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MADE IN T&T...A Brief Look at the Entrepreneurial Benefits of Geographical Indications

Fanta Punch

There can be little doubt that the Trinidad and Tobago economy would benefit from a thriving non-energy sector, particularly as sole dependence on oil and gas is proving to be less reliable. Developing a sustainable local agriculture and agricultural products sector would be an ideal option as the unique, multi-faceted nature of the intellectual property rights in good known for their geographic origin has marketable potential for products which are made in this region. The identification of the geographic origin of a product in relation to intellectual property rights is known as a Geographical Indication.

What is a Geographical Indication?

Under the Geographical Indications Act 1996 Chapter 82:78, a geographical indication is defined as an indication which “*identifies a good as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin*”.

Geographical indications are defined intellectual property rights that protect high quality goods which are produced in specific geographical regions and have unique characteristics that are essential or originate from that region. The “rights” themselves are often linked to agricultural products such as foodstuff, wine and spirits but they do not necessarily have to be agricultural in nature. They can also protect human factors for example, the traditions and manufacturing skills associated with handicrafts.

Some of the more well-known and famous geographical indications include Champagne, Prosecco, Tequila, Darjeeling Tea or Swiss watches. Regionally, Jamaican jerk (both the ingredients as well as their unique processing), Jamaican Blue Mountain

coffee, Nutmeg from Grenada (and their unique method for drying the seeds) and Demerara Rum from Guyana, are examples of profitable geographical indications.

In Trinidad and Tobago the first geographical indication was registered last year for *Trinidad Monsterrat Hills Cocoa* for raw cocoa beans and cocoa. This registration is a step in the right direction in re-energising our local cocoa industry. For the proprietor, *Monsterrat Cocoa Farmers Co-operative Society* (a farm owned by about 48 farmers), there is a real opportunity to further maximize on the commercial value and established reputation of its cocoa products, in marketing its high grade *Trinitario* brand, both locally and internationally. There are other local geographical indications for example, *Moruga Hills Rice*, *Scorpion pepper* which will hopefully be developed in the near future.

What is the scope of protection?

The parties who are entitled to seek protection under a geographical indication are limited to the producers or groups of producers of the product within a specified area, groups of consumers and any competent authority. Unlike trademark registration which allows for an individual or a company to seek protection, registration for this intellectual property right is different. As registration is only permissible where either a natural good or process associated with an area exists, there is no reason to renew the registration. It will continue to exist as long as the unique conditions persist.

Developing a geographical indication requires the creation of certain infrastructure which can take time and resources. Evidence of authenticity of the product as well as a plan for sustainability is a key factor. It also involves the establishment of a certification body to ensure that the product complies with the specified requirements and that geographically identified integrity of the products can be maintained. There must also be sample testing and chemical analysis of the product to show it is truly a geographical indication and that this is conducted on a regular basis.

The association or potential geographical indication owner should also develop a system or code of practice for its members, as well as a manual (which address issues surrounding product evaluation, manufacturing, governance

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THE LONG AWAITED INSURANCE REFORM IS ON THE HORIZON

Linnel Pierre



The Insurance Bill, 2016 was passed in the House of Representatives of the Parliament of the Republic of Trinidad and Tobago on 16th February, 2018. The Bill is described as intending to repeal and replace the Insurance Act, Chap 84:01 of the laws of Trinidad and Tobago; to reform the law relating to insurance companies; to regulate insurance businesses and privately administered pension fund plans and for other related purposes. The Insurance Bill, 2016 must be passed by the Senate before it can become law. If passed into law, it will be the first major overhaul of the insurance legislation in Trinidad and Tobago since 1980.

In this Article, we provide some background information concerning the insurance sector in Trinidad and Tobago and highlight some of the key changes to the insurance regime that will become effective provided the Insurance Bill, 2016 is passed into law in its present form.

BACKGROUND

In January 2009, Trinidad and Tobago's insurance industry experienced the most significant financial collapse ever experienced by the country to date - the collapse of the CL Financial Group which included Colonial Life Insurance Company (CLICO), which was founded in 1937. CL Financial Limited (CLF), which was established in 1993, was created as a holding company of CLICO. CLICO's operations were once confined to insurance, but expanded into real estate, energy services as well as the beverage industry. According to an IMF Report 'as CLF expanded into other sectors, a key source of financing for its expansion particularly after 2004 was the offer of deposit-like annuity products through CLF's insurance subsidiaries - CLICO Trinidad which operated primarily in the domestic market and British American which operated in many countries of the region.'¹ The returns that were offered by these products were higher than the interest rates offered by banks at the time. The products were however not subject to the regulation and supervision that the banks and other financial institutions had to endure. This set the stage for its collapse, which caused spill over effects into several CARICOM countries, the notable exception being Jamaica. The International Monetary Fund described the collapse of CLF and its related companies as a major financial shock to the Caribbean, which was already reeling from the global crisis. The Central Bank of Trinidad and Tobago identified excessive related-party transactions as one of the major causes of the collapse. Other causes included lack of corporate governance, non-compliance with regulation and lack of enforcement of the same as well as out-dated legislation.

Given the critical role of insurance companies in Trinidad and Tobago's economy, the collapse of CLICO underscored

the need for legislative reform of the regulatory framework for the insurance industry in Trinidad and Tobago. In this regard, after successive attempts each year from 2011 to 2015, the draftsmen, after extensive consultation with the stakeholders of the insurance industry formulated the Insurance Bill, 2016.

CHANGES PROPOSED BY THE INSURANCE BILL, 2016

The Insurance Bill, 2016 is said to correct some of the glaring shortcomings of the insurance legislation that governs the Trinidad and Tobago insurance industry. After having been passed in the House of Representatives on 16th February 2018, the Insurance Bill, 2016 was introduced to the Senate shortly thereafter on 20th February 2018.

The Insurance Bill, 2016 seeks to:

- i. strengthen prudential requirements, including the introduction of risk-based capital and financial standards;
- ii. introduce more stringent corporate governance requirements for insurance companies;
- iii. provide the Central Bank with effective regulatory authority over financial groups;
- iv. improve public disclosure with a view to promoting market discipline;
- v. provide the Central Bank with a wide range of preventative and corrective measures; and
- vi. bring the legislation into conformity with the Insurance Core Principles established by the International Association of Insurance Supervisors.

Some of the noted changes proposed to be introduced to the insurance regime by the Insurance Bill, 2016 are as follows:

- Increased power and authority of the Inspector of Financial Institutions, including greater intervention powers;
- Introduction of consolidated supervision;
- Greater connected party supervision with extensive definitions of 'connected party' and 'connected party group';
- Harmonization of definitions with those of the Financial Institutions Act;
- To reduce contagion, increased power of the Central Bank of Trinidad and Tobago to direct restructuring where group entities engage in both financial and non-financial activities;
- Requirements for separate accounts for each class of insurance business as well as for local policies and foreign policies;
- Enhanced Corporate Governance requirements including mandatory audit committee and policies and procedures for transactions with connected parties and employees;
- More stringent reporting requirements, including

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Hunter Monroe & Yi Wu, 'International Monetary Fund Country Report No. 11/17'

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or certification), aimed at ensuring over time the continued protection of the geographical indication and adherence to set standards by all producers.

There are three (3) main methods of protection - **collective marks, certification marks and sui generis**:

- a) Collective marks distinguish the geographical origin or characteristics of the mark, but the focus is on public notification or education about particular features of the mark. These can be used along with individual trademarks and are best used to differentiate one party's products from those of others.
- b) Certification marks are granted for compliance with certain set standards but are not confined to membership, like geographical indications.
- c) Sui generis method is a specific right for a protected geographical indication based on the region.

Of the three methods, Trinidad & Tobago uses the *sui generis method* and was the first country in the region to adopt it.

Advantages of Registration

Geographical indications have a number of advantageous aspects, such as:

- i. the capacity to develop whole communities;
- ii. protection of competing goods within a particular region;
- iii. increase or high price premium for goods on local and international markets;
- iv. incursion into new markets and better competitive advantage for its owners.

Registration, while not mandatory, can prevent unauthorized use of the geographical indications both by third parties as well as members. It can also fend off registration of the indication as a trademark by unrelated parties and protection can limit the possibility of the indication becoming generic.

Equally important are the challenges faced by producers to ensure that there is adherence to production standards, quality control and marketing rules which ought to be maintained throughout the life of the geographical indication to protect its value.

Implementing Geographical Indications

In addition to the benefits to be gained from distribution on domestic markets, the export of goods from a recognised geographic origin on foreign markets has real value. Protection of the brand in foreign markets is needed and can be done in mainly two ways. The first would be to apply directly in each jurisdiction where protection is sought and go through the registration process each time; however, this can be costly and time consuming. The second more pragmatic route is by bilateral agreement, though at times

not without some difficulty. For example, the EU Cariforum Economic Partnership Agreement between CARICOM and the European Union aims to work towards reciprocity for both CARICOM Geographical Indications and European Geographical Indications to allow for easier access into the respective markets in terms of registration and market penetration. This article does not intend to go into the details of the merits and demerits of this particular agreement, but there are other such arrangements worldwide and these types of agreements can also be beneficial.

The process to obtaining a geographical indication as well as maintaining the protective right can be a major undertaking. However, when stacked against the potential for growth on a large scale and penetration into international markets for multiple producers from the same region, it is a worthwhile investment and one that Trinidad and Tobago entrepreneurs should explore.

Fanta Punch is a Partner in the firm's Dispute & Risk Department and can be reached at fanta@trinidadlaw.com

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requirement to submit 'financial condition reports' on the prospective ability of the insurer to meet its future obligations to policyholders and beneficiaries;

- Mandatory actuary appointment;
- Redefining reinsurance such that reinsurance will be treated as insurance business and therefore subject to the same requirements as insurance business;
- Standardised valuation methods;
- Increased stated capital and capital adequacy requirements;
- Whistle-blower protection; and
- Increased fines for non-compliance.

The above changes are but a few of the modifications to the insurance regime which will come into effect on the passage of the Insurance Bill, 2016. These changes are consistent with global trends and will be instrumental in bringing the law up to date with internationally accepted standards, whilst offering the much desired protection which the insuring and investing public demands. The proposed Insurance Bill, 2016 reflects an improvement in the regulatory framework for insurance supervision as it addresses some of the visible shortcomings that exist in the current regulatory framework. We will continue to monitor and advise on the progress of the Insurance Bill, 2016, and look forward to its passage in the near future.

Linnel Pierre is an Associate in the firm's Transactional Department and can be reached at linnel@trinidadlaw.com



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Tel: 1(868) 299-0981 / Fax: 1(868) 625-9177

E-mail: mhs@trinidadlaw.com / Web: www.trinidadlaw.com

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