

## OPINION &amp; INSIGHTS

# What cannabis legislation can teach us about foreign direct investment (Part 1)

AS I SEE IT



By Rahym R. Augustin-Joseph

More often than not, when you hear the vox populi describe the intrinsic issues and drawbacks of foreign direct investment and development, they note among other things that the investors come in without capital, they receive large tracts of prime property which displaces portions of the population and local industry. They are averse to environmental considerations and receive extensively long leases of prime state assets and property. They also receive the most favourable tax exemptions and concessions on income tax and withholding tax among others, VAT free holidays, and permission to repatriate their profits while maintaining local staff within the lower band of employment, creating and maintaining unfavourable working conditions for local employees.

They also note that there is an unequal treatment of foreign investors as compared to local investors, who will not be extended the same concessionary courtesies, nor be provided with opportunity to invest in foreign investment opportunities in Saint Lucia.

After all, this is what we have classified as creating a favourable investment environment.

However, the vox populi always believe that they receive the shorter end of the stick in our manifestation of 'trickle-down economics,' where the people are supposed to receive the trickles or rain drops of the development promises, as opposed to being central in the development of their country.

After all, the **Mighty Pep** in **Why I Died** in 2017, as a tribute to the development musings and public advocacy of Sir Derek Walcott, our Nobel Laureate after his passing, sung instructively that, "While it must be said that unemployment down here is dread, and we need investment for our people to buy their bread, and if we object, we must do so with great respect, let them know is our heritage that we all want to protect. So, if DSH wants our land, they must pass the cash... they can give us US or CIP, but they must show great respect, for we, as Lucians we must raise our voice, Saint Lucian people must never beg."

As such, any new industry being spoken about in this country, which also includes components of foreign direct investment, elicits the same fears, trepidations, and realities experienced by citizens.

Citizens fear that the same components of development that befall tourism and others will also befall any new industry.

It is for this reason I was so elated to speak with Dylan Norbert-Inglis, CEO of the Regulated Substance Authority (RSA), as a moderator in Helen's Daughters' UNCONFERENCE, as he oversees the legislation for the cannabis industry. He provided me with a different tenor of foreign direct investment and development.

Albeit it cannot encompass the entire ecosystem of public policy changes which are required in our foreign direct investment policy, but it provides us with a starting point to commence the discussions and actions.

So, what does the RSA propose that is different and what lessons can the wider foreign direct investment ecosystem learn from the propositions by the RSA?

What are some of the considerations that the RSA must also heed to ensure that these legislative proposals do not suffer a similar fate as other industries within the foreign direct investment ecosystem?

Firstly, the draft legislation provides under the **Regulations for Medicinal Cultivation of Cannabis** that an individual can apply for a Traditional, Tier 1 (Extra Small Medical Cultivation), Tier 2 (Small Scale Medical Cultivation), Tier 3 (Medium Scale Medical Cultivation) or Tier 4 (Large Scale Medical Cultivation) licence.

With this licence, the individual, after satisfying all of the application requirements, is permitted to cultivate, possess, obtain, and submit cannabis samples to the registered laboratory as per Section 10 of the regulations. As such, their cultivation can range from three acres or less, up to 15 acres of land, based on the type of licence they receive.

What is instructive about the draft legislation, which can provide guidance for future policy makers when engaging with foreign investment, is that it explicitly provides that each licence holder must employ within their operations at least 40 per cent Saint Lucians and up to 60 per cent based on the type of licence received.

In effect, it is explicitly ensuring that Saint Lucians are employed within the emerging industry and are not subject to foreign entities determining that they are averse to employing locals.

As a matter of fact, it is seeking to divert from existing liberalised models across the Caribbean and world, which do not provide any local employment criteria, or local content policy within the industry, as seen in Guyana and Trinidad and Tobago.

Some have argued though that rarely ever would you find a tourism project that does not employ locals. But the burning question is always where are the employees within the hierarchy of the project?

As such, this RSA legislative intervention may only be formalising unspoken rules, as it is near impossible for one to invest in a country without employing at least one local. One, however, is obviously not enough.

However, the mere existence of a lack of employee criteria provides the opportunity for the convention of employment of locals to cease to exist.

But, what the RSA does not countenance, as does the other foreign direct investment industries, is that one can establish an employee numerical criteria. However, this does not directly translate to the provision of high-skilled, value added, and upper managerial and ownership positions within the company and industry. As such, Saint Lucians may be within the 40 to 60 per cent but certainly can be seen as 'hewers of wood and drawers of water' and remain at the lowest employment level, without upward mobility within the organisations in the

industry.

The net effect is the payment of minimum wage and a debilitating cycle of poverty, while the profits of the company also are repatriated overseas and do not circulate within the local economy.

The International Labour Organisation is thus accurate in a publication entitled **Non-Standard Employment Around the World, Understanding Challenges, Shaping Prospects** when they noted, "While the industry is very diverse, it is characterised globally by high fragmentation, chain business and franchising, which have strong repercussions on the organisational strategy, including human resource management. Work processes within large chains and firms operating under franchises are highly standardised and simplified, and require little training so that they can be performed by casual and part-time employees, usually young and low- to medium-skilled workers. The jobs generated by the sector usually offer little formal training and are not expected to last for a lifetime. They are also often characterised by unsocial, unpredictable, and irregular hours and shifts, including working at night, on weekends, and at holiday times. Because of a very high rotation of a young and migrant workforce, union density in the sector is low, and worker representation is weak. This means that workers' bargaining power is also low, and there is much scope for raising workers' awareness about their rights."

As such, an argument can be made for legislative interventions, which detail the band of employment which Saint Lucians must occupy within these companies, ensuring upward social mobility, stability, requisite training and an improvement in their quality of life over time.

While this is critical, one must also be aware of the difficult balancing act of our national priorities with regional obligations under the **Revised Treaty of Chaguaramas**, which note in effect under Article 7 of the RTC, "that individuals should not be discriminated [against] on the basis of nationality only." Such that, if one enforces a policy that explicitly notes that "Saint Lucians alone can be employed" and permitting their employment band in comparison to other CARICOM nationals, it may contravene the right of establishment (the right to set up a business), the right to provide services, and the rights of skilled nationals.

These provisions were established in furtherance of ensuring that all CARICOM nationals feel a sense of belonging and oneness within any CARICOM state.

This is particularly relevant therefore as CARICOM territories Barbados, St. Vincent and the Grenadines, Dominica and Belize endeavour to be the first to expand the freedom of movement fully to their citizens, under the Protocol on Enhanced Cooperation.

As such, Saint Lucia must reconcile these policy positions of putting Saint Lucians first with our regional obligations. One of the nagging areas, as identified

accurately by Andre De Caires, is that while the employment criteria among others are progressive policies, the legislation does not comprehensively address the lack of competition and destabilisation which may occur when the bigger businesses displace the 'boys on the block' or small-scale cannabis cultivators and retailers out of the market. He argues that the commercialisation runs the risk of destroying the 'local' market which already has a distribution market in favour of wider investment and development.

He argues correctly that cannabis is already being utilised among ordinary people to feed their families. As such, the onerous requirements in the legislation, for dispensaries to sell cannabis, will prevent the smaller-scale individuals from plying their trade. He argues correctly for some assistance for moving the smaller-scale individuals from the roadside as hucksters into the formal market being set up by the RSA through formal technical, capital, land, and financial assistance.

After all, the expunging of the records and the permitting of 30 grammes of cannabis for consumption by the Hon. Philip J. Pierre-led administration, early in the term, was not done for the business environment, but for these ordinary people who may be affected by the regulations.

In relation to the provision of tax incentives, it must be noted that the pieces of legislation related to cannabis must be read in tandem with the Tax Incentives and Stimulus Acts, and other pieces of legislation which inform the provision of Taxes, Incentives and Concessions in Saint Lucia.

As such, the cannabis industry will not be recoiling from the status quo on the provision of tax concessions.

But the consultations and discussions provide another opportunity for a revision and interrogation of our lopsided and prejudicial tax incentives regime, which favours business investment as opposed to ordinary people. It provides an opportunity for us to critically discuss the introduction of a capital gains tax, especially in light of continuous exemptions and amnesties from corporate tax over the years.

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