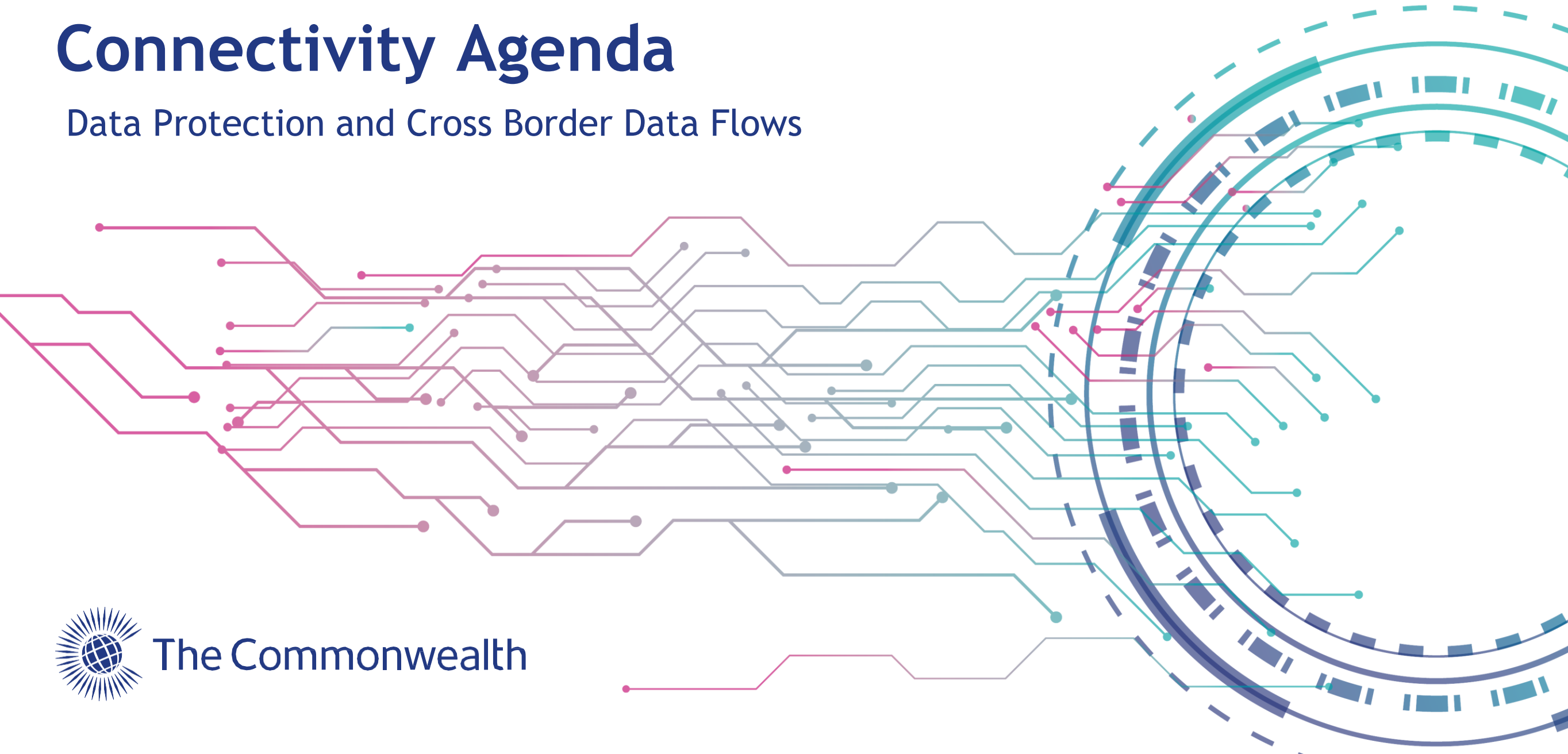


# Commonwealth Connectivity Agenda

Data Protection and Cross Border Data Flows



The Commonwealth



# Commonwealth Connectivity Agenda

A decorative graphic at the top of the slide features a network of colorful circuit lines in shades of pink, purple, and teal. On the right side, there are two stylized robotic arms, one in teal and one in dark blue, both with circular joints and emitting signal waves from their ends.

Commonwealth Leaders adopted the Commonwealth Connectivity Agenda (CCA) at the Commonwealth Heads of Government Meeting in April 2018, with a view to boosting trade and investment links across the Commonwealth and raising intra-Commonwealth trade to US\$2 trillion by 2030

The CCA brings together Commonwealth members to facilitate **the sharing of knowledge, best practices and experiences and to undertake capacity building and voluntary mutual support** to help harness the opportunities presented by new and emerging global trends and find the most effective ways to deal with the challenges they pose

# Commonwealth Connectivity Agenda



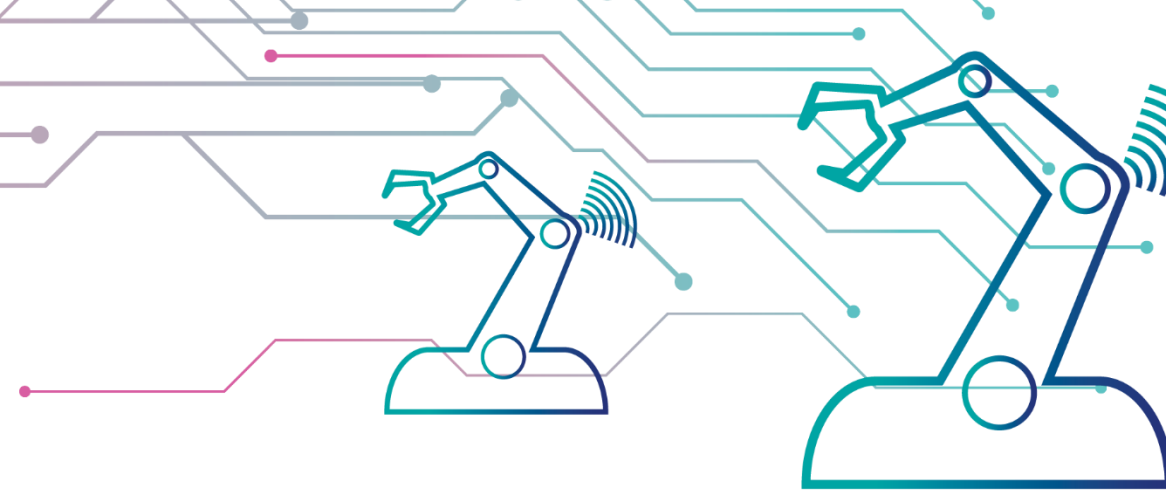
The **CCA** is structured around five (5) clusters/working groups: -

1. **Physical Connectivity** focusing on digital infrastructure & digital divide and led by The Gambia
2. **Digital Connectivity** focusing on digital transformation and the digital economy and co-led by South Africa and United Kingdom
3. **Regulatory Connectivity** focusing on the regulatory environment for MSMEs and led by Barbados
4. **Business-to-Business Connectivity** focusing on improving Commonwealth business links and led by Bangladesh
5. **Supply Side Connectivity** focusing on participation and upgrading agricultural and fisheries value chains through digitalisation and led by Vanuatu

# Digitalisation of Trade

- Cross-border data exchange refers to moving personal data from one country to another across international borders. Trade in this digital age including E-commerce demands seamless cross border exchange of data.
- Rapid advances towards digitalisation, driven by an exponential growth in technologies such as advanced robotics, artificial intelligence, the internet of things, machine learning, 3D printing, nanotechnology and quantum computing as well as the use of cloud technology, mean economies are becoming increasingly digitalised
- Businesses rely on cross border exchange of personal data to develop and sell new products; improve existing products; carry out target advertisements; and improve existing business processes and logistics among others.
- This has naturally led to enormous growth in both the volume and speed of digital data flows.

# Competitive Advantage of Data



- Cross-border data transfers have allowed consumers around the world to access a wider range of goods and services, at a lower cost.
- Better and faster access to critical knowledge and information also helps SMEs overcome informational disadvantages by reducing barriers to engaging in international trade and allowing them more readily to compete with larger firms.
- Smooth data flows provide an avenue widening consumer choice and the affordability of goods and services, as well as a medium for the delivery of digitally enabled services across borders, and an enabler of trade facilitation.
- It is therefore important to understand the trade implications of emerging regulations restricting cross border flow of data

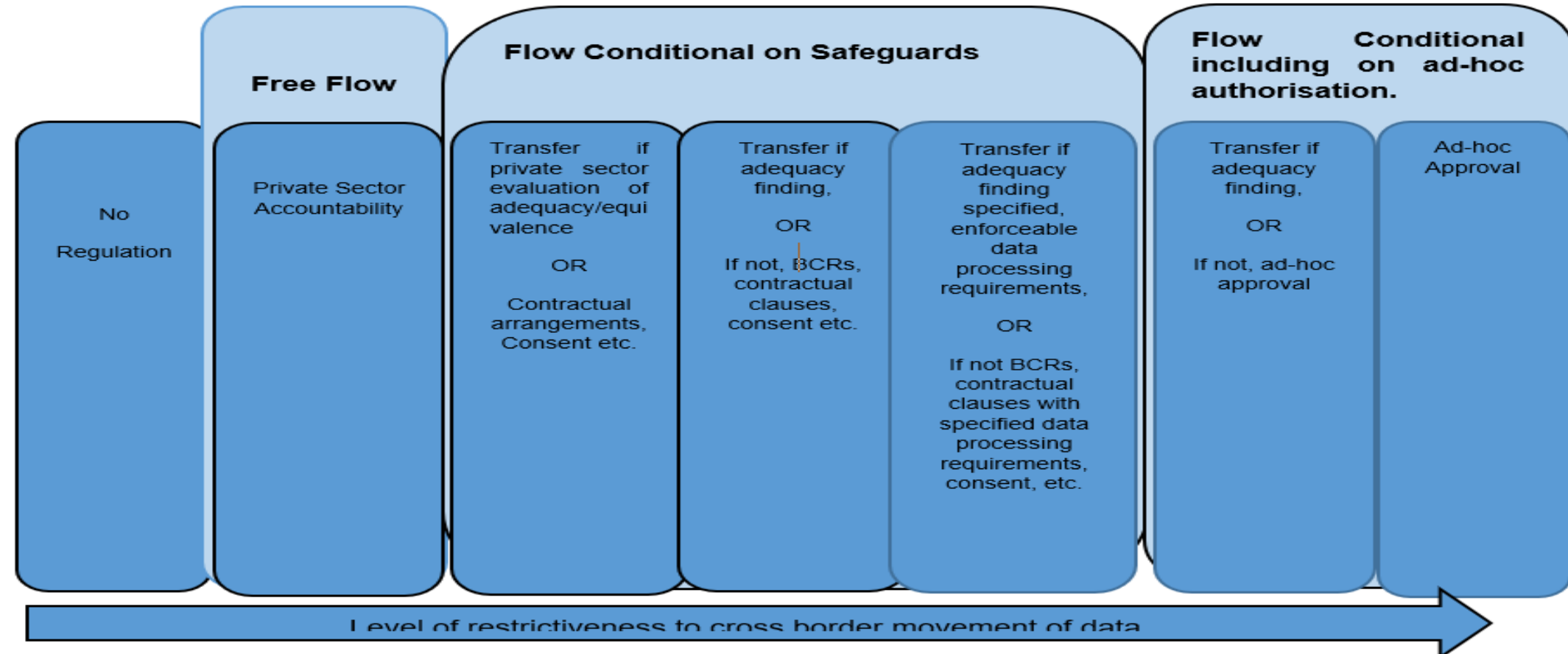
# Regulatory Approach

A decorative graphic at the top of the slide features a network of colorful circuit lines in shades of pink, purple, and teal. On the right side, two stylized robotic arms are depicted in teal and blue, with their joints and bases connected to the circuit lines, suggesting a theme of automation and digital technology.

- Cross border data transfer has become the lifeblood of trade in the digital era as all Digital Technologies need Data. It is increasingly difficult for an international trade transaction to take place without a cross-border data transfer of some sort.
- The prevalent exchange of data across borders has given rise to concerns by governments and citizens about the effects of information being collected and used, often without the knowledge of data subjects.
- This has led to the emergence of cross border data flow regulations meant to achieve legitimate public policy objectives of ensuring privacy and personal data protection, access to information for audit purposes, national security, and to help develop domestic digital industry among others. Within the Caribbean data protection laws present varying degree of restrictiveness in relation to cross border data transfers.



# Taxonomy of restrictiveness of cross border data flow regulations



# Free Flow of Data

A decorative graphic at the top of the slide features a network of colorful circuit lines in shades of purple, blue, and green. On the right side, two stylized robotic arms are depicted in blue and green, appearing to interact with the data lines.

- **Free flow of data:** Free flow of data refers to regulatory approaches that do not prohibit the cross-border transfer of data nor require any specific conditions to be fulfilled in order to move data across borders, though, provide for ex-post accountability for the data exporter if the personal data sent abroad is misused. The free flow model of data exchange is the least restrictive approach to cross border data flow
- This also pertains to countries that have no specific data protection laws. While this implies no restrictions on the movement of data, the absence of regulation precludes the willingness of others to send data, affecting the inflow of data from other countries that have implemented data protection laws. Absence of regulation becomes a barrier to cross border data flow.



# Flow Conditional on Safeguards

A decorative graphic at the top of the slide features a network of colorful circuit lines in shades of pink, purple, and teal. On the right side, there are two stylized robotic arms, one in teal and one in blue, with their joints and bases highlighted in white. The background is a light blue gradient.

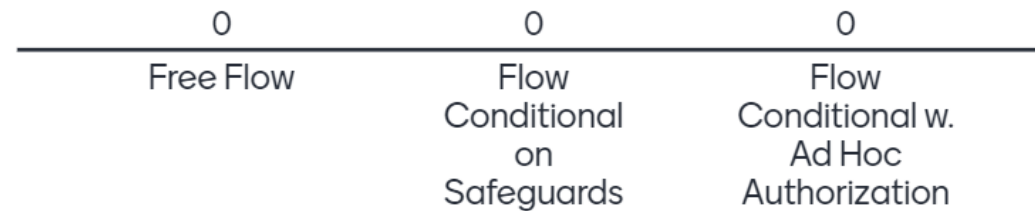
- **Flow conditional on safeguards** refers to approaches where the cross-border transfer of data is only permitted on condition that certain safeguards are met. These safeguards include the requirement that the recipient countries' data regulations/laws adequately satisfy the dictates of or are equivalent to the laws of the sending country; contractual arrangements; and consent of data subjects among others.
- Flow conditional on safeguards approaches subject entities operating the transfer of data to progressively institute more requirements with regard to the steps that they need to take before transferring data increasing their liability. Hence the approach is more restrictive to data transfer relative to free flow.

# Flow Conditional Including on Ad Hoc Authorization



- Most restrictive approaches to data transfer fall under the “***flow conditional including on ad hoc authorisation***” model. Under this model, data is transferred on condition that there is adequacy finding by the relevant public authority, or, where this is not granted, transfer is possible with ad-hoc approval by the relevant authority or all transfers are subjected to a review by a relevant public authority.
- Law allows transfer of personal data to a foreign country if the level of data protection or security in the foreign country meets (or exceeds) the requirements stipulated in national, and subject to obtaining a relevant license or permit from the government authority.
- Given the time and costs to obtain permission from government authority, such laws are more restrictive to cross border movement of data. However, firms might feel comfortable to transfer data only where there is a prior approval by the government making cross border data transfer thrive under the most restrictive laws.

# What do you think is the most widely used Model for Cross Border Data Flows in the Caribbean



Country	Legislation	Free Flow	Flow w. Safeguards	Flow w.Authorization
Anguilla	-	x		
Antigua and Barbuda	Data Protection Act, 2013		x	
The Bahamas	Data Protection (Privacy of Personal Information) Act		x	
Barbados	Barbados Data Protection Act, 2019		x	
Belize	Belize Data Protection Act, 2021		x	
Bermuda	Personal Information Protection Act, 2016		x	
British Virgin Islands	The Data Protection Act, 2019		x	
Cayman Islands	The Data Protection Law, 2021		x	
Dominica	-	x		
Grenada	-	x		
Guyana	-	x		
Jamaica	Data Protection Act, 2020		x	
Montserrat	-	x		
St Kitts and Nevis	Data Protection Act 2018		x	
St. Lucia	Data Protection Act 2011		x	
St. Vincent and the Grenadines	Privacy Act of 2003		x	
Trinidad and Tobago	Data Protection Act 2011		x	

# Way Forward



- Though, the cross border data transfer regulatory objectives are not meant to regulate international trade, they are assumed to have substantial unintended trade consequences, especially when they restrict cross border movement of data that is critical for the coordination of global value chains and trade between countries.
- Heterogeneity in restrictiveness of data protection laws and the absence of regulation laws in some Caribbean States creates uncertainty in regional data flows.
- Regional harmonisation of cross border data flow regulations it certainly a congenial policy option to reduce compliance costs, hence, boosting regional trade as there is a positive nexus between international cross-border data flow agreements and both trade in goods and services.



*Thank you for your Time and Attention*

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