

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

**TERMS OF REFERENCE
FOR ADVISORY SERVICES TO MODERNIZE THE LEGAL
FRAMEWORK FOR ELECTRONIC TRANSACTIONS IN TRINIDAD AND
TOBAGO**

1. Background

An increasing number of transactions in trade are done through electronic data interchange commonly referred to as 'e-commerce'. E-commerce is an alternative to paper-based methods of conducting business and allows for the rapid flow of information and payments in markets. Specific statutory laws with respect to electronic transactions contribute to a stable and certain environment for the operation of e-commerce. For example, statutory provisions which provide equal treatment of paper-based and electronic information gives confidence in the use of electronic transactions and supports e-commerce. Many countries have developed legal frameworks for electronic transactions which are consistent with international best practice. Model laws have been drafted, such as the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Transactions, to encourage countries to develop harmonized legislation and so increase reliability and confidence in cross border e-commerce transactions. Electronic transactions laws thus create an enabling environment for electronic transactions and affords legal protection for consumers, governments and business.

In Trinidad and Tobago, electronic transactions are governed by the Electronic Transactions Act (ETA) No. 6 of 2011. This Act was drafted after the UNCITRAL Model Law on Electronic Transactions. The ETA, *inter alia*, allows the use of the Single Electronic Window (SEW) for Trade and Business Facilitation as a legitimate tool for conducting business with the Government of Trinidad and Tobago (GORTT). It is also a key component of the legal framework for electronic transactions in Trinidad and Tobago and gives legal effect to electronic signatures, electronic documents and electronic records. It also helps establish standard rules regarding the verification and integrity of electronic records.

The ETA however is only partially proclaimed and important provisions aimed at establishing uniformity of rules, regulations and standards regarding the authentication and integrity of electronic records are not yet in effect. The ETA was introduced in 2011 but since then there have been significant changes in the regulation of electronic transactions by Governments internationally. Therefore even the proclaimed sections need to be reviewed for relevance and updating with international standards. In light of this, the ETA needs to be reviewed and modernized in line with changes in the international context before it can be fully proclaimed in Trinidad and Tobago. There is also need to develop a framework, and in some cases regulations, for standards to implement electronic transactions in the Government sector in areas such as electronic payment, signatures and records.

To this end, the GORTT is seeking to engage a Consultant to review the legal framework for electronic transactions in Trinidad and Tobago and draft amendments to modernize the ETA in line with international standards and best practices. Also required is the preparation of a framework of standards to implement electronic transactions in the Government sector. Key activities to be undertaken by the Consultant include preparing a legislative brief and conducting stakeholder consultations and regulatory impact assessments on proposed amendments and regulations. Given the importance of this legislation for the functioning of the Single Electronic Window (SEW) and e-commerce in Trinidad and Tobago, the GORTT 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 Single Electronic Window (SEW) for Trade and Business Facilitation Programme is an Inter-American Development Bank (IDB) funded programme being executed by the Ministry of Trade and Industry. The overall objective of this Programme is to improve trade performance and enhance the business competitiveness of Trinidad and Tobago through the strengthening and transformation of the SEW (branded 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 Programme is 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 SEW platform in line with international best practices and the addition of new services.
- **Component 2** - Enhancing the Interoperability of the SEW - This component will facilitate the exchange and analysis of data between the SEW 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 *Modernization of the Legal Framework for Electronic Transactions in 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 for Trade and Business Facilitation Programme.

2. General Objective of this Consultancy

The objective of this consultancy is to draft legislative amendments for the modernization of the Electronic Transactions Act (ETA) and development of a framework of standards and regulations for the implementation of the ETA in the Government sector.

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 – Gap Analysis, Regulatory Impact Assessment and Legislative Brief

2. Review the Electronic Transactions Act, and any other relevant material comprising the legal framework for electronic transactions in Trinidad and Tobago, and make recommendations for areas which need to be proclaimed, amended or repealed for alignment with international standards and best practices. This will be documented in a **Gap Analysis Report**.
3. Prepare a **Draft Legislative Brief** containing proposals for changes to be made to the ETA and proposals for a framework of standards for the implementation of the ETA in the Government in areas such as payment, signature and records. Any proposals for Regulations to implement the ETA in the Government 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 Public Administration (MPA) on the Draft Legislative Brief and Stakeholder Consultations Report.
6. Incorporate all applicable comments and feedback from the RIC, Stakeholder Consultations and presentation the MPA on the **Final Legislative Brief** for review and approved by the Chief Parliamentary Counsel (CPC).

Phase 3 – Legislation and Final Report

5. Use the approved Legislative Brief to prepare **Draft Legislation** for amendments to the ETA and develop the **Framework of Standards and Regulations** (if applicable) for the implementation of the ETA. Under the scope of this consultancy, the Consultant must develop at least (1) one priority regulation identified in the Legislative Brief.
6. Make a **presentation** on the Draft Legislation and Regulation (if applicable) to the Legislative Review Committee (LRC).
7. Incorporate all applicable comments and feedback from the presentation to the LRC into the **Finalized Legislation** for amendments to the ETA and **Finalized Regulations**.
8. Make a **presentation** to key stakeholders on the Finalized Legislation and Regulations and actions required for full proclamation.
9. 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
PHASE 1: Project Initiation					
1	Draft Inception Report	5 days after commencement of services	5 days	Ten percent (10%) of contract price payable upon approval of Deliverable 2.	Electronic MS Word and PDF 2 bound hard copies
2	Final Inception Report	1 day after client's review	2 days		
PHASE 2: Gap Analysis, Stakeholder Consultations and Legislative Brief					
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 1 hard bound copies
4	Final Gap Analysis Report	3 days after clients review	2 days		
5	Draft Legislative Brief	14 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, Stakeholder Consultations and presentation of Draft Brief to Stakeholders.	7 days after submission of Deliverable 5.			PowerPoint Presentation
7	Detailed Report on the Stakeholder Workshop(s) providing feedback and comments/issues identified	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	10% of the Contract Price payable upon approval of Deliverable 8.	Electronic MS Word and PDF 2 bound hard copies
PHASE 3: Legislation and Final Report					
9.	Draft Legislation, Draft Standards Framework and Draft Regulations (if applicable)	21 days after approval of Deliverable 8.	21 days	Fifteen Percent (15%) of contract price payable after completion of Deliverable 10.	Electronic MS Word and PDF 1 bound hard copies
10.	Presentation to Legislative Review Committee (LRC)	7 days after approval of Deliverable 9			PowerPoint Presentation
11	Finalized Legislation, Standards Framework and Regulations (if applicable)	10 days after completion of Deliverable 10	10 days	Twenty five percent (25%) of the contract price payable upon approval of Deliverable 11.	Electronic MS Word and PDF 2 bound hard copies

12.	Presentation to Key Stakeholders and 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
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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. Two (2) separate missions to Trinidad & Tobago are expected with approximately ten (10) business days on the ground. **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 ;
- Minimum of ten (10) years' experience in drafting laws as evidenced by examples
- Previous experience in the review of laws and regulations;
- Knowledge of, and experience in, implementing reforms for electronic transactions in the Government sector within a developing country context;
- Experience in the law making process and legislative drafting techniques in Trinidad and Tobago or another CARICOM jurisdiction will be an asset;
- Experience working across multiple government organizations and private sector stakeholders involved in trade;
- Working knowledge of projects funded by Inter-American Development Bank, World Bank, United Nations or similar multilateral organizations; and
- Strong communication, analytical and presentation skills;
- Fluent in English.

7. Selection Criteria

	Criteria	Maximum Points
1	Academic Qualification	20
	1.1 Degree in Law	20
2	General Experience	35
	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
3	Specific Experience	30
	3.1 Knowledge of electronic transactions reforms within a developing country context as evidenced by training, qualifications, membership of committees related to electronic transactions reforms.	10
	3.2 Experience in the implementation of electronic transactions reforms in the Government sector as evidenced by:	20
	(a) More than five (5) reform projects	20
	(b) Three (3) to five (5) reform projects	10
4	Adequacy for the Assignment	15
	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.	5
	4.3 Working knowledge of projects funded by Inter-American Development Bank, World Bank, United Nations or similar multilateral organizations.	5
	Total	100

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 Public Administration, 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, policies and relevant organisational process assets 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.