

# The National Electronic

# Legislation Agenda

Report on the Progress of E-Legislation Reform in Trinidad and  
Tobago

September 2013

Prepared by Information and Communication Technology Society of Trinidad and Tobago  
On behalf of the E-Business Roundtable

## **INTRODUCTION**

In its Medium Term Policy Framework (MTPF) 2011-2014, the Government of Trinidad and Tobago sees the creation of digital economy products as a high value, fast growing industry. The MTPF goes on to state that in Trinidad and Tobago, local firms are increasing their capability to provide a complete suite of ICT services including: web content development, wireless services, end-user equipment, software, professional services, computer systems, and communication equipment. There is also the capability for the provision of ICT products in hard services such as networking, communication equipment, real time operational systems and back office services and other services such as software design and re-engineering, web development and e-commerce.

The creation of an ICT based knowledge economy in Trinidad and Tobago is a priority of the Government over the medium term. ICT and the systems that they can create are fundamental to the nation's development and Government remains committed to the efficient and effective use of ICT within all sectors of the economy, a key requirement to link Trinidad and Tobago to an increasingly integrating information society.

The MTPF 2011-2014 sees focus on strengthening of the legislative framework for the ICT sector, with a view towards ensuring regulatory oversight of competition issues. The Telecommunications Authority of Trinidad and Tobago (TATT) will continue to review and revise the regulatory framework to facilitate the stimulation of investment opportunities in the sector, particularly infrastructure development.

At the National Diversification Conference in June 2012, ICT was viewed as an enabler of socio-economic development by the Ministry of Planning and Sustainable Development. The Ministry indicated that ICT's are necessary for ensuring that Trinidad and Tobago achieves and maintains a high level of global competitiveness. ICTs and the systems that they create are fundamental to the Nation's development and subsequently to cluster development. After the Conference, ICT was upgraded as an additional strategic business cluster at the first meeting of the National Stakeholder Committee. The other business clusters were Energy, Maritime, Creative Industries, Tourism, Food Sustainability and Financial Services.

## **IMPEDIMENTS TO REFORM**

The right legal environment can facilitate the implementation of e-Government by ensuring that there are no legal impediments to communicating or doing business with the Government electronically, while protecting the Government's electronic infrastructure from unwanted intrusion.

The right level of security, assured by legislative measures to protect privacy of data, helps to establish the credibility of electronic transactions. This means that in the right legal environment, security systems (legal and technical) are in place to protect both data and the physical systems.

The right legal environment can build consumer and business confidence in electronic transactions. If Trinidad and Tobago is to take part in a global economy, systems to recognize digital signatures legally, support certification authorities, and protect privacy will all need to be in place. Without trust and confidence internationally, Trinidad and Tobago will be unable to reach its potential, and from TTCSI perspective, the services sector will underachieve.

The right legal environment can be a powerful enabler for enforcement authorities to conduct lawful investigations in the interests of protecting society at large. At the same time, however, cyber-crime provisions dealing with "lawful access" will need to balance the needs and the rights of individuals and businesses to go about their affairs without intrusions on their privacy. The role and liabilities of carriers and Internet service providers (ISPs) would need to be clearly defined in such a context.

Finally, the "right legal environment" will be one where intellectual property legislation will promote innovation and where Trinidad and Tobago is in full compliance with its international obligations regarding intellectual property, telecoms liberalization, and cooperative law enforcement. The country will have its fair share of tax revenue generated by e-Commerce without imposing undue burdens on citizens or investors, and investment and commerce will be stimulated by the appropriate incentives, tariffs, and rules regarding investment.

As existed during the period of the National ICT Plan 2005-2008, otherwise known as *Fastforward*, the lack of local expertise in the formulation of e-Legislation meant that the government has to rely on external consultants, often through financing from multilateral financial institutions. The Inter-American Development Bank (IDB), through its Multilateral

Investment Fund (MIF) provided technical assistance in the development of the first set of telecommunication regulations for the Telecommunications Authority of Trinidad and Tobago.

The Data Protection and Electronic Transaction legislation while benefiting from foreign expertise, went through a protracted period following the conclusion of those consultancies. Therefore it is proposed that future technical assistance must be accompanied by the required amount of training for legal and policy officers in the public service.

## **E-LEGISLATIVE AGENDA**

The E-legislation Framework for Trinidad and Tobago had been identified since the production of the National ICT Plan 2005-2008, i.e. *Fastforward*. That Plan outlined the first set of legal and regulatory measures that had to be introduced in order to promote e-commerce in Trinidad and Tobago. The notable achievement were two pieces of legislation which eventually were approved by Parliament in 2011, some six years after being first mentioned in *Fastforward*. These were the Electronic Transactions Act (No. 6 of 2011) and the Data Protection Act (No. 13 of 2011). Both Acts are partially proclaimed pending the development of the necessary Regulations. Other e-legislation initiatives are:

- Amendments to the Telecommunications Act
- Amendments to the Exchequer and Audit Act and Regulations
- Amendments to the Electronic Transfer of Funds Act (No. 87 of 2000)
- Cybercrime Bill
- Cyber-Security Agency Bill
- Electronic Evidence Bill
- Electronic Payments Bill

There are plans to introduce legislation to deal with waste electronic and electrical equipment. The Bill to amend the Exchequer and Audit Act to allow for electronic transactions by government agencies had lapsed and will have to be introduced in the new session of Parliament,

which commences in September 2013. As for the amendments to the Telecommunications Act, consultations are on-going.

However despite these e-legislative activities, the legal and regulatory framework is being developed without an overarching strategy for the ICT sector. The successor to *Fastforward*, the draft National ICT Plan 2014-2018, known as **SmarTT**, is yet to be approved by Government and there are concerns that the Plan reads more like a corporate plan as opposed to being national in scope. Most important there is the view that it may not be consistent with the economic transformation agenda being pursued by the Ministry of Planning and Sustainable Development.

In its first Annual Performance Report 2012, the Government noted that in relation to guiding the direction and policy formulation of the local telecommunications and broadcasting sector, legislative reform and related research had commenced as well as the formulation of a draft National Broadband Plan, with the assistance from the World Bank.

The current state of play is disappointing considering the efforts which have been ongoing for over 10 years. Whereas we have made great strides in certain areas, e.g. Telecommunications Liberalisation, there is a seeming lack of will to finalise the numerous legislations that are in different stages, without fully appreciating the negative impact it is having on our economy. The following table provides a summary of the state of play:

Legislation	Purpose	Status
Amendments to the Telecoms Act	<ul style="list-style-type: none"> <li>• Provides for more regulatory oversight in the telecoms and broadcasting sectors</li> <li>• Confer competition authority in TATT for telecoms and broadcasting sectors to address lacuna in Fair Trading Act which excludes those sectors from purview</li> <li>• Grants TATT power to impose administrative penalties for</li> </ul>	<ul style="list-style-type: none"> <li>• Public Consultation completed on the 9 July 2013. DORs being compiled. MST to report to LRC in Sept 2013.</li> </ul>

Legislation	Purpose	Status
	breaches of Act and Concession	
Data Protection Act (No 13 of 2011)	➤ Provides for protection of an individual's right to privacy by ensuring that personal information remains private and confidential	➤ The Act is partially proclaimed (Part 1 as well as sections 7, to 18, 22, 23, and 28 of Part 2.
Electronic Transactions Act (No 6 of 2011)	➤ Gives legal effect to electronic documents, electronic records, electronic signatures and electronic transactions	➤ Act partially proclaimed. (Parts 1, II and VI ) ➤ Regulations still to be prepared
Exchequer and Audit Amendment Act and Regs	➤ Facilitates electronic monetary transactions with the Government	➤ Bill lapsed and will be re-introduced in the upcoming Parliamentary session
Electronic Transfer of Funds Crime Amendment Act (No 87 of 2000)	➤ Act regulates transfer of money electronically for the purpose of authorising a financial institution to debit or credit cardholder's account.	➤ Being reviewed to ascertain whether it needs to be amended
Cybercrime Bill	➤ This will repeal the Computer Misuse Act and provide for the prevention, investigation and prosecution of computer crime and cybercrime including cyber-bullying and child pornography.	➤ National Cybercrime Policy and Bill has been approved by Cabinet in Feb 2013
Cyber-Security Agency Bill	➤ Creates the T&T Cyber-Security Agency (TTCSA) and the T&T Computer Security Incident Responses Team (TT CSIRT) as a department. Provide for a public/private sector collaboration or focal point for cyber incident reporting management and response, attacks, skimming	➤ National Cyber-Security Strategy has been approved by Cabinet in Oct 2012 ➤ TTCSA Bill expected to be laid in September 2013 ➤ Commonwealth Scoping mission conducted week of 22 July 2013 will ALL important stakeholders incl judiciary to identify training needs

Legislation	Purpose	Status
	phishing, spamming	
Electronic Evidence Bill	➤ Existing Evidence Act needs to be reviewed to ensure that in civil proceedings electronic evidence admissible	➤ Being reviewed
Electronic Payments Bill	➤ Facilitation of non Govt electronic payments (debit and credit instructions to financial institutions)	➤ Exchequer Act limited to Govt payments online.
Waste Electronic and Electrical Equipment	➤ Need to address the management and disposal of used and waste electrical and electronic equipment eg, computers, cell phones & tablets	➤ The Basel Convention, PACE and UNEP recently hosted a Caribbean capacity workshop on the 9-10 <sup>th</sup> July 2013 to identify the capacity development needs wrt E-Waste

Trinidad & Tobago's government and private sector each have vital roles to play in both the development of the ICT sector as well as the diffusion of the benefits of ICT across all sectors. Only by working together can the country ensure it has the resources to quickly enter this segment and establish the country as a global destination for ICT skills-training, IT outsourcing and strategic ICT Business Consulting services. In this regard the e-Legislative agenda is critical if Trinidad & Tobago is to achieve its full potential in the ICT sector.

