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Ministry of Trade and Industry

presents

A Draft White Paper on

The Investment Policy of Trinidad and Tobago 2009 - 2013

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MINISTRY OF TRADE AND INDUSTRY

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EXECUTIVE SUMMARY

In less than fifty (50) years of political independence, Trinidad and Tobago has successfully created an oil and gas based sector and a globally competitive petro-chemical sector. While traditionally the strategy has been to utilise the revenues generated from the energy sector to fuel the economic diversification and future development plans of the twin island republic state, the Government recognises that attracting investment, both foreign and domestic is a significant source for sustainable development.

The international literature shows that foreign direct investment has been a critical source for development in world economies. In fact, in 2007, global investment flows reached a record level of US$1.8 trillion. Of this total, developing and transition economies attracted US$600 billion, a 25% increase over 2006 inflows. The current global financial and credit crises paint a sombre picture threatening the ability of countries to attract global investment flows.

Notwithstanding, Trinidad and Tobago is in a relatively more favourable position to deal with the challenges posed by these crises. This country's strong macroeconomic fundamentals, its friendly and attractive investment climate, the vast array of investment opportunities coupled with Government's commitment to build capacity and improve the effectiveness of its governance systems suggest that investors can continue to enjoy adequate returns for commensurating risks.

As observed, the role of the State has expanded over time from one of participatory involvement to include that of a facilitatory approach fostering an enabling environment for entrepreneurial growth and development.

As Trinidad and Tobago develops, the emphasis is not only on investment as a creator of employment, generator of revenue and other tangible outputs. There is a more focussed approach on intangible deliverables and outcomes to improve the quality of life of citizens. The new approach features attracting investment into the non-energy sector through the creation of an enabling environment that is transparent, predictable and hospitable to existing and potential investors.

To this extent, the incentive regime is shifting focus from broad based tax holidays to sector specific measures. Notwithstanding, the focus is now extended to include niche industries such as the creative and cultural industries and the increasing dominance of the service sector.

Inward investment along with domestic and outward investment takes on even greater significance as the country strives to maintain its focus to achieve developed nation status by the year 2020.

INTRODUCTION

The Government of the Republic of Trinidad and Tobago has embarked on a path to achieve developed nation status by the year 2020 and to realise this objective, a strategic plan has been created titled Vision 2020. In this plan, five (5) development pillars have been identified. They are as follows:

1. Developing Innovative People
2. Nurturing a Caring Society
3. Enabling Competitive Business
4. Investing in Sound Infrastructure and Environment
5. Promoting Effective Government.

Of the five development pillars featured, the Ministry of Trade and Industry (MTI) is entrusted with the responsibility of "Enabling Competitive Business". Under this development pillar, three (3) goals are considered critical to enabling competitive businesses.

1) Maintaining macroeconomic stability.
2) Creating a business climate that attracts investors and encourages competitive businesses to start and grow.
3) Encouraging competitive business to transform Trinidad and Tobago into a diversified economy with exciting growth opportunities.

The Ministry of Trade and Industry's primary responsibility is to generate economic growth by promoting and developing trade and trade-related activities, driving industrial diversification and investment particularly in the non-energy manufacturing and services sectors.

As Government continues its drive to diversify Trinidad and Tobago's economy away from finite resources such as oil and gas, ongoing regulatory reforms are expected to create an increasingly coherent and investor-friendly environment to support the growth of foreign and local investments in the non-energy sector. To ensure that diversification takes place, the Government has identified ten (10) priority sectors in need of investments for further sectoral growth and development. These include:

- Financial Services
- Tourism
- Information and Communication Technologies (ICT)
- Food and Beverage
- Printing and Packaging
- Merchant Marine
- Film

- Music and Entertainment
- Fish and Fish Processing
- Yachting

The Ministries of Finance and of Tourism are responsible for developing the Financial Services and Tourism sectors, respectively. These institutions are presently engaged in drafting new policies that are of relevance to their sectors. The remaining eight (8) industrial sectors fall under the purview of the Ministry of Trade and Industry.

The Tobago House of Assembly (THA) which was established by Act No. 37 of 1980 is the government agency charged with the responsibility of developing the island of Tobago. Its mandate is to enhance the development of Tobago and reduce the disparities between the two islands. The THA has different departments that are responsible for the development of different areas on the island. The main sector that the THA is targeting for the development of Tobago is tourism.

It has already been acknowledged that Trinidad and Tobago has done significantly well in the energy sector. The Ministry of Energy and Energy Industries is the government agency that is responsible for driving growth in this sector. The role of the Ministry of Energy and Energy Industries is to monitor, control and regulate the energy sector. As such the Ministry of Energy and Energy Industries has its own policy for development.

In fulfilment of its mandate, the MTI as an implementing arm of Government will continue to demonstrate the Government's commitment in providing an efficient and friendly investment environment in an attempt to attract both local and foreign investors.

Currently, the investment framework is subsumed under several pieces of legislation. They include:

- The Foreign Investment Act, 1990 (as amended)
- The Fiscal Incentives Act, Chapter 85:01
- Income Tax (in aid of Industry) Act, Chapter 85:04
- The Trinidad and Tobago Free Zones Act, Act 19 of 1988 (as amended)
- The Petroleum Taxes Act, Chapter 75:04
- Telecommunications Act, Act 4 of 2001 (as amended)
- The Tourism Development Act, 2000 (as amended)
- The Financial Institutions Act, 1993 (as amended)
- The Insurance Act, Chapter 84:01 and
- The Shipping Act, 1987

From the above list, the Foreign Investment Act of 1990, as amended is considered the main regulatory mechanism governing investments. This Act, which was written during an era of relative protectionism, regulating the acquisition of lands and of shares in private and public companies by foreigners, has become obsolete. A new piece of legislation therefore needs to be introduced that is of true relevance to the current liberalized investment environment.

Objective

The overarching purpose of this investment policy is to prescribe the institutional and regulatory frameworks to inform the drafting of a new piece of legislation – an Investment Promotion Act, which is expected to facilitate the growth and expansion of foreign as well as, domestic investment in Trinidad and Tobago. Owing to the availability of data, this policy will track the performance of foreign direct investment (FDI) flows (a significant source for development), identify the factors that make this environment more favourable to potential and existing investors and introduce the new policy approaches and strategies selected to facilitate investment.

Outline of Policy

Chapter 1 examines the performance of investment flows in Trinidad and Tobago. Chapter 2 identifies the legislative framework governing business, treaty obligations to which Trinidad and Tobago is a signatory and the issue of competition policy. It also provides a synopsis of the regional and international organisations with which Trinidad and Tobago interacts in the global trading environment. Chapter 3 provides an in-depth review of the investment climate documenting the present incentive regime, the investment process, the investment promotion agency and the other State agencies that investors interact with in conducting business. A comprehensive SWOT analysis is also presented which identifies the existing gaps that must be addressed to inform policy decisions for future investments. Featured in Chapter 4 is the Way Forward which identifies the legislative changes required to facilitate trade and promote as well as protect investment. This Chapter also proposes the following strategies outlined in the policy to attract sustainable investment in the non-energy sector:

i. A Business and Investment Secretariat for Investments in Trinidad and Tobago;
ii. Sector Specific Incentive Regime;
iii. Streamlining Projects based on Science and Technology, Research and Development;
iv. Role and focus of the Investment Promotion Agency;
v. Utilisation of Trade Missions;
vi. Increased focus on Overseas Missions; and
vii. Mechanisms for Data Collection.

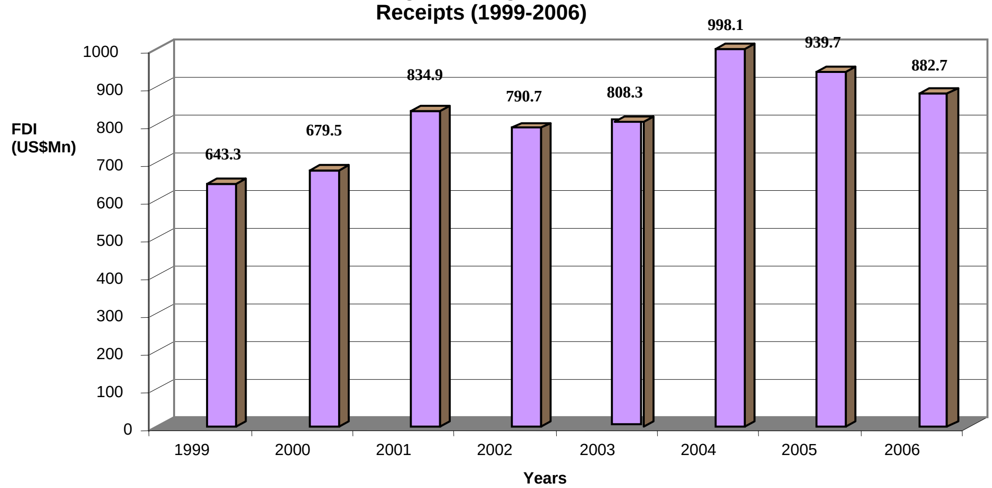
The salient strategies necessary to create the enabling environment to facilitate the growth and development of investment in the non-energy sector is noted in the conclusion.

CHAPTER 1: PERFORMANCE OF INVESTMENT FLOWS

Relative to other CARICOM member-states, Trinidad and Tobago has traditionally been the leading target country of FDI inflows largely owing to this country's natural resource endowments of oil and natural gas (See **Table 1** of **Appendix I**). The available data given in **Table 2** of **Appendix I** reviewing FDI flows for the period 1999 to 2006 reveals that in 1999, total FDI flows into Trinidad and Tobago was approximately US$643 million. This figure increased by 6 percent in the year 2000 and again by 23 percent in 2001. By the end of 2002, total FDI fell to roughly US$791 million or by 5 percent. In 2003, there was a slight recovery by 2 percent and this upward trend continued in 2004 when total FDI was estimated at a whopping US$998 million, the highest record for the period under review. This 23 percent increase was driven mainly by a 90 percent rise in equity investment. 2004 was therefore an outlier year for in 2005, FDI was on the decline to US940 million, reduced by 6 percent. In 2006, FDI fell once again by another 6 percent reaching US$883 million. This volatility in FDI flows is expected given that the majority of flows have been as previously mentioned directed to the energy sector. **Figure 1** below shows FDI flows into Trinidad and Tobago for the period 1999 -2006.

This volatility in FDI certainly does not discount the fact that in these early years of the 21st century, Trinidad and Tobago has attracted more than US$6 billion (an estimated TT$37.8 billion) in foreign investment funds. If the year 2004 is excluded as an outlier year, the average FDI flows into Trinidad and Tobago for the period 2000-2006 stands at US$823 million per annum. These high inflows reflect not only the strong economic performance of the country's economy, but they are also testimony to the global investor's confidence in Trinidad and Tobago as one of the most vibrant small economies in the CARICOM region and by extension, in the Western Hemisphere.

Figure I
Trinidad and Tobago's Foreign Direct Investment Receipts (1999-2006)



Source of Data: Central Bank of Trinidad and Tobago

FDI flows into Trinidad and Tobago are partly driven by cross-border mergers and acquisitions (M & As) and by retained corporate profits. These findings are not surprising as M & As are quite visible in the energy sector where foreign transnational corporations (TNCs) specializing in oil and gas extraction and to a lesser extent production enter into different types of partnership arrangements such as joint ventures, production-sharing agreements (PSAs) and service agreements with state-owned oil and gas companies.

The vast majority of FDI is directed into the energy sector and more specifically into the areas of mining, exploration and production, refineries, and Petrochemicals (See **Table 2** of **Appendix I**). The volatility of this sector helps explain the fluctuations in FDI. In the non-energy sector which includes, but is not limited to the manufacturing and services industries, FDI inflows usually take the form of non-equity investment-type transactions. They include inter alia, franchising, licensing, co-production arrangements and subcontracting which frequently occurs in the Food and Beverage sector, the Hotelier and Tourism industries, the Financial Services sector and the Communication Services sector to name a few. Corporate profits earned by foreign investors in these non-equity investment type transactions oftentimes are reinvested and retained by T & T affiliates.

As observed, the collection of data on all these forms of transnational corporation activities is usually not separately identified; notwithstanding, the statistics given on the components of direct foreign investment lend support to the above pattern of FDI inflows. **Table 3** of **Appendix I** titled “Components of Direct Foreign Investment 1999-2006” indicates that for the period under review, equity capital and reinvested earnings were the key drivers of Direct Foreign Investment into the economy of T & T. In absolute terms, for the year 2006, equity capital fuelled by M & A transactions accounted for more than 50 percent of total foreign inflows while for reinvested earnings, the retained profits by T & T affiliates accounted for an estimated 46 percent of total FDI.

Upon analysing the geographical trends, **Table 4** of **Appendix I** titled “Direct Foreign Investment by Country of Origin, 1999-2006” indicates that developed countries remain the predominant sources of FDI into T & T. During the period 1999 – 2006, the United States was consecutively the leading source country of FDI flows accounting for approximately 58 percent of total foreign investment flows making an overall contribution of over US$3,434 million for the period under review. Other FDI source countries with relatively significant levels of inflows include the United Kingdom, Germany, India, Canada and Japan in that order. An additional 8.7 percent of investment originates from countries classified under the category of “Other”.

Flows of FDI are not only inbound but are also outward in direction. Outward foreign direct investment also called direct investment abroad, has significantly increased for the period 2004 – 2006 from US$25 million recorded in 2004 to US$370 million in 2006 (See **Table 1** of **Appendix I**). While the sectors responsible for this movement of foreign capital are not collected in the statistics, it is widely known in the local business community that these FDI activities are in great part attributable to companies operating in the manufacturing and service-oriented sectors.

The current system at Trinidad and Tobago's Central Statistical Office does not consider the collection of data on domestic investment flows into T & T's economy. It is therefore difficult to capture the actual performance of these flows and their form. An observed trend however from the in-house data collected at the MTI for the period September 2007 – July 2008 on fiscal incentives granted for known investment projects indicates that of the TT$7.6 Bn of capital investments channelled into industries residing in T & T, 66 percent of these investment flows are of domestic origin and are being directed mainly into the energy sector while an estimated 1.3 percent of these local investments is being directed to develop the manufacturing and services industries. It is important to bear in mind that these figures in no way capture the entire picture of domestic investment flows into the domestic economy.

CHAPTER 2: THE LEGAL FRAMEWORK

This Chapter examines some of the present legislation in Trinidad and Tobago which impact on investors and investment, including Competition Policy. It also provides a brief description of the regional and international organisations of which Trinidad and Tobago is a member and highlights some of the country's treaty obligations.

A. LEGISLATIVE FRAMEWORK

Although the investment framework is largely governed by the Foreign Investment Act of 1990, there are other sector specific pieces of legislation which regulate investments. These include inter alia**:** the Petroleum Taxes Act, Chapter 75:04; Telecommunications Act, Act 4 of 2001; Tourism Development Act, 2000; Financial Institutions Act of 1993; Insurance Act, Chapter 84:01; and Shipping Act of 1987. These various pieces of legislation impact on the regulation of investments and in most cases they need to be updated taking into consideration, changes in the global environment as they relate to investments in the various sectors, the level of relevance to our socio-economic objectives and our plans to develop internationally competitive manufacturing and services sectors.

Relevant Trinidad and Tobago legislation include the following:-

1. The Foreign Investment Act (1990) (as amended)

The Foreign Investment Act of 1990, as amended, is currently the main regulatory mechanism governing investments. It was enacted upon repeal of the Alien Land Holdings Act. This Act was developed during an era of relative protectionism when the country's trade policy was heavily based on the doctrine of import substitution. By the 1990s however, the operational environment was transformed into one of increased liberalization, which demanded changes to a legislative framework dealing with investments that would be more reflective of the prevailing demands, opportunities and challenges of prevailing international economic conditions. This piece of legislation makes provision for land ownership and share ownership in public companies.

In this international economic environment characterized by the globalization of trade and investment and in light of the enhanced impetus to grow the non-energy sector, it is evident that the Act needs to be repealed and a new Act be introduced.

2. The Financial Institutions Act (1993) (as amended)

This Act provides for the regulation of banks and other financial institutions which engage in the business of banking and other business of a financial nature. In 2004 based on the recommendations set out in the White Paper on the Reform of the Financial Sector it was clear that this Act had to be amended in order to create a responsive and well-diversified financial sector that would be more effective in its contribution to the creation of a diversified national economy. Weaknesses were identified in the legislative, regulatory and supervisory frameworks.

The necessary legislative and regulatory reforms applicable to the banking sector and the Venture Capital Incentive Programme have been completed and the reform process for the rest of the industry would soon be completed. It is envisioned that the total package of reforms for the financial sector will impact positively on the investment climate. The major impact resulting from a strong, diversified and expanding financial sector is the increased pool of resources that would be available to fund increased investments in the country, especially domestic investments.

3. The Securities Industry Act (1995)

This Act provides for the regulation of the securities market in Trinidad and Tobago through the establishment of the Securities and Exchange Commission (SEC). The establishment of the Securities and Exchange Commission meant that there were three different Regulatory Authorities for the financial sector. The other two are the Financial Institutions Supervision Department, which falls under the umbrella of the Central Bank, and the Commissioner of Co-operative Societies which falls under the Ministry of Labour, Small and Micro Enterprises. The White Paper on the Financial Sector reform has however, recommended the establishment of a single regulatory authority for all financial-related institutions.

In addition, it is hoped that reforming the Securities Act could address the challenge of encouraging the use of equity as a source of financing investments compared to the overriding bias towards debt. According to the White Paper on the Financial Sector reform, the issue of low market confidence also needs to be addressed. The aim is to encourage companies to list on the stock market and to view this option as one that would provide the necessary funds to expand and build competitiveness.

4. Insurance Act (Chapter 84:01)

This Act is intended to revise and consolidate the law providing for the regulation of the insurance sector and privately administered pension fund plans. The Insurance Act specifies that a minimum of 80 percent of the assets of pension funds must be invested in Trinidad and Tobago. The limit on equity investment is set at a maximum of 50 percent of a fund’s assets. Consideration should be given to revising this limit in relation to its impact on, or among other things, equity investments.

5. Venture Capital Act (1994)

The Venture Capital Act of 1994, amended in 1997, and the Venture Capital Regulations of 1996 regulate the Venture Capital Industry. This industry is comprised of three venture capital companies (VCC) under the purview of the Venture Capital Incentive Programme (VCIP) with a combined issued share capital of $14.6 million. There are two other private venture or equity funds registered as issuers, both of which are under the purview of the SEC. The Venture Capital Act was amended in 2005 to incorporate a number of changes, such as:

- an increase in paid up capital with which a VCC can carry on a business from 20 million to 100 million dollars;
- an increase in the equity limit of a qualifying investee company to fifty million dollars;
- an increase in the range of investment instruments in which venture capital companies may invest; and
- removal of the restrictions on the type of shares that could be issued by venture capital companies.

6. The Tourism Development Act (2000) (as amended)

This Act is intended to facilitate the development of the Tourism Industry by providing to investors a package of incentives. Consideration may be given to revising this Act taking into consideration the urgent need to increase the number of rooms in the country by encouraging the expansion of existing hotels, and encouraging investment in new hotels. The supporting infrastructure related to the tourism sector is currently being improved according to international standards. As a consequence**,** the Ministry of Tourism is presently finalising the national tourism policy for the sustainable development and management of that sector.

7. The Telecommunications Act (4 of 2001) (as amended)

This Act is intended to provide for the regulation of telecommunications in Trinidad and Tobago. It is predicated on the need 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 as an internationally competitive telecommunications sector is a major pillar of a friendly and facilitative investment climate.

B. COMPETITION POLICY

Trinidad and Tobago is also aware that a clear, comprehensive competition policy is critical in an economy characterized by a liberalised trade and investment framework. This policy is embodied in the Fair Trading Act, No. 13 of 2006 which was passed in 2006. Parts IV, V and VI of the Act have been proclaimed. The other parts are yet to be proclaimed. The National Fair Trading Commission is also still to be established. Matters related to competition in the telecommunications sector are to be dealt with by the Telecommunications Authority under the Telecommunications Act of 2001. Matters relating to competition in respect of regulated industries are to be dealt with by the Regulated Industries Commission which is governed by the Regulated Industries Act No. 26 of 1998. The Regulated Industries Commission will act in consultation with the Fair Trading Commission.

At present, community competition rules have not yet been developed. The Caribbean Community (CARICOM) Competition Commission (CCC) however was inaugurated in January 2008. Its main functions within the CSME will include:

- applying the rules of competition;
- promoting and protecting competition;
- administering the provisions outlined in the Competition Policy;
- monitoring anti-competitive business conduct;
- promoting the establishment of national Competition Institutions;
- harmonization of Competition Law; and
- advising the Council for Trade and Economic Development (COTED) on Competition and Consumer Protection policies.

C. REGIONAL AND INTERNATIONAL ORGANISATIONS

The country's major regional and international obligations include participation in the CARICOM Single Market and Economy (CSME), the Association of Caribbean States (ACS)**,** the World Trade Organisation (WTO) and the World Intellectual Property Rights Organisation (WIPO).

1. CARICOM Single Market and Economy (CSME)

Trinidad and Tobago, together with Barbados and Jamaica, were the first group of countries to sign the necessary protocols confirming their entry into the CARICOM Single Market and Economy (CSME). To date twelve **(**12) member state countries have ratified the arrangement. The CSME is expected to create a single economic space for the establishment of business, production and trade in goods and services, and allow the free movement of the factors of production, particularly labour, and capital. It provides a market of 14 million people (6 million if Haiti is excluded), which is more attractive from a trade and investment perspective, than individual small island economies.

2. Association of Caribbean States (ACS)

The Association of Caribbean States (ACS) is comprised of twenty-five (25) Member States and four Associate Members. Its aim is to promote consultation, co-operation and concerted action among all the countries of the Caribbean. The headquarters of the organisation is located in Trinidad and Tobago and this country plays an active part in ensuring its objectives are fulfilled. The objectives of the ACS are consistent with those of Trinidad and Tobago's which include strengthening the regional co-operation and integration process with a view to creating an enhanced economic space in the region, preserving the environmental integrity of the Caribbean Sea and promoting the sustainable development of the Greater Caribbean.

3. World Trade Organization (WTO)

Trinidad and Tobago is a signatory to the General Agreement on Tariffs and Trade (GATT) since October 1962 and became a member of the World Trade Organization (WTO) on March 1, 1995.

4. World Intellectual Property Rights Organization (WIPO)

Trinidad and Tobago is a member of the World Intellectual Property Organization (WIPO) and in accordance with its commitment to protecting intellectual property rights the country has enacted legislation.

D. TREATY OBLIGATIONS

The country's treaty obligations include Double Taxation Treaties, Investment Promotion and Protection Agreements and the CARIFORUM/European Union Economic Partnership Agreement (EPA) among others.

1. Double Taxation Treaties

Trinidad and Tobago has double taxation treaties with a number of countries. These include the United States of America, Canada, the United Kingdom, Germany, Denmark, France, Italy, Norway, Sweden, Switzerland, Venezuela, India, China and Luxembourg.

Within CARICOM, there is also the Intra-Regional Double Taxation Agreement which seeks to encourage and facilitate trade and investment by removing barriers which previously existed. Some of these barriers resulted because of the high effective rate of tax levied on income derived from one Member State by a resident of another.

2. Investment Promotion and Protection Agreements (IPPAs)

The country also has a number of Investment Promotion and Protection Agreements (IPPAs) or Bilateral Investment Treaties (BITs), as they are more commonly referred to. IPPAs have been signed between the Government of Trinidad and Tobago and the Governments of the United Kingdom, Cuba, the United States of America, Canada, Spain, the People's Republic of China, South Korea, Germany, Mexico and India. Negotiations for an IPPA with the Swiss Confederation have also been completed. There are IPPAs at different stages of negotiations with countries such as Finland, Italy, El Salvador and Argentina.

Most IPPAs include obligations not to expropriate property without compensation as well as, provisions governing the repatriation of profits and the transfer of funds. They also include treatment of non-discrimination on admission, pre-establishment, and post-establishment phases of investment. In addition, IPPAs provide mechanisms for settling disputes between the two contracting parties, and often also disputes between an investor of one state and the government of the host state.

One of the key outcomes of this policy is the recommendation that new legislation be crafted to incorporate more of the broad issues covered in the IPPAs which are not considered in the existing legislation.

3. CARIFORUM/EU Economic Partnership Agreement (EPA)

Final agreement on the Economic Partnership Agreement (EPA) between CARIFORUM and the European Union was reached in December 2007. Trinidad and Tobago signed the agreement on October 15, 2008. Unlike the preferential trade relationship under the Cotonou Partnership Agreement (CPA) which was signed in 2000, the EPA allows for reciprocal trade.

CHAPTER 3: THE INVESTMENT CLIMATE

Several elements constitute the investment climate in Trinidad and Tobago. They include: the incentive regime, the investment process, the role of the Investment Promotion Agencies and other State Agencies and companies with which investors interact. This Chapter provides details on all these issues as well as the socio-political and economic climate, without which the investment climate would be incomplete.

A. THE INCENTIVE REGIME

Incentives offered to investors fall under the following pieces of legislation:

- The Fiscal Incentives Act, Chapter 85:01 (as amended)
- The Corporation Tax Act, Chapter 75:02
- The Income Tax (In Aid of Industry) Act, Chapter 85:04
- The Value Added Tax Act, 1989
- The Trinidad and Tobago Free Zones Act, 19 of 1988 (as amended)
- The Customs Act, Chapter 78:01
- The Tourism Development Act, 2000 (as amended) and
- Various Finance Acts

The incentives include:

(i) Fiscal Exemptions;
(ii) Import Duty Concessions;
(iii) Tax Exemption for Approved Small Companies Status;
(iv) Research and Development Facility;
(v) Loan Guarantees for Small/Medium Sized Enterprises;
(vi) Venture Capital Incentives;
(vii) Free Zones;
(viii) Production Expenditure Rebate Program for the Film Industry
(ix) Revolving Investment Arrangement for the Entertainment Industry and
(x) Wear and Tear Allowance.

Please note that all incentives are explained below in greater detail.

1. Fiscal Exemptions

Fiscal incentives are benefits granted to large-scale locally incorporated manufacturing companies under the provisions of the Fiscal Incentives Act, Chapter 85:01. Fiscal incentives manifest themselves in different forms. For example, a qualifying enterprise can be exempted from customs duties and VAT on the construction of an approved project. Projects qualifying for fiscal incentives normally fall within one of three classifications[1] outlined in the Act. In most cases, tax exemptions are extended to dividends, in which case the qualifying enterprise may also be exempted from payment of non-resident withholding tax on any taxes in excess of the investor's tax rate on the dividend in the investor's country of residence.

To qualify for fiscal incentives, a company must adhere to the following:

- be a manufacturing or processing enterprise;
- make a contribution towards the T&T economy in terms of employment, linkages, and investment;
- be declared an approved enterprise under Sections 2 and 12 of the Act;
- manufacture approved products as indicated by not being on the list of products on the First Schedule of the Act; and
- be declared an industrial factory for the manufacture of the approved products.

Applications for Fiscal Incentives are made to the Minister of Trade and Industry and final approval is granted by the Cabinet of the Government of the Republic of Trinidad and Tobago on a case by case basis.

2. Import Duty Concession

Full exemption from customs duties is available for imports of machinery, equipment and raw materials in the following sectors:

- Agriculture
- Forestry
- Fisheries
- Petroleum
- Hotel/Tourism

[1] Group 1 Enterprise: Where the local value added to the product is at least 50%
Group 2 Enterprise: Where value added is at least 25% but less than 50%
Group 3 Enterprise: Where the local value added is at least 10% but less than 25%

- Manufacturing

In the Manufacturing/Assembly sector, exemption from customs duties is granted through import duty concessions. Manufacturing enterprises are considered for the grant of import duty concession based upon the provisions of the Customs Act, Chapter 78:01, Third Schedule.

To be considered, the company must be:

- a manufacturing enterprise listed on the Third Schedule of the Customs Act, Chapter 78:01;
- making a contribution towards the T&T economy in terms of employment, linkages and investment**;** and
- making a contribution to the economy in terms of a positive local labour weighting and a positive local value added.

Applications for Import Duty Concessions are made to and approved by the Minister of Trade and Industry on a case by case basis.

3. <u>Approved Small Company Status</u>

Approved Small Company Status is a designation granted to a Limited Liability Company, allowing a tax relief for a period of five (5) years under the Corporation Tax Act (Act No. 11 of 1988, amended by Act No. 2 of 2006 and assented to on February 08, 2006) in the form of a Tax Credit.

To qualify, the company must:

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

Applications are made through the Business Development Company Limited to the Minister of Trade and Industry who grants approval on a case by case basis.

4. Research and Development Facility

The Research and Development Facility is a funding mechanism designed to stimulate and encourage investment in innovation through the provision of grants for corporate research & development.

To qualify the company must be;

- locally owned and operated;
- in existence for a minimum period of two (2) years;
- able to contribute a minimum of 33.33% of the cost of the project;
- investing in non-property assets e.g. machinery, equipment and working capital of TT$50,000 - TT$5,000,000; and
- making annual sales turnover between TT$50,000 - TT$5,000,000.

Businesses can access a maximum grant of TT$100,000 annually. Applications for business alliances will also be considered for a maximum of TT$200,000 and funding for patent registration to a maximum of TT$50,000 is also available. The Business Development Company Limited is the relevant authority charged with the responsibility of the Research and Development facility.

5. Loan Guarantees for Small/Medium Sized Enterprises

The Loan Guarantee Program is a credit support instrument designed to assist start-up or existing businesses in securing loans from financial institutions with the Business Development Company Limited providing the major part of the collateral.

The criteria to qualify are as follows:

- The company must be owned and operated by citizens or residents of Trinidad and Tobago and involved in legitimate productive business activity and operated for profit;
- Guarantees are provided to businesses for funding purposes upon qualification for a loan from the lending agency and the Business Development Company Limited;
- The loan repayment period must not exceed 7 years; and
- The current maximum guarantee value is TT$500,000.00.

Financial support can be obtained for the following purposes:

- Working capital financing;
- Inventory purchases;
- Revolving loan facility; and
- Purchase of an existing business as a going concern.

6. Venture Capital Incentive Programme (VCIP)

The Venture Capital Incentive Programme (VCIP) was created in direct response to the need to provide financial capital and managerial support to Small and Medium-sized Enterprises (SMEs). Its prime objective is to administer and facilitate activities related to raising risk capital through the private equity industry, thus fostering the expansion and preservation of small and medium businesses, as well as the creation of new jobs. Applicants qualify for the tax credit based upon the provisions of the Venture Capital Act, 1994. The only requirement for access to the VCIP is that the individual must be making an investment in a venture capital company.

The advantage of the VCIP is that a personal tax credit equal to the highest marginal rate of tax, currently 25% is granted to investors in venture capital companies. The VCIP is the responsible agency for administering this incentive. This statutory agency falls under the purview of the Ministry of Trade and Industry.

7. Free Zones

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

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

- Customs duties on capital goods, parts and raw materials for use in the construction and equipping of premises and in connection with the approved activity;
- Import and Export duties, taxes or licensing requirements;
- Land and Building Taxes;
- Fees for Work Permits;
- Foreign currency or property ownership restrictions;

- Capital gains, withholding and value added taxes; and
- Duties on vehicles for use only within the Free Zone.

Application to operate in a Free Zone is made on specified forms to the Trinidad & Tobago Free Zone Company ('the Company'). After recommendation by the Company, the Minister of Trade and Industry may by Order designate an area a Free Zone, the limits of which are defined in the Order. The Free Zone regime falls under the purview of the Ministry of Trade and Industry. The first schedule of the Free Zones Act contains the list of activities permitted in a free zone. There are presently 12 permitted activities[2].

8. Production Expenditure Rebate Program

The Trinidad and Tobago Film Company has recently introduced a competitive rebate program with a view towards attracting international producers to Trinidad & Tobago. These rebates apply to the following areas of filmmaking:

- Rental of local equipment, supplies and services;
- Payments to the Police, Fire and Ambulance Services;
- Wardrobe, props and related items;
- Location fees;
- Employment of local cast and crew;
- Accommodation and food; and
- Local travel and transportation costs.

The Trinidad and Tobago Film Company evaluates applications with special reference to:

- The total estimated expenditure in Trinidad and Tobago;
- The level of employment of the Trinidad and Tobago crew; and
- A script that does not portray Trinidad and Tobago in a negative light.

[2]The list of activities are: warehousing and storing; manufacturing; transhipment; loading and unloading; exporting; importing; service operations (banking, insurance and professional services); packaging and shipping; processing, refining, purifying and mixing; constructing, altering, reconstructing, extending or repairing infrastructure or premises, equipping premises in a freezone; sale, lease, rental and management of a free zone land, infrastructure, premises, plant, and equipment; merchandising.

The 4th Schedule also contains a list of products excluded from a free zone and includes food, beverage, tobacco, cigarettes and petroleum.

The Production Expenditure Rebate Program provides cash rebates up to 30% for expenditure accrued while filming in Trinidad and Tobago.

9. Revolving Investment Arrangement

The Trinidad and Tobago Entertainment Company Limited's Revolving Investment Arrangement (RIA) has been established to provide financial assistance for entertainment practitioners with major projects related to the entertainment industry. These may include but are not limited to projects in market development; music, multimedia, theatrical and dance production, works of 'mas' and touring, as well as implementation of export plans.

The Trinidad and Tobago Entertainment Company Limited's Revolving Investment Arrangement provides financial assistance of up to 70% of any project. The percentage will be decided on a case-by-case basis.

The applicant is required to provide documentation demonstrating an ability to raise the balance of funds not supplied by the company before any funds are disbursed. The applicant should also be a citizen or permanent resident of Trinidad and Tobago. A significant percentage of the project team should also meet this criterion.

10. Wear and Tear Allowance

Under the Income Tax (In Aid of Industry) Act, there is an annual wear and tear allowance of 10% of the capital expenditure on construction of a building or structure or in respect of capital improvements made on or after January 01, 1995. There are also annual wear and tear allowances on plant and machinery. In respect of plant and machinery acquired after January 01, 1995, there was the introduction of the pooling of such assets 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.

The following concessions are also available:

- Initial allowance of 10% on erection of buildings and structures.
- Initial allowance of 50% on purchase of plant and machinery reduced in certain industries to 20%.

Annual allowances equal to 1/50th of the expenditure on building structures or 1/20th of the expenditure where a person carries on petroleum operations under licence issued after January 01, 1970.

- Annual allowances of a reasonable amount for wear and tear on plant and machinery.

- Oil refineries - annual allowances calculated by manufacturer on 120% of the expenditure.
- Investment allowance for capital expenditure in respect of production business on land equal to 150% of the expenditure, that is, 40% in year 1 and 20% in the following five years.

11. 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 is the liability to pay withholding tax where applicable.

B. THE INVESTMENT PROCESS

There are five (5) stages in the investment process:

- *Screening of Projects* – This is the initial phase where investors communicate with officials of the relevant government departments about their investment plans.
- *Application for Investment Incentives* – Investors then seek to benefit from incentives that are available for their specific project.
- *Approval* – This stage includes obtaining approval from all the relevant statutory agencies such as:
    - Town and Country Planning Division, Ministry of Planning, Housing and the Environment;
    - Factory Inspectorate Division, Ministry of Labour;
    - The Environmental Management Authority; and
    - The Regional Corporation in the district where construction will occur.
- *Implementation* – This is where the project commences.
- *Monitoring* – This is essential for data collection purposes that will assist in the management of the economy. There is need for greater monitoring of investment projects.

The procedure for obtaining approvals is the longest phase because of the different levels of approvals that are required from various agencies. These agencies may at times seek technical assistance from advisory agencies, which may delay the approval process even further.

C. INVESTMENT PROMOTION AGENCIES

This country's investment promotion activities are shared among three main organizations:-

- Investments in the energy sector are spearheaded by the National Energy Corporation.
- The newly formed Tourism Development Corporation (TDC) is responsible for all marketing and promotion activities for the tourism sector.
- Evolving Technologies and Enterprise Development Company Limited (eTecK) is responsible for encouraging business development in the non-energy sector, including ICT, knowledge-based and down stream energy industries.

There are currently nineteen (19) industrial estates which are managed and maintained by eTeck. These are strategically located throughout Trinidad and one (1) in Tobago and cover a gross area of three hundred and twenty-five (325) hectares. The cumulative floor space (i.e. factory shell) that is tenanted is just under seventy thousand square metres. The accumulated land site that is tenanted is approximately 1.7 million square metres.

All estates are equipped with a network of internal roads within easy access to the major highways, with underground and surface drains, water and electricity. In some cases, a natural gas supply can be accessed by tenants on some of the industrial estates. Industrial accommodation (land and factory shells) is offered to clients engaged in industrial manufacturing, processing and service oriented activities. Upon completion, the Tamana Technology Park located in north-east Trinidad, would cater to high-value and high-technology manufacturing and services, academic input, and research and development.

There are also plans for the expansion of two of the parks and construction of six (6) additional industrial estates at:

- Dow Village;
- Reform;
- Factory Road;
- Endeavour;
- Preysal; and
- Debe

D. OTHER STATE AGENCIES AND COMPANIES

1. The Tobago House of Assembly (THA)

The mandate of the Tobago House of Assembly (THA) includes the promotion and facilitation of investment in Tobago. The promotional activities are an addition to those undertaken by the national investment promoting agencies. These activities are also linked to the national socio-economic objectives which include the diversification of the economy, employment generation, and the attainment of developed country status, among other things.

2. The Ministry of Trade and Industry (MTI)

The Ministry of Trade and Industry in furtherance of the Government's objectives of diversification and growth of the economy, pursues a number of targeted initiatives aimed at the transformation, development and expansion of the Non-petroleum Sector. Strategies aimed at developing and expanding the Manufacturing and Services Sub-sectors include sector development initiatives, which seek to assess and identify the future competitive advantage of eight (8) targeted sectors, as mentioned in the Introduction. The Ministry's participation in various negotiating fora also provides opportunities for increased market access to companies located in Trinidad and Tobago.

3. National Entrepreneurship Development Company (NEDCO)

The National Entrepreneurship Development Company's (NEDCO's) mandate includes a focus on micro business (five employees, with not more than $250,000 in assets or in sales), by providing primarily funding and training and development. As of December 2008, the company had assisted approximately 8,637 individuals to start-up or expand their businesses. NEDCO's Entrepreneurial Training Institute & Incubation Centre also provides a range of critical services such as business advice, mentoring, business information, technology, training, entrepreneurial development, and research and planning. This agency falls under the purview of the Ministry of Labour and Small and Micro-Enterprise Development.

4. Business Development Company Limited (BDC)

The mandate of the Business Development Company Ltd includes a focus on providing technical and financial support to Small and Medium-sized Enterprises (SMEs), to enable them to grow and become internationally competitive. The Company's technical assistance programmes focus on training for management and entrepreneurial development, the provision of project management and company-specific consultancy services for business growth, enhancing efficiency and productivity through support for quality, health and safety and environment systems development, Gap Analysis

Programme, Good Manufacturing Practice, Hazard Analysis Critical Control Point and lean manufacturing programmes; and supporting e-commerce developments. BDC provides loan guarantees of up to 85% to a maximum of $500,000 (but has recommended an increase in the limit to TT$1.5 million) for the acquisition of working capital through financial institutions in the country. The Company has issued 5,190 guarantees to date, valued at TT$130 million and covering loans of over TT$250 million.

BDC's wholly owned subsidiary, Caribbean Leasing Company Limited (CLCL) provides financial leasing for the acquisition of capital equipment for plant expansion, modernization and upgrading at a minimum value of TT$25,000 thousand and with no upper limit. One hundred and fifteen (115) companies have been approved for leases with a total value of over TT$35 million. The Company's objective is to provide at least TT$15 million in leases every year.

5. Venture Capital Incentive Programme (VCIP)

The Venture Capital Incentive Programme (VCIP) was created to facilitate the administration and access to capital for small and medium-sized businesses. The organization is a regional integrator of private equity resources and entrepreneurial activity. The VCIP has facilitated firms in raising approximately TT$15M in equity capital from individual and institutional investors and as at the end of 2008, venture capital companies had invested over TT$5.7M in twelve businesses.

6. Trinidad and Tobago Bureau of Standards (TTBS)

The Trinidad and Tobago Bureau of Standards' (TTBS') mandate includes ensuring that goods and service produced and/or used in the country satisfy the criterion of good performance established by the Bureau. Its services include: certification; inspection and monitoring; standardization; testing; metrology; lab accreditation; and testing.

7. Trade Licence Unit

The Trade Licence Unit falls under the purview of the Ministry of Trade and Industry. It is responsible for granting import and export licences to the general public. Further details on the procedures for obtaining import and export licences are provided in **Appendix II**.

E. SOCIO-POLITICAL AND ECONOMIC ENVIRONMENT

To identify the characteristics of the socio-political and economic environment in which investors operate in Trinidad and Tobago, a SWOT analysis was conducted. In general, Trinidad and Tobago's strengths lie in its geographical, socio-political and economic characteristics. There are weaknesses in the legislative framework and physical infrastructure as neither of these two elements has kept apace with the rate of modernisation taking place in Trinidad and Tobago. An acquired challenge continues to be altering the psyche of local investors to be less risk averse and more global in their reach. Amidst the identified weaknesses and challenges are opportunities which investors must take advantage of, and threats over which the local community has little control but can take measures to mitigate the effects.

1. Strengths

Trinidad and Tobago can boast of being strategically located, having a stable political history and maintaining sound macro economic policy, as explained below.

i. Strategic Location

Trinidad and Tobago lies at a strategic geographic location, the southernmost part of the Caribbean. The country is ten (10) kilometres from Venezuela, which places it at the gateway to the South American mainland. The major cities of North America are only a few hours away by airplane. This is a particular advantage, especially when viewed in combination with the number of trade agreements to which this country is a signatory, and creates tremendous potential for the transformation of Trinidad and Tobago into an international centre for trade and transport.

ii. Access to a wide Array of Markets

Trinidad and Tobago is part of the Caribbean Community (CARICOM) which has an estimated population of 6.4 million. In addition, investors have access to a number of regional markets through a number of bilateral trade agreements between CARICOM and countries such as the Dominican Republic, Venezuela, Colombia, Cuba and Costa Rica. Negotiations are being conducted to expand the CARICOM/Costa Rica Free Trade Agreement to include the other Central American countries of Nicaragua, El Salvador and Panama. Negotiations are also expected to commence shortly with Canada for a Free Trade Agreement (FTA).

iii. English Speaking

Trinidad and Tobago's history has been primarily of English rule. However between 1498 and 1797, Trinidad was under Spanish rule and the evidence exists in Spanish customs. While English remains the official language, Spanish has been deemed as the first foreign language. This initiative auger well as the country seeks to forge closer ties with Latin America and other Spanish speaking neighbours in the Caribbean.

iv. Skilled Labour

The Government recognizes the importance of skilled labour and is presently involved in enhancing the training and education process through such programmes as the On-the-Job Training (OJT) and multi-skilled training (MUST) initiatives.

The country currently has a high percentage of university graduates in various administrative, business, science and technical areas. Tertiary education is currently free to nationals and the Government has established two new educational institutions, the University of Trinidad and Tobago and the College of Science, Technology and Applied Arts of Trinidad and Tobago (COSTAATT), to cater to the increased demands for skilled people.

Steps are being taken to provide the linkage between science and technology with research and development since this will drive innovation and business growth into more high-end activities in the value chain.

v. Stable Political System

A significant factor for Trinidad and Tobago is its history of political stability. There are three major political parties in Trinidad and Tobago and Governments have changed on four occasions in the last 17 years without jeopardizing the country's enviable history of political stability.

vi. Macro-Economic Stability

According to the Review of the Economy 2008, Trinidad and Tobago's Gross Domestic Product (GDP) continues to show substantial growth rates as can be seen in **Table 5** of **Appendix I**. Although the energy sector continues to be the driver for economic growth, the non-energy sector has maintained a growth rate in excess of 3.7% over the period 2004 to 2008. The manufacturing sector has had consistent growth rates over 8% during 2004 to 2007.

vii. Competitive Corporation Tax Rates

The corporation tax rate was reduced from 30% to 25% in 2006 for companies operating in the non-energy sector. Companies in the gas processing and petro-chemical sectors are taxed at a rate of 35% while companies in the oil exploration and production sector are taxed under the Petroleum Taxes Act at a rate of 50% on their profits.

viii. Low Energy Cost

Trinidad and Tobago has one of the lowest energy costs in the region. This continues to be a major attraction for many manufacturing entities. Commercial users currently pay approximately US$1.70 per million BTU for natural gas. In addition, there are over 620 kilometres of pipelines, which distribute natural gas directly to the manufacturing plants. This network of pipelines is expected to be increased in the near future. This includes a plan to build a pipeline directly to Piarco International Airport which will be used to supply jet fuel at competitive prices. This project is envisaged as a major step towards positioning Piarco as an alternative Hub to Miami in accessing the Americas and also provides for the establishment of a repair and maintenance facility at Piarco.

ix. Foreign Exchange Stability

The stability of the country's currency relative to other flexible exchange rates in the region continues to be an attractive factor. The Trinidad and Tobago dollar has consistently maintained an exchange rate to the US Dollar of $US 1 to $TT 6.30 over the past ten years.

x. Developed Manufacturing Sector

There is a well-developed manufacturing sector both in the energy and non-energy sector. This provides vast potential for joint-venture cooperation, and the creation of backward and forward linkages. As noted earlier, the non-energy manufacturing sector has grown at a rate of over 8% in the four consecutive years prior to 2008.

2. Weaknesses

Despite its strengths, Trinidad and Tobago faces a number of challenges which it must overcome to succeed in becoming the premier destination for investment in the western hemisphere.

i. Legislative and Regulatory Framework

The present legislative framework for investors is deficient. The existing piece of legislation which applies to foreign investment addresses the acquisition of land; ownership of shares in local private or public companies and provisions for formation of companies. It does not incorporate a regulatory framework which governs the protection and promotion of investment as provided in the numerous bilateral investment treaties that this country has signed. There is no legal definition of investment. Therefore there is need to replace the existing legislation with one that seeks to address these concerns.

ii. Physical Infrastructure

Although significant investment has been allocated to modernise the physical infrastructure in Trinidad and Tobago, challenges still exist. The aim is to create a level of infrastructure that is comparable to the best in the world. Several of the country's roads and bridges that connect the three major areas of business and administrative centres, such as the cities of Port of Spain and San Fernando in Trinidad, and the Town of Scarborough in Tobago are in need of repair. Efforts are also underway to implement measures to ease traffic congestion in targeted areas in and out of the capital city.

The port facilities located at Port of Spain and Point Lisas in Trinidad and Scarborough in Tobago need to be expanded to accommodate the increasing capacity of commerce between Trinidad and Tobago and the rest of the world. Additionally, the country has two major airports, the Piarco International Airport in Trinidad and the Crown Point International Airport in Tobago that are continuously being upgraded to improve their efficiency.

The Telecommunication network which currently provides coverage to over 90% of the population is also being upgraded to accommodate more service providers and quality services.

iii. Expanding Business

One of the major challenges facing Trinidad and Tobago is the lack of economies of scale. The objective to drive investors to achieve their full potential developing new products and processes has proven to be an obstacle as many businesses appear to be hesitant to export extra-regionally. Additionally, the need arises for the business community to change the culture of local investors to be less risk averse and more innovative. Although opportunity exists for growth, some prefer to trade within CARICOM where markets are more secure.

iv. Approval Process

Recognised as an obstacle to doing business in Trinidad and Tobago is the approval process, which is currently being described as bureaucratic. However, a new system is being conceptualised to facilitate a greater ease of doing business and investment.

v. National Security

The Government recognises the challenges posed by the crime situation in the country and has been instituting necessary measures to address the issue and to make Trinidad and Tobago safe for all its citizens and visitors.

3. Opportunities

Tremendous opportunity exists for domestic and foreign investors to expand and establish backward and forward linkages within the local, regional and international regions. There is room to move up the value chain in many sectors and to take advantage in the down-stream energy sector and the services sectors. The work of the investment promotion agencies to establish clusters is another opportunity that investors are encouraged to take advantage of utilising. Additionally the specific sectors targeted by Government present opportunities to capitalise on incentives provided.

4. Threats

In spite of the opportunities, there is need to acknowledge that threats do exist but these are not always insurmountable. The general slow-down in the global economy is a very real threat to a small economy such as Trinidad and Tobago who is a price taker in the oil and gas markets. Therefore as prices fall or demand decreases, the effects would be detrimental to the economy. Such negative effects associated with a "Dutch Disease" scenario could be disastrous if efforts are not undertaken to diversify the economy. The Government recognises this challenge and is committed to ensuring that history does not repeat itself.

The impending economic recession in the United States of America is very close to home and Trinidad and Tobago would feel its impact and effect as it is one of our leading trading partners. The growth of India and China also presents challenges for this country as they are now not only leaders in producing cheap goods and services but also in attracting investment. In this regard though, our opportunity may lie in alternative marketing strategies such as clean, sustainable development that does not compromise international laws such as labour codes, environmental laws and occupational health and safety standards. Other emerging markets such as the rapidly growing Asian economies can also be seen as threats to this country as well as the emerging economies of the former Soviet Socialist Republic which are fast becoming our competitors in attracting investment.

CHAPTER 4: THE WAY FORWARD FOR INVESTMENT PROMOTION AND FACILITATION

The analysis provided in the previous chapters has shown that Trinidad and Tobago does not attract substantial Foreign Direct Investment (FDI) into the non-energy sector. The emphasis has always been on the energy and energy related industries; quite understandably so because of the country's natural endowment of oil and gas resources. Nevertheless these are non-renewable resources and therefore in finite supply.

The non-energy manufacturing sector has shown its ability to meet the challenges and has developed itself substantially. New legislation for investment promotion and protection will be introduced. In mapping the way forward, the emphasis will be placed on the essential elements and strategies deemed necessary to attract investment both local and foreign.

A. LEGISLATIVE CHANGES

The legislation on investment is outdated, the most recent being the Foreign Investment Act of 1990 which addresses the issue of land tenure and foreign investor shareholding in public and private companies. Over the years, a number of Investment Promotion and Protection Agreements (IPPAs) or Bilateral Investment Treaties (BITs), have been signed between Trinidad and Tobago and other countries. Additionally, as a Member State of CARICOM, Trinidad and Tobago has signed several trade agreements which include provisions for investment. More recently, the EPA negotiated between the EU and CARIFORUM contained specific articles on investment promotion and protection of investors.

Consequently, Government needs to update the legislation on investment to ensure that it meets the requirements provided for in the individual agreements. Firstly, it is envisaged that the new legislation will replace the Foreign Investment Act of 1990, as amended. Additionally it will seek to combine existing legislation pertinent to investment into one prescribed Act. Thirdly, it will include new elements for investment promotion and protection not previously included in the legislation such as a definition of investment; along with provisions for transfers, expropriation, and behaviour of investors.

The new legislation will also take into consideration Trinidad and Tobago's commitments under the Revised Treaty of Chaguaramas and the unique circumstances of Tobago. In this respect, a general exceptions and reservations clause applicable to Tobago may have to be drafted to account for the special and differential treatment of Tobago. The provisions of the new legislation must also be in tandem with the proposed Investment Code being developed by CARICOM.

Further explanations are provided below on the recommended changes to the legislation.

1. Definition of Investment

An asset-based definition of investment will be adopted using an illustrative list as presented below indicating the types of activities that will be considered as an investment. This is common in all modern agreements compared to an enterprise-based or transaction-based definition and is generally preferred by countries wishing to encourage investment flows.

In this policy, investment means an asset, defined as what an investor commits in accordance with the law and includes:

i. real or personal, movable or immovable property and any other property rights such as mortgages, liens or pledges;
ii. shares, stock, securities and debentures in a company or any other form of participation in a company;
iii. claims to money or to any performance under contract having an economic value, loans only being included when they are directly related to a specific investment;
iv. intellectual property rights, including copyrights, patents, industrial designs, trademarks, trade names, geographical indications, technical processes and know-how;
v. business concessions conferred by law or under contract, to undertake any economic and commercial activity, including any concessions to search for, cultivate, extract or exploit natural resources;

Investment however **does not** include the following:

i. a debt instrument;
ii. claims to money that arise solely from commercial contracts for the sale of goods and/or services; and
iii. any intangible asset or other claims to money that do not involve at least one of the types of interests as set out in paragraph (i) through (v) above;

2. Definition of Foreign Investor

A foreign investor means:

i. an individual who is neither a citizen of a CARICOM Member State nor a resident of Trinidad and Tobago; or
ii. any firm, partnership or unincorporated body of persons of which more than fifty per cent of its shareholdings is held by persons who are neither citizens of a CARICOM Member State nor a resident of Trinidad and Tobago; or
iii. any company or corporation that is not incorporated in a CARICOM Member State or if so incorporated, is under the control of a foreign investor; and
iv. who has engaged in activity as defined under the term investment.

3. Key Personnel

The employment of foreign natural persons is governed by the Immigration Act (Chapter: 18:01) and any amendments to this Act which may arise from the recommendations of the Work Permits Committee. The current framework provides for the employment of managers, executives, specialists and experts who may be considered indispensable to guarantee the proper control, administration and operation of an investment. These employees are granted work permits for a period of two years.

4. Land Ownership

Subject to the requirement of a licence in the following circumstances, a foreign investor is free to purchase land for both residential and commercial purposes:

- If one parcel of land for residential purposes exceeds 3,716.12 square metres (one acre)
- If a parcel of land for commercial or industrial purposes exceed 20,234.30 square meters (five acres)

Subject to the acquisition of the necessary approvals, construction must commence within twelve (12) months from the date of the granting of a licence. In cases where the investor is unable to fulfil the requirement of the licence, an application for an extension should be submitted to the Minister of Finance. The Minister may grant an extension for a further period of eighteen (18) months. The application for an extension will be a simple process, requiring the completion of a prescribed form.

There will be two exceptions to the land use policy:

1. The Minister of Planning, Housing and the Environment will reserve the right to prioritize the use of the land for particular investments or sectors.
2. Issues related to land ownership in Tobago would fall under the purview of the Tobago House of Assembly (THA). This institution may impose additional requirements related to land ownership that may include restrictions on the length of ownership before resale, and the type of activity to be undertaken on the land.

5. Share Ownership

Currently a non-national cannot acquire more than thirty percent (30%) of any public company without approval from the Minister of Finance. The investor is required to complete and submit a prescribed form to the Minister of Finance for approval. This form will contain a request for routine personal and investment-related information such as name, address and purpose of the investment. The Minister of Finance will reserve the right to exempt certain sectors. With respect to private companies, there are no restrictions to share ownership.

6. Transfers

Trinidad and Tobago is an advocate of the free transfer of funds related to an investment. Foreign investors are free to transfer funds in a freely convertible currency and in accordance with the domestic laws of Trinidad and Tobago.

Such transfers may only be prevented under the following conditions:

- in cases of bankruptcy, insolvency or to protect the rights of creditors;
- in instances of criminal or penal offences;
- ensuring the satisfaction of warrants, or court orders in judicial or administrative proceedings; and
- non-fulfilment of tax obligations.

In addition, in the case of balance of payments difficulties, as defined by the International Monetary Fund, transfers may be temporarily restricted, in a manner that is equitable, non-discriminatory and in good faith.

7. Expropriation

Investments, including returns on investment shall not be nationalized or expropriated except for a public purpose.[3] Whenever this occurs however, it must be done under due process of law and in a non-discriminatory manner. It will also be followed by prompt, adequate and effective compensation which will be determined through negotiation between the Parties.

8. Behaviour of Investors

The new legislation should also include specific requirements regarding the behaviour of investors and their commitment to corporate social responsibility. It must be noted that Trinidad and Tobago has committed to these provisions under the Economic Partnership Agreement between CARIFORUM and the Economic Commission.

The new legislation should include measures to:

a. Forbid investors from and hold them liable for, offering, promising or giving any undue pecuniary or other advantage, whether directly or through intermediaries, to any public official or member of his or her family or business associates or other person in close proximity to the

[3] A public purpose relates to measures that may become necessary in order to protect public morality; prevent crime and maintain public order; protect or maintain essential security interests; protect human, animal and plant life; protect the balance of payments and react to balance of payments difficulties; protect disadvantaged persons or communities; protect national treasures of artistic, historical, anthropological, paleantological and archaeological value etc.

official, for that person or for a third party, in order that the official or third party act or refrain from acting in relation to a proposed investment or any licences, permits, contracts or other rights in relation to an investment;

b. Ensure that investors act in accordance with core labour standards as required by the International Labour Organisation Declaration on Fundamental Principles and Rights of Work, 1998 and to which Trinidad and Tobago is a signatory; and
c. Ensure that investors do not manage and operate their investments in a manner that circumvents international environmental or labour obligations arising from agreements to which Trinidad and Tobago is a signatory; and
d. Ensure that investors establish and maintain, where appropriate, local community liaison processes, especially in projects involving extensive natural resource-based activities, in so far as they do not nullify or impair the benefits of the project.

B. INVESTMENT STRATEGIES

1. Approval Process

One of the critical initiatives is the implementation of a business and investment facility to make it easier to invest in Trinidad and Tobago. Its objectives include ensuring the faster processing of applications and approvals for establishing businesses and reducing bureaucracy in this respect. Efforts are currently being directed towards the conceptualisation and thereafter implementation of a single electronic window for doing business in Trinidad and Tobago.

2. Incentive Regime

The incentive regime must switch from a general purpose orientation to one that gives priority support to specific sectors. Business expansion stimulated through research and science must be encouraged. This strategy is not new as the agriculture, manufacturing and tourism sectors are already promoting a number of sector specific incentives. Additionally, the Film and Entertainment sectors have also proposed incentives. The sector teams and investment promotion agencies for the focussed sectors must develop sector specific incentives to attract and retain investment in an attempt to increase productivity in their respective fields.

3. Streamlining New Investment Projects

Trinidad and Tobago has a sound industrial base from which to leverage the move into more value added activities. It has been noted that Government has identified ten sectors for priority support and development.

Strategic plans have been approved for development of the following industrial sectors: Food and Beverage; Printing and Packaging; Merchant Marine; Film; Entertainment; Fish and Fish Processing and Yachting.

The need now arises for the relevant implementing agencies to identify appropriate investment projects based on the approved plans, to attract investment, both domestic and foreign.
Links must be identified to bring research and development closer to science and technology in an effort to develop and grow innovative industries along the higher ends of the value chain. Synergies must be encouraged between academia and entrepreneurship. Lessons learnt from the development of the energy sector from oil production to a booming gas and petrochemical sector today must be applied to the down-stream energy and non-energy sectors. As with the energy sector, public-private partnerships will be critical to this effort.

4. Investment Promotion Agency

The Evolving Tecknologies and Enterprise Development Company Limited (eTecK) has been selected as the investment promotion agency for the non-energy sector. eTecK's mandate includes branding Trinidad and Tobago, targeting investors and specific investment opportunities; providing physical incubators to assist start-up companies and industries; earmarking physical spaces for clustering and attracting companies to use and benefit from the cluster approach; and offering the necessary services to investors from start-up to operation as well as to after-care services. Such a comprehensive approach would bring tremendous benefits to the business sector.

5. Trade Missions

Efforts are being made to measure the impact and outcome of all trade missions conducted by Government agencies to promote trade and investment. Performance indicators need to be identified to evaluate the success of these missions and the tangible deliverables achieved.

6. Overseas Missions

The proliferation of Overseas Missions, Embassies and Trade Facilitation Offices (TFOs) such as in Cuba are regarded as essential to promote Trinidad and Tobago and target potential investors. A plethora of potential investors already exist in the Trinbagoian diaspora and can be extended to the Caribbean diaspora residing in cities of North America and other regions.

7. Data Collection Mechanisms

The existing mechanisms for collating data on investment are deficient. Every effort must also be made to improve this system to capture domestic, inward and outward investment flows. A project needs to be undertaken to identify the sources of investment and recipients. Given that the Central Statistical Office, the agency responsible for collecting official statistics on behalf of the Government, faces many challenges, the line Ministries and Investment Promotion Agencies will therefore assist in data collection on investment. Analysing the data collected is critical to determining the impact to inform policy for economic development.

CONCLUSION

Investments and particularly foreign investments have played a crucial role in advancing the development of Trinidad and Tobago's economy. This is evident given the global success of Trinidad and Tobago's highly competitive petroleum and petrochemical-based sectors, certainly significant contributors to the high income per capita enjoyed by this country. Maintaining a gross national income per capita of US$14,751 and ranking 4th in terms of GNI per capita in the Western Hemisphere after the U.S.A, Canada and Mexico is not sustainable if the economy is heavily dependent on finite resources such as oil and gas. Investments are needed to support the diversification thrust of the government.

As mentioned in the Introduction, the Government has identified ten (10) attractive industries for investment. These include: Financial Services, Tourism, Information and Communication Technologies (ICT), Food and Beverage, Printing and Packaging, Merchant Marine, Film, Entertainment, Fish and Fish Processing and Yachting. The list is not exhaustive and therefore investors, both local and foreign with wide expertise in detecting opportunities for investment will be able to identify many more industries for investment.

In recognition of the ever changing investment environment, efforts are being made to upgrade relevant pieces of legislation and as outlined in the purpose of this investment policy document, introduce new legislation for investment. It is expected that the new Investment Promotion Act will give clarification to the definition of investment; key personnel, land ownership, share ownership, transfers, expropriation and behaviour of investors as covered in the Investment Promotion and Protection Agreements (IPPAs) that are not currently considered in the existing legislation.

The Incentive Regime as noted offers a mixed bag of incentives and concessions to attract not only the large-scale investor but also the small and medium-sized entrepreneurs. Unlike the approach of the past where any new industry was welcomed into the country, so long as the investing industry demonstrated the ability to process indigenous raw materials, create employment or provide the basis for further manufacturing, the emphasis is not as much on the quantity of investment as much as on the quality of investment received and the ability of the investor to establish backward and forward linkages with enterprises in the economy, transfer technology and contribute positively to local value added and the overall diversification plan of government.

The Government of Trinidad and Tobago remains committed to creating an investor friendly environment that captures the lasting interests of local and foreign investors. While the strategies to attract investment have not deviated significantly from past practices (marketing the natural advantages of T & T, promoting the structure of the economy, issuing an attractive incentive regime to pioneering industries, or identifying core industries for development), the proposed way forward for investment promotion and facilitation embodies a coherent set of rules deemed necessary for transparency in the operation of foreign and local investors. Additionally, this approach attempts to create an enabling environment that is supportive of growth and development of new investment in the non-energy sector. In this regard, the upgrading and introduction of key legislation, streamlining of the investment approval process, strengthening of investment promotion agencies and the creation of sector specific incentives all constitute a new competitive environment that seeks to attract investment and permit the spill over of investment flows to impact positively on the overall development of T & T’s economy.

APPENDIX I

Table 1[4]
FDI INFLOWS/OUTFLOWS FOR CARICOM REGION AND BY MEMBER COUNTRY 2004-2006
/*US-$Mn*/

REGION/COUNTRY	FDI inflows			FDI outflows		
	2004	2005	2006	2004	2005	2006
CARICOM	2422	2729	3148	89	451	483
Antigua & Barbuda	95	133	207	-[a]	-[a]	..
The Bahamas	443	564	706	..	..	..
Barbados	-12	62	36[a]	4	9	5[a]
Belize	112	127	73	-	1	1
Dominica	27	33	34	-	-	-
Grenada	66	86	119	-	-	-
Guyana	-	-	-	-	-	-
Jamaica	602	682	850	60	101	108
Montserrat	3	1	1	-	-	-
St. Kitts & Nevis	53	104	203	-	-	-
St. Lucia	81	82	119	-	-	-
St. Vincent & the Grenadines	66	42	85	-	-	-
Suriname	-	-	-	-	-	-
Trinidad & Tobago	998	940	788	25	341	370

[4] Source: UNCTAD's World Investment Report 2007

TABLE 2[5]
DIRECT INVESTMENT CAPITAL IN PRIVATE SECTOR ENTERPRISES BY SECTOR OF ACTIVITY 1999 – 2006
/US - $Mn/

Item	1999	2000	2001	2002	2003	2004	2005	2006
1. Petroleum Industries	467.7	613.7	816.3	738.2	738.5	913.4	857.2	794.9
1.1 Mining, Exploration and Production, Refineries, Petrochemicals	449.0	613.9	787.2	694.8	710.3	867.2	813.0	735.5
1.2 Service Contractors, Marketing and Distribution	18.7	-0.2	29.1	43.4	28.2	46.2	44.2	59.4
2. Food, drink and Tobacco	3.8	-21.3	-18.1	3.6	4.8	5.8	4.3	6.8
3. Chemicals and Non-Metallic	2.9	1.8	-0.3	1.5	1.9	2.3	1.4	2.3
4. Assembly Type and Related Industries	0.1	-18.4	5.5	8.1	5.3	8.7	9.6	7.2
5. Distribution	-0.5	1.7	0.5	-0.7	2.2	2.7	2.6	2.9
6. All Other Sectors[6]	169.3	102.0	31.0	40.0	55.6	65.2	64.6	68.6
TOTAL	**643.3**	**679.5**	**834.9**	**790.7**	**808.3**	**998.1**	**939.7**	**882.7**

[5] Source: Central Bank of Trinidad and Tobago
[6] "All other sectors", includes textiles, printing, publishing and paper convertors, miscellaneous manufacturing, construction, hotels, transportation and business services, etc., commercial banks, insurance companies and other financial institutions.

TABLE 3[7]
COMPONENTS OF DIRECT FOREIGN INVESTMENT, 1999 - 2006
/US - $Mn/

Item	1999	2000	2001	2002	2003	2004	2005	2006
Direct Investment	**643.3**	**679.5**	**834.9**	**790.7**	**808.3**	**998.1**	**939.7**	**882.7**
Equity Capital	488.5	549.2	715.6	639.8	451.2	856.9	663.9	496.6
Reinvested Earnings	151.5	145.8	167.6	164.6	365.9	152.9	292.2	406.4
Divestment	5.0	5.0	0.0	0.0	0.0	0.0	0.0	0.0
Other	-1.7	-20.5	-48.3	-13.7	-8.8	-11.7	-16.4	-20.3

TABLE 4[8]
DIRECT FOREIGN INVESTMENT BY COUNTRY OF ORIGIN, 1999 – 2006
/US - $Mn/

Country	1999	2000	2001	2002	2003	2004	2005	2006
U.S.A	274.6	315.9	372.3	352.7	375.8	697.5	693.8	626.7
U.K.	232.1	254.7	307.1	290.9	297.4	169.9	164.5	150.1
Canada	9.3	1.8	7.1	7.2	11.7	2.6	1.4	2.6
Germany	7.5	14.0	36.5	34.8	35.6	42.5	41.4	37.6
Japan	0.1	0.0	0.1	0.1	0.2	0.1	0.2	0.2
India	57.0	11.1	20.8	19.8	20.1	24.2	16.4	26.5
Other	62.7	82.0	91.1	85.2	67.5	61.3	22.0	39.0
TOTAL	**643.3**	**679.5**	**834.9**	**790.7**	**808.3**	**998.1**	**939.7**	**882.7**

[7] Source: Central Bank of Trinidad and Tobago
[8] Source: Central Bank of Trinidad and Tobago

Table 5[9]
GDP Growth Rates
2004 – 2008

Sector					
Petroleum					
Non-Petroleu					

[9] Source: Ministry of Finance's Review of the Economy 2008

m					
A g r i c u l t u r e					
M a n u f a c t u r i n g					
S e r v					

ices[10]					
All Sectors					

[10] The Services Sector includes the construction, distribution, transport, communication and financial sectors.

APPENDIX II

PROCEDURES FOR IMPORT AND EXPORT LICENCES

Import Licence

The Applicant must produce the following identification:

a. Imports for personal use – Trinidad & Tobago Passport, Drivers Permit or Identification Card.
b. Imports for trade - Board of Inland Revenue Certificate.

A stamped copy of the application form will be returned to the applicant to be presented when the prepared Licence is collected. The Licence will be ready for collection within seven (7) working days of lodging application.

Export Licence

Export Licence Application forms are available at the Licensing Unit and on the MTI's website (www.tradeind.gov.tt). Export of fish, animal species, wild flora and fauna require the prior recommendation of Ministry of Agriculture before the application is submitted to the Ministry of Trade and Industry. Export Licences are ready for collection within two (2) working days of lodging the application.