

**STRENGTHENING OF THE SINGLE ELECTRONIC WINDOW FOR  
TRADE AND BUSINESS FACILITATION  
IDB Loan #3575/OC-TT**

**TERMS OF REFERENCE  
FOR ADVISORY SERVICES TO AMEND DATA PROTECTION  
LEGISLATION FOR TRINIDAD AND TOBAGO**

## 1. Background

As more transactions take place over the internet, public and private sector agencies collect sensitive personal data from their users and customers in an electronic format. While storage of data in such formats allows ease of access, processing and management, it also introduces new risks which need to be protected against. Data needs to be protected against corruption, compromise and loss as well as its misuse by third parties through fraud such as phishing, scams and identity theft. Such protection can be achieved through the implementation of data protection legislation. Data protection legislation controls how personal and customer information is treated and used by organizations, governments and businesses. It provides guidance and best practice rules to organizations on the use of data by regulating the processing of personal data, protecting the rights of the data subjects, enabling a data protection authority to enforce rules and holding organizations to fines in the event of a breach of rules. It must be coherent with data privacy rules and legislation.

In Trinidad and Tobago, data protection and data privacy are governed primarily by the Data Protection Act (DPA) of 2011 Chapter 22:04 and the Freedom of Information Act (FOIA) of 1999, Chapter 22:02. The DPA provides for the protection of personal information by public and private bodies, establishes a data protection authority (Office of the Information Commissioner), and covers enforcement of the Act and penalties for breaches. The FOIA allows the public to have access to information on the activities of the GORTT. Members of the public can apply for access to official documents or to review their own personal information held by any public authority.

The DPA is partially proclaimed and covers general privacy principles and establishes the Office of the Information Commissioner. However, several important parts which are not proclaimed include the use and handling of personal information by public and private bodies, powers of the Information Commissioner and enforcement of the Act. Major trading partners of Trinidad and Tobago such as the European Union, the United Kingdom and the United States of America have strong and harmonized data protection laws. Accordingly, the DPA must be reviewed in light of the legislation of other countries to allow for the smooth flow data in international trade transactions. Data protection legislation is also required for the full operationalization of the GORTT information management systems such as the Single Electronic Window for Trade and Business Facilitation.

In 2018, the GORTT undertook a comprehensive review of Data Protection legislation in Trinidad and Tobago. The findings of the review confirmed that the DPA was not consistent with best practice in data protection as defined by the European Union's General Data Protection Regulation (GDPR). For example unlike the GDPR, the DPA has no specific/expressed provisions in the areas of Electronic Marketing, Online Privacy (Including Cookies and Location Data) and Breach of Notification. It was also noted that the DPA was deficient in many areas; and the question of the best practical way of amending legislation to bring it into a more current state proved difficult in addition to important parts of the Act were not proclaimed.

Further, in November 2019, the Ministry of Communications (MOC) held a consultation with stakeholders to obtain feedback to amend the DPA. Apart from the trade and business issues identified above, other matters raised included, *inter alia*, the following:

- The Office of the Information Commissioner in terms of power, structure and composition.
- Protection of children and adolescents i.e. age of consent.
- Consideration for defined categories of expression including journalistic, literary and/or artistic expression.

- The need for uniformity in the definitions used in legislation (discrepancies between the definitions provided in the DPA and other statutes.

It was recommended in both cases that the GORTT adopt the principles guiding the GDPR and incorporate them into a new data protection law to be adopted.

To address these deficiencies the GORTT is desirous of updating and harmonizing the DPA in line with international standards. These include the EU-GDPR, United Kingdom legislation and the US Data Protection Legislation. Regulations to operationalize the Act may also be developed to allow for the full implementation of the DPA.

To this end, the GORTT is seeking to engage a consultant to review the DPA and draft the required legislative amendments and regulations. It intends to finance this consultancy through an Inter-American Development Bank Loan for the Strengthening of the Single Electronic Window for Trade and Business Facilitation Programme.

### **1.1 Programme Details**

The Strengthening of the SEW for Trade and Business Facilitation is an Inter-American Development Bank (IDB) funded programme to be executed by the Ministry of Trade and Industry. The overall objective of this project is to improve trade performance and enhance the business competitiveness of Trinidad and Tobago through the strengthening and transformation of the SEW (TTBizLink) into a world-class solution based on international standards. The expected outcomes of the project are enhanced trade performance and competitiveness of the private sector, improved coordination and interoperability between government agencies and main international trading partners. The project will be divided in three (3) major components:

- **Component 1** - Enhancing and expanding the services of the Single Electronic Window -This component will focus on upgrading the current TTBizLink to international best practices.
- **Component 2** - Enhancing the Interoperability of TTBizLink- This component will facilitate the exchange and analysis of data between TTBizLink and the information systems of key stakeholders as well as the information systems of strategic trading partners of Trinidad & Tobago.
- **Component 3** - Modernizing the Legislative, Institutional Framework for International Trade and Institutional Governance of the SEW. This component will address the deficiencies in the legislative framework and strengthen the institutional governance of the SEW.

Specifically, the *Amendments to the Data Protection Act of Trinidad and Tobago* is being pursued under **Component 3: Modernizing the Legislative, Institutional Framework for International Trade and Institutional Governance of the SEW** of the Strengthening of the Single Electronic Window Programme.

## 2. General Objective of this Consultancy

The objective of this consultancy is to provide expert services which include but are not limited to the provision of advice and drafting of legislation to assist the Government of Trinidad and Tobago in the establishment of a legal framework for an amended **Data Protection Act** consistent with best practice in data protection such as the European Union's General Data Protection Regulation (GDPR), other commonwealth jurisdictions and the United States.

## 3. Scope of Services

### 3.1 Specific Tasks

The specific tasks related to this Consultancy shall be executed in three (3) phases:

#### **Phase 1 - Project Initiation**

1. Conduct inception meetings with the Executing Agency and key stakeholders upon commencement of the project to (i) review the process for conducting all activities within the project, (ii) determine roles and responsibilities, (iii) discuss the basis on which this work will be implemented, and (iv) finalize the methodology, work breakdown structure, project schedule for all project deliverables, identification of any risks and mitigation strategies and any other relevant details for the implementation of the project deliverables. This shall be documented in an **Inception Report**.

#### **Phase 2 – Regulatory Impact Assessment, Stakeholder Consultations and Legislative Brief**

2. Review the DPA against the European Union's General Data Protection Regulation (GDPR), the US and UK approaches to Data Protection, the Freedom of Information Act Chapter 22:02 and any other relevant material and prepare a comprehensive **Gap Analysis Report** with recommendations for areas of the DPA which need to be amended or possibly repealed for alignment with international standards and best practices
3. Prepare a **Draft Legislative Brief** containing proposals for amendments to the Data Protection Act. Any proposals for Regulations to implement the DPA must also be identified in the Brief if applicable.
4. Conduct a **Regulatory Impact Assessment (RIC)** and **Stakeholder Consultations** on the proposals contained in the Draft Legislative Brief and prepare a **Stakeholder Consultations Report**.
5. Make a **presentation** to the Ministry of Communications (MOC) on the Draft Legislative Brief and Stakeholder Consultations Report.

6. Incorporate all applicable comments and feedback from the RIC, Stakeholder Consultations and presentation to MOC in a **Final Legislative Brief** for review and approved by the Chief Parliamentary Counsel (CPC).

**Phase 3 – Legislation and Final Report**

7. Use the approved Legislative Brief to prepare **Draft Legislation** for amendments to the DPA and develop **Regulations** (if applicable) for the implementation of the DPA. Under the scope of this consultancy, the Consultant must develop at least (1) one priority regulation identified in the Legislative Brief.
8. Make a **presentation** on the Draft Legislation and Regulation (if applicable) to the Legislative Review Committee (LRC).
9. Incorporate all applicable comments and feedback from the presentation to the LRC into the **Finalized Legislation** for amendments to the DPA and **Finalized Regulations**.
10. Prepare a **Final Report** containing a clear and concise summary of the activities undertaken, inputs, outputs, conclusions, recommendations and lessons learnt.

**4. Deliverables / Specific Outputs**

The Consultant will be expected to submit deliverables to the MTI in accordance with the following deliverable schedule:

No	Deliverable	Delivery Timeframes Working Days	Client Review Period Working Days	Payment Amount	Report Details
<b>PHASE 1: Project Initiation</b>					
1	Draft Inception Report	5 days after commencement of services.	5 days	Ten percent (10%) of contract price payable upon approval of Deliverable	Electronic MS Word and PDF 2 bound hard copies
2	Final Inception Report	1 day after client’s review	2 days		
<b>PHASE 2: Regulatory Impact Assessment, Stakeholder Consultations and Legislative Brief</b>					

3	Draft Gap Analysis Report	14 days after approval of Deliverable 2.	10 days	Fifteen Percent (15%) of contract price payable upon approval of Deliverable 4.	Electronic MS Word and PDF 2 bound hard copies
4	Final Gap Analysis Report	3 days after client's review.	2 days		Electronic MS Word and PDF 2 bound hard copies
5	Draft Legislative Brief	21 days after approval of Deliverable 4.	10 days	Twenty Percent (20%) of contract price payable upon approval of Deliverable 7.	Electronic MS Word and PDF 1 hard bound copies
6	Regulatory Impact Assessment and Stakeholder Consultations	7 days after approval of Deliverable 5.			
7	Report and presentation to MOC on the Regulatory Impact Assessment and Stakeholder Consultations	7 days after completion of Deliverable 6	7 days		Electronic MS Word and PDF 1 bound hard copies
8	Finalized Legislative Brief	15 days after approval of Deliverable 7	21 days	Ten (10%) of the Contract Price payable upon approval of Deliverable 8.	Electronic MS Word and PDF 2 bound hard copies
<b>PHASE 3: Legislation and Final Report</b>					

9	Draft Legislation and Regulations	21 days after approval of Deliverable 8.	21 days	Fifteen Percent (15%) of contract price payable upon approval of Deliverable 9.	Electronic MS Word and PDF 1 bound hard copies
10	Presentation to Legislative Review Committee	7 days after approval of Deliverable 9		Twenty five percent (25%) of the contract price payable upon approval of Deliverable 11.	PowerPoint Presentation
11	Finalized Legislation and Regulations	10 days after completion of Deliverable 10.	10 days		Electronic MS Word and PDF 2 bound hard copies
12	Final Report	10 days after approval of Deliverable 11.	10 days	Five percent (5 %) of the contract price payable upon approval of deliverable 12.	Electronic MS Word and PDF 2 bound hard copies

## 5. Characteristics of the Consultancy

The characteristics of this Consultancy are outlined as follows:

- Type of Consultant: Individual Consultant selection based on qualifications (ICQ)
- Start and Contract Duration: 2nd Quarter of 2020 - Six (6) calendar months after signing of contract.
- Place(s) of work: MTI and Consultant's work office. For foreign consultants, two (2) separate missions to Trinidad & Tobago are expected with approximately ten (10) business days on the ground in total. **This requirement will be reviewed given COVID-19 precautions in place at time of negotiations with shortlisted consultant.**

## 6. Requirements Skills and Core Competencies

The Consultant will be expected to possess the following

- Degree in Law ;
- At least ten (10) years' experience in legislative review and drafting of laws and regulations;
- At least five (5) years related experience in Data Protection and Freedom of Information legislative reforms within a developing country context;
- Extensive knowledge of the EU GDPR and the US and UK data protection legislation;

- Experience in the law making process and legislative drafting techniques in Trinidad and Tobago or another CARICOM jurisdiction;
- Experience in working across multiple government organizations and private sector stakeholders involved in trade and data protection;
- Working knowledge of projects funded by Inter-American Development Bank, World Bank, United Nations or similar multilateral organizations;
- Strong communication /analytical/presentation skills;
- Fluent in English.

## 7. Selection Criteria

	<b>Criteria</b>	<b>Maximum Points</b>
<b>1</b>	<b>Academic Qualification</b>	<b>20</b>
	1.1 Degree in Law	20
<b>2</b>	<b>General Experience</b>	<b>35</b>
	2.1 Experience in legislative drafting in the last 10 years as evidenced by:	25
	(a) 1 – 5 instruments drafted	10
	(b) 6 – 10 instruments drafted	20
	(c) More than 10 instruments drafted	25
	2.2 Experience in the review of laws and regulations in the last 10 years:	10
	(a) 1 – 10 laws/regulations reviewed in the last 10 years	5
	(b) 10 or more laws/regulations reviewed in the last 10 years	10
<b>3</b>	<b>Specific Experience</b>	<b>30</b>
	3.1 Experience in Data Protection and Freedom of Information legislative reforms within a developing country context in the last five (5) years as evidenced by:	20
	(a) More than five (5) projects	20
	(b) Three (3) to five (5) projects	10
	3.2 – Extensive knowledge of EU GDPR and US and UK Data Protection legislation as evidenced by training, qualifications, membership of committees related to data protection.	10
<b>4</b>	<b>Adequacy for the Assignment</b>	<b>15</b>
	4.1 Experience in the law making process and legislative drafting techniques in Trinidad and Tobago or another CARICOM jurisdiction.	5
	4.2 Experience working across multiple government organizations and private sector stakeholders involved in trade and data protection.	5
	4.3 Working knowledge of projects funded by Inter-American Development Bank, World Bank, United Nations or similar multilateral organizations.	5
	<b>Total</b>	<b>100</b>



## **8. Supervision and Reporting Requirements**

The Consultant will report to the Programme Manager, Project Implementation Unit and the Director, Legal Services, Ministry of Trade and Industry. Additionally, the incumbent will be required to work with the Ministry of Communications, the Office of the Chief Parliamentary Counsel of the Ministry of the Attorney General and Legal Affairs and other key stakeholders in executing this consultancy. All submissions must be in English Language, delivered via the form and media stated by the MTI and delivered on the date requested and addressed to:

Programme Manager  
Strengthening of the Single Electronic Unit (SEW) for Trade and Business Facilitation  
Ministry of Trade and Industry  
Level 9, Nicholas Tower  
63-65 Independence Square  
PORT OF SPAIN  
Email: PIUSEW@gov.tt

## **9. Responsibility of the Client**

The MTI, as the Executing Agency for the Project, shall support the implementation of this Consultancy. Accordingly, the MTI shall:

- i. Facilitate the arrangements for interviews and provision of access to Project documents, relevant existing regulations, legislations and policies as required. Efforts will also be made to have the Consultant provided with relevant reports, information and contacts from other key stakeholders;
- ii. Provide a Counterpart Team to guide the implementation of the Consultancy.
- iii. Provide relevant and appropriate information as required by the Consultant.

## **10. Responsibility of the Consultant**

The Consultant will:

- iv. Absorb all other expenses including direct staff, office space and facilities, computer systems and software, telecommunication systems, travel expenses, hard copy report deliveries and any other incidentals.
- v. Undertake the activities of the consultancy utilizing primarily its own resources.
- vi. Respect and adhere to the proposed time-frames.
- vii. Conduct meetings with stakeholders in a professional, responsible manner.
- viii. Ensure the validity and reliability of any instruments and tools developed and/or utilized by the Consultant for training, workshops and sessions.
- ix. Ensure the confidentiality of all aspects of the process/consultancy

## **11. Working Language**

The working language shall be English

## **12. Confidentiality**

The Consultant shall not, except as authorized by the MTI or required by the stipulated duties under the contract, use for the Consultant's own benefit or gain or divulge to any persons, firm, company or other organization whatsoever any confidential information belonging to the Government or relating to the affairs or dealing which may come to the provider's knowledge during the engagement. This restriction shall cease to apply to any information or knowledge which may subsequently come into the public domain other than in breach of this clause.

## **13. Ownership**

All data, records, reports and other documents prepared by the Consultant, or obtained from whatever source in connection with carrying out the functions of this position, shall become and remain the property of the Ministry of Trade and Industry. The service provider shall not later than upon termination or expiration of the contract, deliver all such documents to the Ministry together with a detailed inventory thereof. The Consultant may retain a copy of such documents but shall not use them for purposes unrelated to this contract without prior written approval of the Ministry.

## **14. Eligibility**

The applicable rules of the Government of the Republic of Trinidad and Tobago will apply in determining the eligibility and selection of the consultant. It should be noted that only individuals from member countries of the Inter-American Development Bank (IDB) are eligible to apply.