



Hamel-Smith

ATTORNEYS-AT-LAW, TRADEMARK & PATENT AGENTS

FORUM

VOLUME 12 ISSUE 7

The Lawyers Newsletter for Business Professionals

JUNE 2022



PROTECTING YOUR PERSONAL INFORMATION ON ALL FRONTS: RECENT DEVELOPMENTS IN CROSS-BORDER DATA PROTECTION

Fanta Punch

In today's world the use of technology is synonymous with everyday life – from supermarket shopping, food delivery, filing prescriptions, medical treatment and employment data – unparalleled volumes of personal data is transmitted and shared through mobile apps, social media, telecommunication networks, the internet, online publications, online platforms and cyberspace. This trend is set to increase.

As the global market for goods and services expands beyond national borders, laws which are meant to protect an individual's personal information are constantly under threat. The speed of technology moves quickly, literally at the click of a mouse, making it challenging to protect data on the global front, in all spheres.

Data Protection in the local context

In Trinidad & Tobago, at present personal data and data privacy protected by the Data Protection Act 2011 (the 'DPA'), including online transmission of personal information. At present, only the establishment of an Information Commissioner and the general data privacy principles which provide guidance for handling, storing and processing of a person's personal information are in force. The operative parts of the DPA which govern how that information is collected, protected and disclosed as well as sanctions for breach of the Act are not yet proclaimed.

An individual's personal information can be extensive and can include information in any recordable format, such as information relating to the race, nationality or ethnic origin, religion, age or marital status of the individual, education or the medical, criminal or employment history of the individual or information relating to the financial transactions, any identifying number, symbol or other particular that can identify an individual, an individual's name, address telephone contact number and more detailed information such as fingerprints, DNA, blood type or the biometric characteristics. It can also include confidential correspondence sent by an individual, views and opinions of a third party about the individual.

The general data privacy principles act to ensure that the handling, storage or processing of a person's personal information is done in a manner that affords some measure of protection both by public and private entities. These guidelines or principles include that:

1. an organization shall be responsible for the personal information under its control.
2. before or at the time when information is collected, the reason for collection should be made clear.
3. an individual's information should only be collected, used or disclosed with his/her full knowledge and consent, and should be as accurate and complete as is needed for purpose of collection.
4. collection of an individual's personal information must be a legal undertaking and limited to what is necessary and in keeping with the reason or purpose for collection.
5. unless there is an exemption in law, an individual is entitled to request and obtain full disclosure of any documentation containing personal information about him, and to challenge the accuracy and completeness of that information and the extent to which the holder of that

C O N T E N T S

- **Protecting Your Personal Information On All Fronts: Recent Developments In Cross-Border Data Protection**
- **Ensuring Business Continuity: the impact of the Russia-Ukraine war on T&T**

(Cont'd on page 3)



ENSURING BUSINESS CONTINUITY: THE IMPACT OF THE RUSSIA-UKRAINE WAR ON T&T

Jeanelle Pran

When Russian President Vladimir Putin commanded troops to line Ukraine's borders, many suspected it was a bluff. That threat quickly became a reality and roughly two months later, the Russia-Ukraine war is still ongoing. The war has occurred at a time when businesses globally and in T&T are trying to recover from the effects of the Covid-19 pandemic, the disruption in the supply of goods and services caused by it and the resultant inflation. Now, businesses must brace for the effects of the war, which shows no signs of ending anytime soon.

Although Russia and Ukraine may seem a world apart from Trinidad & Tobago (T&T), its effects can be felt locally. So how can the war impact T&T and what can businesses do to ensure survival and continuity?

EFFECTS OF THE WAR ON T&T

The war and accompanying sanctions against Russia has had significant negative effects on global supply chains and has led to an increase in commodity prices globally.

Russia provides nearly 10% of the global supply of oil and is one of three top oil producers in the world. As such, the ban on Russian energy has resulted in a decline in supply of oil and gas on the market, which in turn has caused prices of fuel and energy to increase. According to T&T Central Bank's (CBTT) Monetary Policy Announcement dated 25th March 2022, crude oil prices (West Texas Intermediate measure) moved from an average of US\$71.50 per barrel in December 2021 to an average of US\$103 per barrel as at mid-March 2022 as sanctions on Russia disrupted supply. On 8th March 2022, the Prime Minister of T&T announced that if energy prices continue to skyrocket, gas prices will rise. This came to fruition one month later when the Minister of Finance announced that prices of premium gasoline and super gasoline will be adjusted by TT\$1 per litre to TT\$6.75 and TT\$5.97 per litre respectively while the cost of diesel will be adjusted by 50 cents per litre to TT\$3.91 per litre. The war has therefore contributed to an increase in local gas prices.

Both Russia and Ukraine are among the world's largest exporters of oilseeds and grain. The war has impacted on the export and supply of these commodities as many of Ukraine's ports have been blocked by Russian forces and are incapable of being accessed as a result of the ongoing conflict. The shortage of supply of oilseeds and grain has been accompanied by a spike in agricultural commodity prices which only heightens the concern of potential food shortages globally. The World Bank has even warned that higher food prices could cause lasting damage to low and middle-income countries and could contribute to pushing millions of people into poverty.

T&T is an importer of wheat. As such, the increase in global wheat prices may result in an increase in local flour prices and flour based items such as bread. The disruptions in the supply chain and the spike in agricultural commodity prices may also result in disruptions in the exportation of local goods and importation of international goods. This can spike up the price of imported goods. This was highlighted by the CBTT in its Monetary Policy Announcement, in which it noted that imported inflation will continue to push up local prices of food and other items in the coming months.

Ultimately, the disruptions caused by the war can affect the way businesses function and create practical challenges for its day to day operations. For instance, it can affect communications with counterparts in affected regions of the world and lead to a decline in business activity.

HOW CAN BUSINESSES ENSURE CONTINUITY?

It may seem that local businesses are being hit with challenge after challenge as the global economy has been in fight-or-flight mode for over two (2) years. To alleviate these blows, local businesses can consider the following:

- Local companies which conduct business with companies in Russia, Ukraine and the wider European region (especially those with contracts for the supply of goods and services) should analyse the current and future impact of the war on their existing business relationships with those companies in the affected territories. For instance:
- Local businesses should assess the impact (or potential impact) of the war on their revenue and profit and analyse whether a complete halt in business from those parts of the world would be detrimental to their operations. If so, they should explore other sources of revenue, whether locally or in other countries around the world (which may not be as impacted by the war) which may facilitate steady contractual relationships.
- If operations are heavily interrupted by the war (for instance, if supply chains are disrupted such that goods and services cannot be imported or exported or if there is a significant increase in the price of goods and services), local businesses should review their contracts with companies in territories affected by the war to determine.

(Cont'd on page 4)

PROTECTING YOUR PERSONAL INFORMATION ON ALL FRONTS: RECENT DEVELOPMENTS IN CROSS-BORDER DATA PROTECTION (Cont'd)

Fanta Punch



information has complied with these data privacy principles.

6. an individual's personal information has to be protected depending on the sensitivity of the information.
7. except where an exemption exists, sensitive personal information is protected from being processed

Cross-border Protection in the digital space

Given the ease with which personal information is transmitted to and by third parties through advancing technology, the danger and vulnerability faced by individuals where there are ineffective online security measures in place to protect them poses a real concern. Where personal information is not protected, individuals face real threats such as breaches of security of online payments, cybercrime, online fraud, identity theft and misuse of personal data.

As it relates to cross border transmission of personal information, the DPA requires that personal information that is to be disclosed outside of the jurisdiction ought to be regulated and appropriate safeguards put in place to allow for monitoring of those jurisdictions where the personal information is received. There are still limitations, as these safeguards are not yet in place. In one sense, it falls to individuals to do more to protect their personal information.

While the current DPA presents restrictions for the protection of personal information in this jurisdiction, other countries are far more developed in the strides made to protect personal information including information transferred across borders. One example is the United Kingdom's General Data Protection Regulations which sets out the rules that oversee protection of individuals as it relates to the processing of information and free movement of personal information and use of online information.

The recent UK appellate case of *Soriano v Forensic News LLC and others* [2021] EWCA Civ 1952 is a good example of the strides being made. The case involved a claim brought by a naturalized British citizen with Israeli nationality, domiciled in the UK who found himself the subject of a series of publications by a US online newspaper that included publications via a website, social media and podcasts. The Claimant filed a number of claims in the UK court, one of which was in respect of breach of data protection laws against the US based Defendants.

The case affirmed two issues. Firstly, that location or what constitutes a legitimate place where personal information is processed or collated can be simple. It can be somewhere where there is minimal activity taking place, such as an

online service provider with a few staff members. What is important is the nature of the activity taking place. Secondly, it recognizes that the jurisdiction for data protection operates across borders inclusive of monitoring how organisations who collect data behave or treat with that information.

Though not available under local data protection laws now, hopefully in the near future, there will be protection for personal information here that is in step with technology. Even so, there may be little substitute for the actions of an individual actively seeking redress for misuse of their personal information across jurisdictions, particularly where that information is of a sensitive nature, for example, race, political affiliations, sexual orientation or criminal records.

In Conclusion

As improvements for the security and protection of personal information continue to develop though at its own pace, it continues to be a work in progress to see whether laws and safeguards can match the speed at which technology is able to churn through information. Complete comfort with how your personal data is used and accessed online, whether nationally or across borders is some ways off.

Fanta Punch is a Partner within the firm's Dispute & Risk Management Department and may be reached at fanta@trinidadlaw.com

ENSURING BUSINESS CONTINUITY: THE IMPACT OF THE RUSSIA-UKRAINE WAR ON T&T

Jeanelle Pran



- Whether there are any force majeure clauses that can be relied on to terminate existing contracts or delay obligations under them and in what circumstances such force majeure clauses would take effect (e.g. if it applies in instances of war).
- Whether there are any termination provisions in existing contracts which they may wish to rely on if the conflict escalates further or continues for an extended period of time. It would be important to look at whether there are any notice provisions in those termination clauses and if there is a specified method of serving any such notices.
- Whether there are any penalties for terminating the contract and the extent and potential impact of any such penalties.
- Whether existing contracts provide that companies must take any mitigating steps prior to terminating the contract.
- Local businesses should also ensure a consistent line of communication with its customers and alert them about potential supply chain disruptions. This should be properly documented (e.g. in the form of letters or emails) so that it can be relied on in the event of any adverse claims by customers for non-performance of contracts.
- Companies should review their internal policies and procedures (including Know-Your-Customer requirements) to ensure proper screening of individuals and companies with whom it engages in business from the affected regions and in particular, Russia. This can involve reviewing sanction lists by relevant governments such as the USA and the United Kingdom to determine which individuals or companies have been blacklisted. While T&T may not have any specific restrictions on doing business with individuals or companies in the affected regions, local businesses may want to exercise caution in doing business with any such individuals or companies for doing so may have indirect consequences.
- Local businesses should plan ahead even if, at present, they are not directly impacted by the war, as the global consequences of war are far reaching and could affect local companies in unanticipated ways. This will involve taking practical steps to safeguard their financial and legal interests in order to ensure business continuity. For instance, it can be helpful to review existing loan agreements to determine the types of situations in which loan payments may be deferred or suspended and to consider whether there is a need for additional loans and

financing to cover business expenses. Local businesses may also wish to explore additional partnerships or areas of growth (such as merging with other companies or restructuring its operations).

IN CLOSING

The last two (2) years have proven that there is no certainty in the world and businesses must be strategic in order to ensure business continuity. It is therefore pertinent to assess the impact of the changing and dynamic global economy on existing business operations and long term growth and strategically plan for more rainy days ahead. By doing so, local businesses will be better placed to weather the storm and will have a better shot at creating new and innovative ways to ensure successful business continuity and growth amidst the world's crises.

Jeanelle Pran is an Associate within the firm's Dispute & Risk Management Department and can be reached at jeanelle@trinidadlaw.com



The featured articles were previously published in the
Trinidad Guardian newspaper.

The Lawyers Newsletter for Business Professionals

Published by M. Hamel-Smith & Co.
Eleven Albion, Cor. Dere & Albion Streets
Port of Spain, Trinidad & Tobago
Tel: 1(868) 299-0981 / Fax: 1(868) 625-9177
E-mail: mhs@trinidadlaw.com / Web: www.trinidadlaw.com
and intended for limited circulation to clients and associates of our firm.
2022, M. Hamel-Smith & Co., all rights reserved.

Member

LexMundi
World Ready



M. Hamel-Smith & Co.