands as that witness' evidence 'in chief' and avoids him having to give oral testimony of same, although he may still be cross-examined by the other party's Attorney. A witness is allowed to 'amplify' his witness statement at Trial but cannot give evidence of new matters unless they arose after the Witness Statement was filed. Where an Order for the filing of Witness Statements has not been complied with, the relevant witness cannot give evidence at Trial.

Prior to Trial, the parties may also agree on and file a bundle of the documents which they intend to use at the Trial as well as statements of the facts and issues in dispute between them. A Judge may schedule a 'Pre-Trial' Review hearing before Trial in order to ensure that all pre-trial directions have been complied with.

Trial
Civil Trials are heard by a single Judge without a jury. In general, the Claimant will present his case (including the evidence of his witnesses) first, followed by the Defendant. After each party presents its case, oral submissions may be made, unless the Court directs that submissions be made in writing. Once all the evidence and submissions have been given, the case is closed. Judgment is given either immediately or "reserved" to a later date.

Costs
The general rule is that an unsuccessful party will be ordered to pay the reasonable legal costs incurred by the successful party. However, the costs which a successful party can recover will not necessarily be the same as the legal fees paid. The default position under the CPR is that the costs to which a successful party is entitled will be calculated on a sliding scale of fixed percentages of the total value of the claim. Alternatively, the parties may apply for a costs budget to be set.

Appeal
Appeals from decisions of the High Court lie to the Court of Appeal, while decisions of the Court of Appeal can be appealed to the Judicial Committee of the Privy Council, which remains the final appellate court for civil cases.

Expedited/Urgent Cases

Judgments without Trial
In cases where a Defendant has no or no arguable Defence to a claim, it may be possible to obtain Judgment against him relatively quickly and cost effectively and without a full trial.

Default Judgment
Where a Defendant has been served with the Claim Form and Statement of Case but fails to file an Appearance and/or Defence within the time stipulated for doing so, the Claimant can, and in most cases does, obtain default judgment against him. An application for default judgment is made in writing to the Registrar of the Supreme Court and does not require a hearing.
A Defendant who has had Judgment in default entered against him may apply to the Court to have it set aside where he can show that he had a realistic prospect of successfully defending the claim, provided that the application is made as soon as reasonably practicable after he finds out that default judgment has been entered against him.

Summary Judgment
A party can apply to the Court for Summary Judgment on the whole or part of the claim where he can show that the other party to the action has no realistic prospects of success.

Urgent Remedies
The Courts may in appropriate circumstances grant urgent interim relief in the form of injunctions, freezing injunctions and/or search orders before a Trial occurs, where it can be demonstrated that such relief is necessary. In many cases the grant of such interim relief effectively decides the outcome of the dispute or results in a negotiated settlement.

Injunctions
In certain circumstances a Court may be prepared to grant an injunction before Trial restraining a party from doing something (a prohibitory injunction) or commanding them to do something (a mandatory injunction).

A Court would, in general, only grant an injunction if satisfied that the harm likely to be suffered by the Claimant without the injunction is greater (in both likelihood and extent) than the harm that would be suffered by the Defendant if it were granted. In making this assessment the Court will consider the relative strengths and weaknesses of each party's case and the likelihood of success at Trial, the severity of the harm that each party would suffer and the extent to which monetary damages would be adequate compensation for such harm. A Claimant need not necessarily prove that he has a strong chance of succeeding at Trial. Rather, the Court will weigh all the factors together, so that a Claimant with a relatively modest chance of success at Trial, but who faces the risk of severe consequences should an injunction not be granted, may be granted an injunction (and vice versa). At minimum, the Claimant must demonstrate that he has at least some prospect of success and that his case is not hopeless. It is important that the application for the injunction be made as expeditiously as possible as delay tends to be a factor weighing against the Court's granting of such relief.

Injunctions can be granted ex parte (i.e. in the absence of the other party) in suitably urgent cases. Such injunctions are usually granted for a short interim period until the other party has the opportunity to appear before the Court and explain its reasons, if any, for contending that the injunction should not be continued until Trial. A party that applies for an ex parte injunction must fully disclose all material facts and provide an undertaking to satisfy any claim for damages suffered by the other party that may have resulted from the injunction should it subsequently be shown that the injunction ought not to have been granted.

Freezing Injunctions (Prevention of Dissipation of Assets)
A Defendant may attempt to dispose of his assets before Trial so as to prevent any Judgment obtained against him from being enforced (as he would have no assets out of which to satisfy the Judgment Debt). A Freezing Injunction is designed to prevent this from happening by prohibiting the Defendant from dealing with his assets or removing them from the jurisdiction. Because the Freezing Injunction represents a

significant restriction on the Defendant's rights (effectively denying him access to his own assets) it will only be granted if certain conditions are fulfilled.

The Claimant must:

- Show that he has a good arguable case and is likely to recover Judgment against the Defendant for a certain or approximate sum;
- Make full and frank disclosure of all material facts, including full particulars of his claim and its amount;
- State fairly the points which the Defendant could advance against his claim including any counterclaim;
- Show that the Defendant has assets within the jurisdiction and identify such assets as far as possible;
- Show that there is a real risk that the Defendant would remove the assets before the Judgment is satisfied; and
- Provide an undertaking to pay damages to the Defendant if he fails in his claim or it is decided subsequently that the injunction should not have been granted.

Search Orders (Preservation of Evidence)

A Defendant that is being or is about to be sued may attempt to destroy evidence that can be used against him. A Search Order is designed to prevent this from happening by compelling the Defendant to allow the Claimant to enter into his premises to search for, inspect and remove documentary and other evidence with a view to ensuring its preservation until trial. This type of order is obtained "in camera" (in the absence of the public) and without the other side being present. It is of particular significance in copyright and passing off actions.

Because of the draconian nature of the Search Order, it will only be granted if the Claimant meets certain pre-conditions. The Claimant must:

- Establish an extremely strong prima facie case and show that he is likely to succeed in the action;
- Present clear evidence that the Defendant has incriminating evidence in his possession and that there is a real possibility that he would destroy it;
- Show that he is likely to suffer very serious actual or potential damage from the Defendant's actions and demonstrate a "paramount need to prevent a denial of justice to the Claimant" which cannot be met simply by an order for delivery up or preservation of the documents;
- Make full and frank disclosure; and
- Provide an undertaking to pay damages.

Additionally, the party seeking such an order must also ensure that it contains all proper safeguards for the absent party including, for example, an undertaking that the order (together with the material on which it was granted) will be served on the defendant by an independent Attorney who will explain the terms of the order to the defendant and advise him to seek immediate advice.

Alternative Dispute Resolution

Alternative dispute resolution is encouraged but is not mandatory under the Trinidad and Tobago litigation process. The Court has introduced a Programme, under which matters may be referred to:

(i) Mediation; or
(ii) Judicial Settlement Conferencing.

The Court encourages parties to participate in the programme and parties are free to request referral to ADR at any time. The substantive proceedings are stayed pending the completion of ADR, which generally takes about six (6) weeks to three (3) months to complete. (See also Chapter 14, Alternative Dispute Resolution).

Conclusion

In Trinidad and Tobago where litigation is necessary to protect a party's interests, the Courts provide an independent and impartial forum for the just resolution of commercial disputes, as well as a modern procedural system that caters for the grant of appropriate interim relief.

CHAPTER 14

ALTERNATIVE DISPUTE RESOLUTION

The Civil Proceedings Rules encourage parties to make reasonable attempts to resolve their disputes amicably and to use litigation as a last resort. Indeed, the settling of disputes at an early stage continues to be an integral part of case management and is often successful in reducing legal and commercial costs. Parties who are able to resolve their disputes through alternative dispute resolution mechanisms often benefit from a faster process that is more likely to produce a result that is satisfactory and acceptable to both parties.

In this Chapter, Jonathan Walker, Partner and Fanta Punch, Partner in Hamel-Smith's Dispute and Risk Management Practice Group, outline and discuss some of the alternatives that are available to manage and reduce the risk of commercial disputes escalating, and ensuring that those disputes are resolved cost effectively.

Nature of Alternative Dispute Resolution (ADR)
ADR is used as a method of resolving disputes between parties both as an alternative to commencing litigation and even after litigation has commenced. The process is a voluntary one and, depending on the method adopted, can be without prejudice to the parties' strict legal positions. With the aid of an independent third-party assisting parties in their deliberation, disputing parties are able to arrive at a mutually acceptable resolution which is cost effective, quick and commercially beneficial.

Examples of situations where a properly designed ADR system might result in significant cost savings include arrangements between joint venture partners, arrangements with suppliers and sub-contractors and arrangements with customers.

Advantages and Disadvantages of ADR
ADR has many advantages in settling commercial disputes. While these advantages vary depending on the method deployed, in the main they include:

- A more cost-effective option to litigation;
- A shorter period of time to resolve the dispute;
- Greater flexibility in crafting a solution;
- Greater flexibility with regard to the selection of the person to deal with the dispute, thus allowing parties to select persons with the appropriate experience to deal with the dispute; and
- A less adversarial process which increases the chance that the parties are able to preserve a business relationship.

However, there are disadvantages to using ADR. For example, unlike the certainty and enforceability of a court judgment, some ADR solutions cannot be forced upon the parties. There is also the possibility of a lack of full disclosure during the negotiations which may mean a risk that decisions are made with less than all the facts.

Types of ADR
There are various types of ADR to be considered when seeking an alternative to litigation. Some of the more common forms include mediation, arbitration and expert determination.

Mediation
The mediation process involves an independent party who is appointed by both parties and acts as a facilitator between them. Some key features of this process (as distinguished from other forms of ADR) are that it focuses on the interests of the parties; the mediator imposes no decision but acts purely as a facilitator therefore the parties are permitted to reveal to the mediator information that is confidential and that they do not wish disclosed to the other party and the parties themselves participate in the crafting of the solution to the dispute. The result is a process which allows the parties to explore a vast array of potential creative solutions which meet with their respective interests.

The Mediation Act 2004 governs not only the Mediation Board's overseeing of the certification of mediators and registration of mediators, but also regulates confidentiality which is an integral part of any mediation process.

Arbitration
Two (2) of the most powerful advantages of this form of dispute resolution, particularly for commercial disputes, is that it gives parties the benefit of resolving matters in a private and confidential process (as opposed to Court proceedings which are open to the public) as well as having the issue decided by a person with specialized knowledge relevant to the issue in dispute whether this be of a legal or technical nature.

Additionally, arbitration is an internationally recognized means of ADR and there are a host of international rules that parties may rely upon to govern the arbitral process. It therefore offers commercial clients an accepted cross-border method of resolving differences which can be beneficial to international commerce.

Expert Determination
This form of dispute resolution is relatively new to Trinidad and Tobago and continues to develop. The process entails referring the dispute, usually of a technical or scientific nature, to a person with expertise and experience in a particular field, with both parties agreeing to be bound by their determination. This process is especially useful in relation to disputes in specialized industries which do not involve any, or any significant disputes of fact.

CHAPTER 15

ENFORCEMENT OF JUDGMENTS

Even when parties have obtained a judgment from a Court or the award of an Arbitrator, it may be necessary to take steps to enforce their rights under such judgment or award. This is so whether the judgment or award is obtained in Trinidad and Tobago or abroad.

In this Chapter, Jonathan Walker, a Partner in Hamel-Smith's Dispute and Risk Management Practice Group, provides an overview of the procedures by which one can enforce foreign and local judgments, as well as the modes of enforcing such judgments and awards.

Enforcement of Foreign High Court Judgments
The enforcement of foreign judgments by the courts of Trinidad and Tobago is usually dealt with through one of two avenues:

- by way of registration under the Judgments Extension Act; or
- by way of common law, i.e., by instituting an action in Trinidad and Tobago on the foreign judgment.

It is also possible in certain circumstances to institute a fresh action in Trinidad and Tobago based on the original cause of action. This is possible where, for example, the time for instituting such an action is not statute barred and/or the cause of action is one which is recognised as actionable, according to the applicable laws of Trinidad and Tobago.

Statute
The Judgments Extension Act, Chapter 5:02 provides a system of registration to facilitate the direct enforcement in Trinidad and Tobago of United Kingdom money judgments. The Act also provides for the registration of the judgments of specified Commonwealth countries which have similar reciprocal provisions.

Commonwealth countries covered by the Act are:

Commonwealth Countries within the West Indies:

- Bahamas
- Barbados
- Grenada
- Guyana
- Jamaica
- Leeward Islands
- St. Lucia
- St. Vincent

Commonwealth Countries outside the West Indies:

- Australia
- Cocos (Keeling) Islands and
- Christmas Island
- Norfolk Island
- Papua New Guinea
- India
- Nigeria

An application to register such judgments should be made within twelve (12) months after the date of the judgment, although the High Court of Trinidad and Tobago has the power to extend this time.

According to Section 4, these judgments will not be registered where:

- The original court acted without jurisdiction;

- The judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court;
- The judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court;
- The judgment was obtained by fraud;
- The judgment debtor satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment; or
- The judgment was in respect of a cause of action which, for reasons of public policy or for some other similar reason, could not have been entertained by the registering court.

Once a judgment is registered under the Act, as at its date of registration, it is of the same force and effect as a judgment originally obtained in Trinidad and Tobago. The reasonable costs of and incidental to the registration of the foreign judgment are recoverable as if such costs were payable under the judgment.

Common Law - Action on Foreign Judgment

A foreign judgment that emanates from a jurisdiction which does not fall within the schedule of countries listed in the Judgments Extension Act will be enforceable in Trinidad and Tobago once the following criteria are satisfied:

- The courts of Trinidad and Tobago recognize the jurisdictional competence of the foreign Court;
- The foreign judgment is for a definite sum of money;
- The foreign judgment is final and conclusive; and
- There is no defence to the recognition of the foreign judgment.

Jurisdictional Competence

The foreign judgment must have been given by a court of competent jurisdiction.

Under the common law, a foreign court will be regarded as being jurisdictionally competent if at the time legal proceedings are commenced in the foreign court:

- The Defendant had established and maintained at its own expense a fixed place of business of its own within that jurisdiction and for more than a minimum time has carried on its own business from that place; or
- If a representative of the Defendant has for more than a minimum period of time carried on the business of the Defendant in the jurisdiction at or from some fixed place of business.

Alternatively, a foreign court will be treated as jurisdictionally competent if the Defendant has submitted to the jurisdiction of the foreign court:

- By instituting the proceedings or by counterclaiming in them;
- By voluntarily appearing in the proceedings as a Defendant to dispute the merits (other than by appearing solely to contest the jurisdiction of the foreign court); or
- By entering into an agreement to submit the dispute to the jurisdiction of the foreign courts.

Judgment for Definite Sum

The judgment must be for a definite sum of money, which expression includes a final order for costs. In this regard, the judgment must satisfy the following criteria:

- It must order that the Defendant pay to the Plaintiff a definite and actually ascertained sum of money (if a mere arithmetical calculation is required for the ascertainment of the sum, it will be treated as being ascertained); and
- It must be for a sum other than a sum payable in respect of taxes, a fine or a penalty. The courts of Trinidad and Tobago have no jurisdiction to entertain an action for the enforcement, either directly

or indirectly, of a penal or revenue law of a foreign jurisdiction. However, if the foreign judgment imposes a fine on the Defendant and also orders him to pay damages, the latter part of the judgment can be severed from the former and enforced in Trinidad and Tobago.

Final and Conclusive Judgment

The judgment must finally and conclusively establish the existence of the debt so as to make it res judicata between the parties. Thus:

- A foreign judgment is not final if it is liable to be abrogated or varied by the court which pronounced it;
- If the judgment is given by a court of a country forming part of a larger federal system, e.g. an American state, the finality and conclusiveness of the judgment in the country where it is given is alone relevant to Trinidad and Tobago. Whether such judgment is final and conclusive in parts of the federal system (e.g. other American States) is irrelevant; and
- A foreign judgment may be final and conclusive even though it is subject to an appeal, and even though an appeal is actually pending in the foreign jurisdiction where the judgment was given. In the proper case, however, a stay of execution would be ordered by the Trinidad and Tobago Court pending a possible appeal.

Defence to Recognition

The foreign judgment will not be enforceable in Trinidad and Tobago if:

- It was obtained by fraud;
- Its enforcement is contrary to public policy; or
- Natural justice was not observed.

Common Law - Fresh Action on Original Cause of Action

If a fresh action is brought in Trinidad and Tobago based on the original cause of action, the Plaintiff has several options open to him:

- Where the Defendant does not enter an Appearance to the action in Trinidad and Tobago, the Plaintiff may enter judgment in default of Appearance at once;
- Where the Defendant enters an Appearance, the Plaintiff may apply for summary judgment on the basis that the Defendant has no defence to the claim. However, for the Plaintiff to succeed on an application for summary judgment, he must be in a position to prove that there is no dispute as to the facts which might give rise to a defence;
- Where the Plaintiff's application for summary judgment is unsuccessful, and the Defendant is granted leave to issue a Defence in the action, the Plaintiff may obtain judgment in default of Defence if the Defendant does not file his Defence within the stipulated timeframe.

In the event that the above options are not open to the Plaintiff, the action will be set down for trial. At present the general length of time from institution of proceedings to trial ranges from three (3) to four (4) years.

Enforcement of Foreign Arbitral Awards in Trinidad and Tobago

An arbitral award has three (3) consequences:

- it creates new rights in favour of a successful party which he can enforce in the courts of Trinidad and Tobago in substitution for the rights upon which his claim or defence was founded;
- it precludes either party to the arbitration from contradicting the decision of the arbitrator on any issue decided by the award and also upon any issue that was within the jurisdiction of the arbitrator to decide but which, whether deliberately or accidentally, he was not asked to decide; and
- it can operate to bar a claimant, whether successful or unsuccessful, from bringing the same claim again in a subsequent arbitration or action.

The award can be enforced either by:

- statute;
- summary procedure provided under the Arbitration Act; or
- bringing an action on the award.

Statute

The Arbitration (Foreign Arbitral Awards) Act, 1996 ("the Act") gives effect in Trinidad and Tobago to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on 10 June, 1958, commonly known as the New York Convention. A country which has ratified the New York Convention agrees to enforce foreign arbitral awards subject to the proviso that the arbitration must have taken place in another country which is a party to the Convention. Pursuant to the Act an "arbitration agreement" includes an arbitral clause in a contract or an arbitration agreement signed by the parties contained in an exchange of letters or telegrams.

Before applying to enforce a foreign arbitral award in Trinidad and Tobago, pursuant to Section 3 of the Act, a certificate "purporting to be issued under the hand of" the Minister of Foreign Affairs to the effect that a country specified in the certificate is or was at a time specified a party to the Convention must be obtained, and is conclusive proof in any proceedings that a country is, or was at a time specified, a party to the Convention.

According to Section 4 of the Act "a convention award is enforceable in Trinidad and Tobago either by action" or by leave of the Court in the same manner as a judgment of the High Court.

Section 5 of the Act provides that a party seeking to enforce an award must produce to the Court:

- the duly authenticated original award or a duly certified copy of it;
- the original arbitration agreement or a duly certified copy of it; and
- a translation of the award or agreement certified by an official or sworn translator or by a diplomatic or consular agent, if the award or agreement is in a language other than English.

Enforcement of an award may not be refused unless the person against whom it is invoked proves:

- that a party to the arbitration agreement is under some incapacity under the law applicable to that party;
- that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made;
- that he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case;
- that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration. (N.B. An award that contains decisions on matters not submitted to arbitration may be enforced to the extent that it contains decisions on matters submitted to arbitration that can be separated from those matters not so submitted);
- that the composition of the arbitral authority, or the arbitral procedure, was not in accordance with the agreement of the parties or, failing that, with the law of the country where the arbitration took place; or
- that the award has not yet become binding on the parties or has been set aside or suspended by a competent authority in the country in which, or under the law of which, the award was made.

Enforcement of an award may also be refused if:

- the award is in respect of a matter that is not capable of settlement by arbitration; or
- it would be contrary to public policy to enforce the award.

Summary Enforcement of Award
The Arbitration Act provides that an award or an arbitration agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court with the same effect and in such a case judgment may be entered in terms of the award.

This summary procedure is not available however:

- If the arbitration agreement is not in writing and is therefore not within the Arbitration Act;
- Where the award is declaratory and therefore does not constitute award of payment of a sum of money, and
- If the award is not in a form in which it can be entered as a judgment, e.g., it requires some calculation to be made before the amount payable is known. Leave can be given, however, to enforce an arbitral award which orders payment of an amount expressed in a foreign currency.

The main defence available when a successful party brings an action on the arbitral award or applies under the summary procedure is that the arbitrator had no jurisdiction to make the award, or to make some part of it.

The grounds relied upon may include:

- That there was no valid submission, so that the entire arbitration was a nullity;
- That the arbitrator was disqualified, that he did not possess some qualification that he was required by the arbitration agreement to possess, e.g., membership of a specified association; or
- That the award, though valid when made, has ceased to be binding because it has subsequently been discharged, e.g., by a subsequent agreement between the parties.

Action on the Award
In an action on an arbitration award the Plaintiff should plead, and be prepared to prove:

- The arbitration agreement;
- The reference to the arbitrator of a dispute which was within the terms of that agreement;
- That the arbitrator was duly qualified and duly appointed; and
- The award itself.

If these factors cannot be proved, the party seeking to enforce the award may find that a Defendant can rely on the defences outlined above. It should also be borne in mind that an action to enforce an arbitral award may take between two to three (2-3) years to be heard even if sufficient reasons are put forward to fast-track the action.

Modes of Enforcement
Where a judgment for the payment of a sum of money is obtained in the Courts of Trinidad and Tobago or a foreign judgment is registered in Trinidad and Tobago, there are a number of options available to the judgment creditor to actually enforce it and obtain satisfaction from the judgment debtor.

Writ of Fieri Facias
This directs the Marshall of the High Court to levy upon any personal goods and chattels of a Defendant which are found and to sell same.

Attachment Proceedings
Once it can be proved that a debt is owed by a third party to a Defendant, this debt can be applied towards satisfaction of a judgment by attachment proceedings. An order can then be sought for direct payment from the third party to the Plaintiff towards the satisfaction of the judgment owed by the Defendant to the Plaintiff.

Summons for Sale
Where a Defendant owns real estate, an application can be made to the court for an order for the sale of the Defendant's property, out of the proceeds of which sale the judgment can be satisfied. A report on the title to the property is required to support such an application.

Creditor's Winding Up
Under the provisions of the Companies Act, a creditor may apply to wind up a company which is unable to pay its debts.

Generally, the directors of a company are not personally liable for the debts of the company. However, the Court, on hearing a petition to wind up a company, may declare that a director, whether past or present, is personally responsible for all or any of the debts or other liabilities of the company if it appears to the Court that the business of the company has been carried on:

- With intent to defraud creditors of the company;
- With reckless disregard of the company's obligations to pay its debts; or
- With reckless disregard of the sufficiency of the company's assets to satisfy its debts and liabilities.

Appointment of a Receiver
This method of enforcement is rarely utilized as most legal means of execution will produce a quicker realization. It is appropriate, however, when a Defendant is the recipient of income which cannot be garnished.

Charging Order on Stocks and Shares
By this method a creditor can obtain a charge on a Defendant's holding of Government stock, funds or annuities and the stocks and shares of any company, whether held by him or in trust for him and whether in possession or reversion or vested or contingent.

Judgment Summons
This mode of enforcement enables a Plaintiff to summon a Defendant to court to give evidence as to the Defendant's means and assets. On the hearing of the Summons an order may be made by the court for the payment of instalments by the Debtor until the debt is fully satisfied. The Defendant's Paymaster may also be summoned to give evidence as to the Defendant's income. In appropriate cases the order may be "guarded" by the imposing of a term of imprisonment in the event that the debtor defaults in paying the instalments.

Bankruptcy Proceedings
An Application may be made to the Court in Trinidad and Tobago by way of a Notice which requires the debtor to pay the judgment debt or sum in accordance with the terms of the judgment. Thereafter the creditor may present a Bankruptcy Petition against the debtor on which the Court may make an order. Consequent on the order a general meeting of the debtors and creditors is held to determine the best method of dealing with his debts and the debtor is required thereafter to prepare and submit to the Official Receiver a statement of his affairs verified by affidavit showing the particulars of the debtor's assets, debts, liabilities, the names, residences and occupations of his creditors, securities held by them respectively, the dates when the securities were given and such other information that the Receiver may require. The debtor shall also be required to appear at court to be examined as to his conduct dealings and property.

Fugae Warrant
Where a person is alleged to be indebted and to be about to quit Trinidad and Tobago to avoid payment of the debt, on an Application by affidavit the Judge of the High Court may direct the Marshall to arrest and bring before the court such person. The affidavit must be made in respect of a debt of two hundred and fifty dollars ($250.00) and upwards and must verify the deponent's belief that there is no defence to the action

and that the deponent believes that it is the debtor's intention to quit Trinidad and Tobago giving particulars of the debt, on which and the place for which the debtor proposes to leave as far as same is known to the deponent.

On service of the warrant, if the debtor does not confess the judgment and provide security by the deposit of money or by a bond the debtor may be imprisoned. The debtor may be discharged however on proof of:

- The payment or settlement of the debt;
- The consent of the creditor;
- Giving of security as required;
- An adjudication of bankruptcy against the debtor or on satisfying the Judge that he is without means and that his absence will not materially prejudice the creditor.