

The Foreign Investment Act, Chap. 70:07 — Rules for Foreign Ownership of Land and Shares

The Foreign Investment Act is the primary statute governing the acquisition of land and shares in Trinidad & Tobago by foreign investors. It defines who counts as a 'foreign investor', sets acreage thresholds beyond which a licence is required, and imposes a mandatory licence for any land acquired in Tobago regardless of size.

Key Points

- A 'foreign investor' is any person who is not a national of T&T or a CARICOM Member State.
- A company is treated as foreign-controlled where foreign investors hold $\geq 50\%$ of the voting shares or voting rights, or otherwise control the company in fact.
- Land in Trinidad: up to 1 acre for residential or 5 acres for trade/business may be acquired without a licence.
- Land in Tobago: a licence is required for ANY acquisition, no minimum threshold.
- Shares: a licence is required where a foreign investor acquires 30% or more of a local public company.
- Consideration must be paid in an internationally-traded currency through an authorised dealer.
- Failure to obtain a required licence can result in forfeiture of the land or shares.

1. Who is a 'foreign investor'?

Section 2 of the Act defines a foreign investor as any individual who is not a citizen of Trinidad & Tobago, and any company that is not incorporated in a CARICOM Member State, or any company that is controlled by foreign investors as defined above.

A company is deemed 'controlled by foreign investors' where they hold at least one-half of the voting shares, at least one-half of the voting rights, or where the company is otherwise controlled by foreign investors in fact. This 'control in fact' test can catch minority shareholdings that are coupled with veto rights, casting votes, or nominee arrangements. Investors structuring a joint venture with a local partner should get the shareholders' agreement reviewed against this test.

CARICOM nationals are treated as local investors for the purposes of the Act. This includes citizens of the fifteen CARICOM Member States (e.g. Barbados, Jamaica, Guyana, Belize).

2. Acquiring land in Trinidad

A foreign investor may acquire land in Trinidad without a licence up to the following limits:

- Residential purposes, up to one (1) acre.
- Trade or business purposes, up to five (5) acres.

Where the acquisition exceeds these thresholds, a licence issued by the President on the recommendation of the Minister of Finance is required prior to conveyance. Certain areas of Trinidad may also be gazetted as 'designated areas' by Ministerial order, in which case a licence is mandatory regardless of acreage.

In every case the acquisition must be notified to the Minister of Finance within thirty (30) days of completion, on the prescribed form.

3. Acquiring land in Tobago, the special rule

The single most important rule for prospective investors in Tobago is this: a licence is required to acquire ANY land in Tobago, regardless of size or intended use. There is no acreage threshold; even a single lot for residential use requires a Foreign Investor Licence (commonly called an FIL).

The licence application is submitted to the Ministry of Finance and typically requires:

- The applicant's identity documents and, for corporate applicants, incorporation documents and proof of beneficial ownership.
- A description of the land (survey plan, deed reference).
- A statement of the intended use.
- Proof that the consideration will be brought into T&T through an authorised dealer in an internationally-traded currency.
- A police certificate of character (typically within 6 months).

Processing time varies from a few months to over a year depending on the completeness of the application and the nature of the proposed use. Applicants are encouraged to engage a local attorney early.

4. Exemptions

The Act carves out a number of narrow exemptions where a licence is not required, including:

- Annual tenancies (i.e. leases for one year or less that are not renewable perpetually).
- Acquisitions by way of inheritance.

- Acquisitions by a mortgagee on foreclosure or by a judgment creditor in execution, but the land must generally be disposed of within one year.
- Joint acquisitions with a spouse who is a national of T&T or another CARICOM Member State, provided the couple is legally married.

These exemptions are narrowly interpreted. Investors relying on them should have written advice from a local attorney.

5. Acquiring shares in a local company

A foreign investor may acquire shares in a local private company without a licence, but there are two important preconditions:

- The investor must furnish prescribed particulars to the Minister of Finance prior to the acquisition.
- The consideration must be brought into T&T through an authorised dealer in an internationally-traded currency (US\$, EUR, GBP, CAD, etc.), unless the investor uses local retained earnings or reserves of a T&T-incorporated vehicle.

For local PUBLIC companies (i.e. companies whose shares are or may be offered to the public), a licence is required where the acquisition would cause foreign investors, directly or indirectly, to hold 30% or more of the total cumulative shareholding. Companies listed on the Trinidad & Tobago Stock Exchange must confirm to the exchange that either the 30% threshold will not be breached, or the investor holds a valid licence.

6. Payment through authorised dealers

Consideration for land or shares must be paid through an 'authorised dealer', a bank or financial institution licensed under the Exchange Control Act to deal in foreign exchange. The Central Bank of Trinidad & Tobago publishes an up-to-date list of authorised dealers.

The only exception is where the investor is drawing on capital reserves or retained earnings already held inside a T&T-incorporated company. In practice, most first-time investors will need to route funds through their local attorney's client account or directly through the authorised dealer nominated on the licence application.

7. Consequences of non-compliance

Where a foreign investor acquires land or shares without a required licence, the President may, on the recommendation of the Minister of Finance, order the forfeiture of the land or shares to the State. This is a draconian outcome and one of the most compelling reasons to obtain the licence in advance rather than seek to remedy the position after closing.

8. Interaction with the Tobago FDIC

The Foreign Investment Act is administered by the Ministry of Finance and does not itself confer any approval role on the Tobago FDIC. However, in practice the Commission works alongside investors, their attorneys, and the Ministry to help sequence FIL applications with the other approvals a project will need (planning, environmental, THA-issued permits, and, where applicable, Fiscal Incentives). Investors are encouraged to raise their FIL position with the Commission early so that the licence pathway can be co-ordinated with other workstreams.

Sources

- Foreign Investment Act, Chap. 70:07 (tradeind.gov.tt)
- Ministry of Finance guidance on Foreign Investor Licence
- UNCTAD Investment Policy Hub, T&T

This guide is an informational summary prepared by the Tobago Foreign Direct Investment Commission for the benefit of prospective investors. It does not constitute legal, tax, or financial advice. Legislation and administrative practice change from time to time, always consult a qualified attorney-at-law admitted in Trinidad & Tobago before acting on any of this material. Where a discrepancy exists between this guide and the underlying statute, the statute prevails.