

Primary legislation governing the regulation of the securities market in Trinidad and Tobago.

This article is intended to give a brief overview of the legislative framework regulating the securities market in Trinidad and Tobago. I have also sought to provide insight into some of the catalytic reasons for enactment of the current legislation.

In Trinidad and Tobago up until the mid 1990's the securities market was regulated by the Companies Ordinance Chapter 31 No. 1 (the Ordinance), which was based on the UK Companies Act, 1929, the Foreign Investment Act, 1990 (the FIA), the Securities Industry Act, 1981 (the former SIA) and the self-regulated rules of the Trinidad and Tobago Stock Exchange (the Stock Exchange). Companies typically raised capital by way of equity or debt financing such financing usually being raised "at home". Consequently the capital markets in Trinidad and Tobago remained undeveloped until member countries of Caricom^[1] began a drive to facilitate and encourage cross-border investment in securities by harmonising and making more transparent their corporate and security related laws. Further, in the case of Trinidad and Tobago, the development of its multi-billion dollar oil and natural gas industry has made this country a magnet for foreign investors eager to invest in many downstream industries which continue to proliferate with each discovery of new oil and natural gas reserves. Local investors including financial institutions, foreign investors and the Government, desirous of seizing the investment opportunities offered by the development of these industries, advocated (and are still advocating) more legislative regulation and transparency of the securities market to the level of international best practice.

In 1995 new companies and securities industries acts, the Companies Act Chapter 81:01 (the Companies Act) which replaced the Ordinance and repealed it with certain exceptions, and the Securities Industries Act No. 32 of 1995 (the SIA), which repealed and replaced the former SIA, were passed. These acts together with the FIA provide the main legislative framework for the regulation of the securities market in Trinidad and Tobago.

The Companies Act is based substantially on the Canada Business Corporations Act. It regulates the affairs of all domestic companies from incorporation to dissolution

and matters in between, including transfer and issue of shares, issuing of debentures and other securities, arrangements with and protection of creditors, amalgamation and take-over bids with special provision for acquiring shares of dissenting minority shareholders in private companies.

The SIA governs inter alia, the offering of securities^[2] to the public by companies, registration of securities and reporting issuers, ongoing reporting requirements of reporting issuers, market conduct and regulation and recently, take-over bids with respect to public companies^[3]. It also provides for the compulsory registration of self-regulatory organizations such as the Stock Exchange and the Trinidad and Tobago Central Depository Limited, which are the only registered self-regulatory organizations to date.

The FIA regulates the purchase by foreign investors of shares in private and public companies whether or not listed on the Stock Exchange. The term "foreign investor" includes an individual who is not a citizen of a Caricom member country or a resident of Trinidad and Tobago or any company or corporation that is not incorporated in a Caricom member country, or if so incorporated, is under the control of a person who is neither a citizen of a Caricom member country or a resident of Trinidad and Tobago. Under the provisions of FIA, foreign investors desirous of incorporating or acquiring shares in a Trinidad and Tobago company are required, prior to doing so, to supply the Minister of Finance (and in the case of acquisition of shares in a public company the Secretary of the company), with information as to its nationality and description, whether it is a resident of Trinidad and Tobago, the purpose of the investment and the consideration paid for the shares. Further, a foreign investor is required to apply for and obtain a licence from the Minister of Finance prior to acquiring shares in a public company if such acquisition results in the foreign investor holding 30% or more of the shareholding of the company. Payment of the purchase price for shares, whether being acquired in a private or public company, by a foreign investor or citizen of a Caricom member country must be made in an internationally traded currency through a person authorized by law as a dealer in that foreign currency except where, in the case of a company incorporated in Trinidad and Tobago, such purchase price is financed out of capital reserves or retained earnings from its operations generated from its operations in Trinidad and Tobago.

It is fundamental to the sustained growth of the securities market that the current securities legislation keeps pace with the demands of the market. To this end proposed amendments to the Companies Act and SIA have been made and are currently being considered by the authorities. These proposed amendments may be viewed at the Securities and Exchange Commission's website at www.ttsec.org.tt.

1. Caricom is the acronym for the Treaty establishing the Caribbean Community made on July 4, 1973 at Chaguaramas, Trinidad.
2. The SIA defines offer to the public as any offer to the public at large or to any section of the public except an offer by an offeror who is not a registered issuer under the Act where the offer is made to fewer than 35 persons and certain other conditions are satisfied.
3. The Securities Industry (Take-Over) By-Laws, 2005 became effective in March, 2005.