

THE TRINIDAD AND TOBAGO INVESTMENT POLICY 2007-2012: INVESTORS' PARADISE?

Christopher Hamel-Smith

The Ministry of Trade & Industry has recently published a preliminary report (Green Paper) setting out the Government's proposed policy for foreign investment for the next five years. Trinidad & Tobago is credited with the highest Foreign Direct Investment (FDI) per capita in Latin America and the Caribbean and it continues to be a fertile ground for foreign investment, especially as a result of the activity in its energy sector. As the Green Paper recognises, however, Trinidad & Tobago has struggled to attract non-energy FDI.

The Green Paper is welcomed, particularly insofar as it evinces the Government's aim to continue a reasonably non-interventionist approach towards regulation, its recognition of the need for greater effort to promote investment in the non-energy sectors and its intention to take steps to further improve Trinidad & Tobago's investor friendly climate. However, while the Green Paper is fairly detailed in terms of its analysis of the current situation and its articulation of the Government's philosophy and intentions, it is somewhat less helpful in terms of the details of the policy measures that the Government proposes to pursue to achieve its objectives.

Focus on Investment Climate

Highlighting the need for a friendly investor climate as being primary amongst the requirements to achieve a heightened FDI, and using countries such as Malaysia and Singapore as benchmarks for economic success, the Ministry is planning to effect changes in the investment infrastructure. With this aim in mind, the Green Paper signals an intention to streamline Trinidad & Tobago's incentives regime and to introduce new legislation which will repeal and replace the existing Foreign

Investment Act, 1990 as well as other relevant pieces of existing legislation. As part of the review of the incentives regime, consideration is also to be given to a further reduction in the corporation tax rate from the current 25%.

It is also proposed that the Trinidad & Tobago Business Information Centre be established to serve as an effective mechanism to communicate with potential investors on investment opportunities and regulatory procedures. The existing limitation on share ownership by foreign investors has also been revisited. Under the current legislation, foreign investors need a licence in order to acquire more than 30% of shares in a local public company. However, the proposed new legislation will allow acquisition by a non-national of up to 49% of any company without a licence.

Investment Promotion

The Government has noted its interest in making a concerted attempt to promote investment at two distinct levels: Country level and Sector level (promotion of targeted sectors). Further, the Ministry has drafted strategic plans for specific sectors – food and

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FOREIGN MUTUAL FUNDS

Helen Ross

Within recent times, the Trinidad and Tobago investing public seems to be favouring mutual funds as an investment vehicle, over the more traditional bank deposits. This is borne out by the fact that during the period 2000-2005, the mutual fund industry in Trinidad and Tobago grew by the phenomenal rate of approximately 500%, while bank deposits grew by a much more modest 13.7%.

One very attractive feature of the industry, is that several foreign mutual funds have become available for purchase through local agents. This allows the local investing public the chance to participate in a much broader range of investment opportunities which may offer a higher rate of return and may also provide some protection against inflation. It also benefits local financial institutions and brokers by allowing them to offer a much wider portfolio of funds.

Under our law, a security may not be offered for sale to the public in Trinidad and Tobago unless it has first been registered with the Trinidad & Tobago Securities and Exchange Commission (SEC). This includes a security that is already registered in a foreign jurisdiction, such as a foreign mutual fund. There are currently over thirty (30) foreign collective investment schemes (mostly mutual funds) registered with the SEC. This is almost equal to the number of local registered mutual funds. There are also over 40 registered foreign sub-funds.

But foreign mutual funds are suddenly finding it very difficult to become registered in Trinidad and Tobago, due to the SEC's recently changing policy.

The Original Approach

In 1998, the SEC published a Policy Guideline concerning the registration with the SEC of the securities of foreign mutual funds issued abroad, for their distribution in Trinidad and Tobago. The general approach that the SEC took was that if a foreign mutual fund:

- was generally reputable;
 - was from a jurisdiction that had a recognised securities regulatory body with which the fund was registered;
 - was under an obligation to file disclosure documents in its 'home' jurisdiction;
 - was required in its 'home' jurisdiction to comply with financial reporting requirements which satisfy acceptable accounting guidelines;
 - had its documents to be used in Trinidad and Tobago printed in English;
 - appointed a properly qualified agent to represent it in Trinidad and Tobago and;
 - had a prospectus which provided full, true and plain disclosure of all material facts relating to the securities proposed to be distributed;
- generally the fund would be accepted for registration.

The Revised Approach

In January 2007, the SEC took a decision to defer the consideration of all foreign mutual fund registration applications, in order, as

they put it, to "review the reporting regimes of foreign jurisdictions, with particular reference to offshore jurisdictions, in order to ascertain whether their requirements are acceptable." The review was completed in May 2007, the result of which led to the SEC completely changing its general approach to the acceptance for registration of foreign mutual funds. Overseas funds are now categorised into "Designated Territory Schemes" and "Individually Recognised Schemes".

A Designated Territory Scheme is one whose jurisdiction "provides an equivalent level of investor protection, disclosure requirements and a continuous reporting framework to that of Trinidad & Tobago." The designated territory jurisdictions were: Australia, Barbados, Isle of Man, Canada, Guernsey and the U.S.A.

An Individually Recognised Scheme is a "scheme that is domiciled outside a designated territory." The SEC stated that those schemes will be considered on a case by case basis.

The Collective Investment Scheme Guidelines

Most significantly, the SEC stated that all schemes will be reviewed using the Collective Investment Scheme Guidelines (CIS Guidelines) as standard.

The SEC has in effect changed its
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approach from one where it focussed mainly on the ability of the foreign mutual fund to show that it was registered with a recognised securities body in a foreign jurisdiction that had certain minimum requirements, to one where it focuses on the substantive contents of the fund prospectus and whether they met the standards set by it in the CIS Guidelines.

Originally the CIS Guidelines were applied only to mutual funds issued in Trinidad & Tobago. Those Guidelines are in fact proposed By-laws which have not yet been enacted, but which the SEC has been imposing for over a year on locally issued mutual funds which apply for registration with it. The Guidelines include restrictions such as:

- the percentage of portfolio assets a fund must have in a particular type of investment if it has in its name words that suggest the pursuit of a particular investment strategy;
- the percentage of outstanding borrowings a fund is allowed;
- how its net asset value must be calculated and how often and;
- the percentage of illiquid securities it may have.

The Impact

This change in the SEC's policy had the immediate effect of making it much harder for a foreign mutual fund to be accepted for registration in Trinidad and Tobago. Many foreign jurisdictions have their own individual criteria for mutual funds to meet. Inevitably, those criteria may not be on all-fours with ours, and occasionally are more stringent (as is the case in several jurisdictions with more developed securities markets).

Some foreign jurisdictions may, for example, have a lower borrowing threshold than ours, or they may not have the same restriction on the fund name. It is likely therefore, that quite a number of otherwise acceptable foreign funds may not meet the particular criteria set out in the CIS Guidelines.

What seems certain, however, is that a foreign fund registered in several jurisdictions with thousands of investors and with millions of dollars in securities, but which is not approved because it does not meet one or other of the criterion of the SEC, is not likely to change its fund characteristics or its prospectus, in order to be accepted for registration here.

Further Possible Changes

Perhaps in recognition of this, as of the end of June 2007, the SEC again deferred its approval of the registration of foreign funds, at least those from Non-Designated Territory Jurisdictions, in order to "review the legal framework under which foreign schemes operate, with emphasis on the minimum standards that [they] must meet in order to be considered eligible for registration in Trinidad and Tobago."

In 1998, the SEC stated that its policy was to "facilitate increased opportunity for Trinidad and Tobago market actors to participate in the distribution of securities of foreign mutual funds and provide increased opportunity for investment by Trinidad and Tobago investors in the securities of these foreign mutual funds while maintaining an appropriate level of investor protection".

It will be interesting to see whether they choose to become more facilitative of the market, or more restrictive.

HAMEL-SMITH RELOCATION

After 98 years at 19 St. Vincent Street, our office relocation to *Eleven Albion* was completed quite smoothly on Monday 28th May, 2007.

The new offices are well appointed, and lend themselves to offering our clients an enhanced service, with increased capacity and upgraded conference facilities. Our uptown location



provides better accessibility for our clients and visitors, and we have extended our receptionist/operator coverage from 7.30 a.m. to 5.00 p.m.

As we complete the settling-in process, we continue to focus on improving our ability to serve you. We look forward to inviting you to our official opening within the next quarter.

A GUIDE TO THE WATER POLLUTION RULES

Vivian Rambarath-Parasram

Water is one of the most important natural resources on earth and the cornerstone of all life on the planet. Reliable information about water quantity and quality, human uses and water problems and their causes help countries to properly manage their precious water resources as a critical part of their socio-economic development.

In Trinidad & Tobago responsibility for the management of our water resources is entrusted to Water Resources Agency of the Water and Sewerage Authority. Another key player in water resource management is, of course, the Environmental Management Authority (EMA). In recognition of the need to address the contamination of our water resources the EMA has implemented the Water Pollution Rules which effectively prohibits the unauthorised discharge of water pollutants into the environment.

The water pollution rules impact on and apply to a very wide cross section of the business community, ranging from small scale beauty salons to heavy industry. Businesses including those who are still unaware or may not have recognized the applicability of these rules to their operations need to take the necessary steps to regularise their status. Compliance with the water pollution rules and cooperation with the EMA are necessary steps in facilitating the implementation of an effective water resource management strategy in Trinidad and Tobago. This article provides a guide for individuals and companies seeking to be compliant with this aspect of the law.

The Water Pollution Rules

The Water Pollution Rules requires any person releasing water pollutants at or above specified levels to apply for Source Registration. The quantity, condition or concentration at which a substance or parameter is defined as a pollutant are defined. The permissible levels of discharge for a water pollutant are also detailed. These standards

are applicable to small scale business operators as well as heavy industrial establishments that routinely pour or discharge chemicals and other effluents into drains and water courses. Such businesses were required to be registered by 4th May, 2007. In addition persons who intend to release into the environment water pollutants beyond the permissible levels are required to register with the EMA 45 days prior to such a release. All businesses that are discharging waste water into the environment need to scrutinize their operation to ascertain whether they ought to be registered and, where appropriate, should contact the EMA and apply for 'Source Registration' as soon as possible.

The Compliance Process

The Source Registration process is the means by which the EMA gathers information on all actual and potential water polluters. The EMA will issue a Registration Certificate to persons registering as a source of water pollution, and based on the information gathered, the EMA will determine whether or not a permit is required and, if so, it will notify you of this. It is only if you are so notified that you should apply for a permit. At that time the EMA pledges to work with you to determine the best measures to reduce and ultimately eliminate the pollutants from your liquid wastes.

The Enforcement Process

Where a person has not applied for a permit and is found to be releasing into the environment a water pollutant beyond permissible levels, the EMA will serve a notice on that person to apply for a permit. The operations of such a person may be allowed to continue until the EMA determines the permit application. However, upon determination of the application, discharges of water pollutants are prohibited unless a permit has been granted.

Permits may be revoked or suspended for a number of reasons one of which is failure to conform to the fundamental requirements of the permit. However, prior to revoking or suspending the permit the EMA

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beverages, printing and packaging, merchant marine, music & entertainment, film, yachting, fish and fish processing. Through eTECK (Evolving TecKnologies and Enterprise Development Company Limited), the Government is poised to target funds to promote the investment possibilities in these sectors.

Mixed Signals

In addressing the content of the new legislation which is being proposed to replace the Foreign Investment Act, the Green Paper speaks generally of the need to consider the unique circumstances of Tobago and of the possible need for what it calls a “general exceptions or reservations clause applicable to Tobago” without explaining the purport, scope or effect of such a clause. Moreover, the Green Paper suggests that, while the current position with respect to the purchase of land by non-nationals will be generally maintained, one exception to this will be that issues related to land ownership would fall under the Tobago House of Assembly which may impose additional requirements that are not defined.

Conclusion

The Ministry of Trade & Industry seems fervent in its aim to create an environment that lends itself to foreign investment and determined to try to improve Trinidad & Tobago's ability to attract investment into its non-energy sectors. However, actions speak louder than words. The recent shift in the Government's approach to the purchase of lands in Tobago by non-nationals, and the statements in the Green Paper about treating with Tobago as a special case, raise questions about the mixed signals that the Government may be sending to potential foreign investors.

More generally, the relative lack of detail and specifics in terms of the policy measures which the Government intends to pursue to achieve its objectives, highlight concerns about the speed and effectiveness with which it may be able to move from intention to implementation in many of these areas. The Green Paper can be accessed electronically at: <http://www.tradeind.gov.tt/>

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is required to give written notice providing specific reasons and giving the individual or company a reasonable opportunity to make submissions in relation to the suspension and revocation. The EMA is obliged to take these representations into consideration in making its determination.

The ball is in your court

Registering as a source of water pollution is now an environmental requirement, and the Environmental Management Act 2000 specifies the applicable fines for breaches of environmental requirements by individuals and companies. Closure of the facilities is also possible. There is perhaps little or no commercial advantage to not being registered as this may expose individuals and companies to fines and possible closures that are clearly avoidable by working alongside the EMA to facilitate long term compliance with the water pollution rules. Having regard to this and the wider impact of water pollution, it is in the interests of all that we subscribe to and comply with environmentally sound practices that mitigate against the depletion of an essential resource.

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The Lawyers Newsletter for Business Professionals

Published by M. Hamel-Smith & Co.
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and intended for limited circulation to clients and associates of our firm.