

GROWING A STRONGER DIGITAL FUTURE IN SOUTHEAST ASIA

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EXECUTIVE SUMMARY

WITH THE RIGHT ELEMENTS IN PLACE SUCH AS GOOD AND ROBUST INFRASTRUCTURE, SOUND AND PROGRESSIVE POLICIES AND GOVERNANCE FRAMEWORKS, ASEAN'S POTENTIAL FOR GROWTH IS TREMENDOUS. TO ACHIEVE THIS GROWTH, IT WOULD BE CRITICAL TO BOOST ECONOMIC INTEGRATION AND TECHNOLOGY ADOPTION ACROSS ALL SECTORS IN THE TEN ASEAN MEMBER STATES

ASEAN Telecommunications & Information Technology Ministers Meeting (TELMIN) - Framework on Digital Data Governance - December 2018

This is the second paper of the EU-ASEAN Business Council (EU-ABC) Digital Working Group.

In this paper, we examine the core role of the digital economy in the ASEAN region by reviewing six policy areas related to creating and growing a strong digital economy.

ASEAN is a region of huge potential and opportunity. The rates of development are extraordinary. The political leadership of the region are right to point out the very high GDP growth rates. The young, increasingly tech-savvy population, the high rates of urbanisation, the diversity of Southeast Asia, and the increasing numbers of middle-class people with more disposable income, all point to a bright future for the region.

There is no doubt that the digital economy has the power to add significantly to economic growth and development in Southeast Asia.

ASEAN's own research has stated that "disruptive technologies (particularly mobile internet, big data, cloud technology, the Internet of Things, the automation of knowledge work and the social, mobile, analytics and the cloud) could unleash some US\$220 billion to US\$625 billion in annual economic impact in ASEAN by 2030"¹. Yet, this fast-paced potential growth poses both an

opportunity and a challenge for governments in Southeast Asia.

There are several areas where further regional development and collaboration is needed if ASEAN is to get the greatest possible benefit out of the digital economy. Creating an eco-system to encourage businesses to develop digital platforms to enable them to reach new markets and consumers, exchange and interpret effectively data, make and receive payments in a speedy and low-cost manner, while meeting the increasing demands and expectations of end consumers, is of vital importance.

In addition to ensuring that the right physical infrastructure is in place, governments will need to ensure that the right policies and regulatory regimes are developed to encourage the exchange of data, the movement of goods and services that are sold via digital platforms and innovation in new digital products and services.

Finally, it is essential that the right skill sets are developed in ASEAN to support the further development of the Digital Economy: this will involve governments in the region adapting existing education programmes to improve and encourage the teaching of ICT related skills.

This paper examines and makes recommendations on the following areas: Digital Infrastructure, Data Governance, e-Commerce & the movement of goods, Digital Payments, Payments and Settlement Systems, and Human Capital Development.

¹ Master Plan on ASEAN Connectivity 2025, p.48.

Table of Recommendations

Issues	Recommendations
Digital Infrastructure	That ASEAN Member States remain committed to opening their own home markets to allow an increase in foreign investment and to lowering or eliminating the rules restricting foreign ownership of telecommunications companies and other digital infrastructure companies.
	ASEAN Member States are encouraged to continue to invest and expand their own digital structure and to work in a collaborative fashion with other ASEAN states in order to build a truly regional digital infrastructure.
	That ASEAN members states adopt regional rules and standards to promote cross border integration of the digital infrastructure.
	That governments should adopt regulatory best practices wherever possible.
	That ASEAN and ASEAN Member States maintain an ongoing and productive engagement with the private sector and associations to ensure a high level of consultation and discussion between the various actors in the digital economy.
Data Governance	ASEAN member states permit the free flow of data across borders under explicit consent of the owners to avoid productivity loss to the detriment of the ASEAN economy.
	That the goal to encourage privacy and security may not be best achieved by data localisation, but instead by actively maintaining data and taking advantage of updated secured technologies.
	That restrictions on cross-border data flows and data localisation requirements be removed. Free flow of data is critical for many industries and for encouraging innovation.
	That enhanced technologies in the world can be used synonymously with the free flow of data to protect citizens' and governments' data securely.
	That ASEAN members continue to refine their personal data protection laws and share best practices for data collection, storage and handling breaches.
	That ASEAN members work closely with the business community to adopt international best practices with respect to their policy and regulatory approaches towards digital data governance and data localisation with the objectives to maximise the free flow of data and harmonise regulations.
E-Commerce and the Movement of Goods and Services	That ASEAN Member States introduce simplified clearances for low-value shipments in line with WTO and WCO Guidelines e.g. minimal data elements, consolidated clearance, importer/exporter registration exemptions, common value threshold for such shipments etc.
	That ASEAN Member States introduce a requirement that new legislation is evaluated and assessed on its necessity, usefulness and impact before it is implemented. Governments also need to bear in mind that any unilateral regulation taken will also work against other governments as every country importing goods is also a country exporting goods.
	That ASEAN Member States exempt, as far as possible, licensing or permit requirements by other government agencies for low-value shipments, bearing in mind the need for some licences to apply regardless of shipment value (e.g. those relating to public health and safety).
	Consider an ASEAN-wide "trusted trader accreditation program" for e-Commerce sites and shippers to address customs control concerns, without impairing legitimate e-Commerce trade facilitation.
	That national governments need to be open to work in partnership to implement risk mitigation mechanisms while ensuring expedited clearance.

Digital Payments	In order to progress to a cross-border efficient lower cost near-instant payment environment, the EU-ABC welcomes moves to put in place enhanced and more efficient payment and settlement systems across ASEAN.
	That central banks and financial services authorities and regulators engage and consult with industry players, stakeholders and global initiatives.
	That ASEAN members review and actively enable the availability of the "last-mile" connectivity of bank branches in ASEAN so that cross-border payments can flow from senders in one country to recipients in another country efficiently. The low costs and time efficiency benefits of such payments will come from the straight-through processing of payment transactions without manual interventions.
	The use of ISO 20022 message format. Transmission of cross-border payments need to include information necessary for Anti-Money Laundering, Sanctions and other compliance checking ("compliance checking") by banks. Otherwise, without such needed information, cross-border Business-to-Business (B2B) payments will be rejected on good compliance basis and therefore not as cost effective nor time efficient as they could be.
	That ASEAN Member States ensure compliance information and interpretation consistency. Consistent information required for compliance checking by financial intermediaries in the different ASEAN countries on cross-border B2B low-value payments need also to be available to avoid rejections of these cross-border payments.
Payment & Settlement Systems	The adoption of global standards such as ISO 20022 to improve domestic and cross-border operability.
	That central banks and financial services authorities across ASEAN to also consider the aspects of technological innovations and consumers' convenience in developing regulations and national payment schemes. Regulatory frameworks in the payments sector must facilitate participants' quick adoption of innovative payment technologies, such as the latest chip, contactless, mobile contactless, and digital payment solutions. The adoption of such technologies will support the governments' financial inclusion goals.
Digital Taxation	That ASEAN Member States adopt a harmonised multilateral approach to taxing digital goods and services which will help ensure regulatory harmonisation, while encouraging the cross-border flow of e-Commerce and the growth of the overall digital economy.
	That ASEAN Member States adopt international best practices, standards and frameworks such as those developed by the WTO, APEC and OECD.
	That ASEAN and ASEAN Member States maintain an ongoing and productive engagement with the private sector and associations to ensure a high level of consultation and discussion between the various actors on issues relating to digital taxation.
Human Capital Development	That ASEAN and national governments continue to prioritise expanding educational access, promoting higher education opportunities, and the promotion the developing human capital if it is to successfully create the conditions to compete in the digital economy.
	That ASEAN Member States continue to invest in their education systems to meet the growing demand for education amongst its population.
	That public policy makers work with the private sector in developing innovative delivery and funding models for increasing human capital development and for identifying which skills and knowledge's will be in demand in the future.

THE DIGITAL ECONOMY IN ASEAN

**THE DIGITAL ECONOMY:
AN ECONOMY WHICH
FUNCTIONS PRIMARILY BY
MEANS OF DIGITAL
TECHNOLOGY,
ESPECIALLY ELECTRONIC
TRANSACTIONS MADE
USING THE INTERNET.**

Oxford Dictionary,
May 2019

such as voice, messaging, data, and video.³

There are numerous areas that need to be reviewed if ASEAN is to maximise the potential benefits that can be harnessed from the digital economy. Putting in place the right eco-system to encourage established businesses and start-ups to develop digital platforms in order to enable them to reach new markets and consumers, exchange and interrogate effectively big data, make and receive payments speedily and in a low-cost manner, and then meet the requirements of increasingly demanding end consumers, is of vital importance.

It is not just a question of ensuring the right physical infrastructure, such as broadband networks and 3G, 4G or even 5G data systems, are in place. It also requires the right policies and regulations to be developed which will encourage, and not hinder, the exchange of data and the movement of goods and services that are provided via digital platforms. Additionally, it is essential that the right skill sets are developed in the ASEAN population to support the further development of the digital economy. This will involve governments in the region adapting existing education programmes to improve and encourage the teaching of ICT related skills.

The ASEAN ICT Masterplan 2020⁴ sets out a clear vision for the region in terms of a strategic overview for both the hard and soft infrastructure to support the Digital Economy:

- **Digitally Enabled:** Programmes for continual education and upgrading to equip ASEAN citizens with the latest infrastructure, technology, digital skill sets, information, applications and services.
- **Secure:** A safe and trusted environment in ASEAN, providing reassurance in the online environment by building trust in online transactions via a robust infrastructure.
- **Sustainable:** responsible and environmentally friendly use of ICT
- **Transformative:** A progressive environment for the disruptive use of technology for ASEAN's social and economic benefits.

There is no doubt that the digital economy has the power to add significantly to economic growth and development in Southeast Asia. The Masterplan on ASEAN Connectivity 2025 (MPAC2025) stated that "disruptive technologies (particularly mobile internet, big data, cloud technology, the Internet of Things, the automation of knowledge work and the SMAC) could unleash some US\$220 billion to US\$625 billion in annual economic impact in ASEAN by 2030"².

Following on the initiatives from the Singapore Chairmanship of ASEAN in 2018, Thailand, for its chairmanship in 2019, is placing the further development of the digital economy at the front and centre of its objectives for ASEAN.

For the purpose of this report, "digital economy" is defined as all economic activity mediated by software and enabled by telecoms infrastructure. This includes core telecoms services

THAILAND'S DIGITAL ECONOMY RELATED OBJECTIVES FOR 2019 INCLUDE:

- ASEAN Digital Integration Framework Action Plan
- ASEAN Innovation Roadmap
- Guidelines on Skilled Labour/Professional Services Development in Response to 4IR
- ASEAN Declaration on Industrial Transformation to Industry 4.0
- Digitalisation of ASEAN Micro Enterprise

Thailand's 2019 ASEAN Chairmanship
Priority Deliverables

² Master Plan on ASEAN Connectivity 2025, p.48.

³ 2016 European Business Position Paper, European Association for Business and Commerce (Thailand) p88.

⁴ ASEAN ICT Masterplan 2020, p.9-10.

- **Innovative:** A supportive entrepreneurial environment that encourages innovative and novel uses of ICT
- **Inclusive & Integrated:** Empowered and connected citizens and stakeholders.

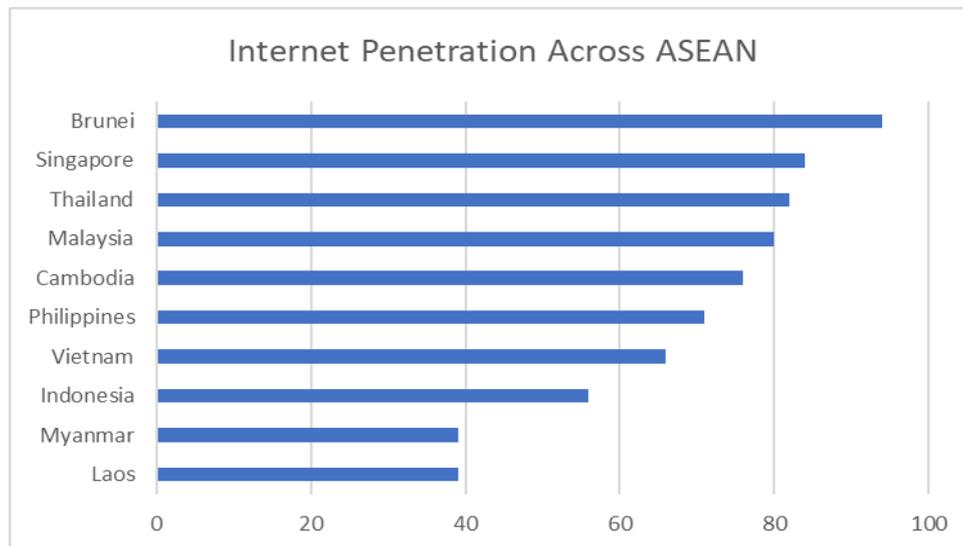
The EU-ABC welcomes the ASEAN ICT Masterplan, especially the call within it to “harmonise regulatory practices and ICT standards” and to “facilitate access and relevance of information to promote ICT adoption”⁵.

There is no doubt that business practices are being widely transformed by digital platforms, with global data flows across borders increasing the world’s GDP growth⁶. The GDP impact by such data flows is even higher than the impact from the trade of traditional goods⁷. Almost every sector of a modern economy needs data to be shared by all worldwide, especially for businesses that are data driven⁸.

In contrast with the dominance of finance and physical goods in the 20th Century, the 21st Century is being defined by data flows and information distribution across nations⁹. New trends and challenges are emerging, overcoming the difficulties of distance and immigration of the past¹⁰ and thus greatly improving economic development potential. ASEAN Member States have previously established a good reputation for manufacturing and offering cost advantages, but to develop their economies faster, to remain competitive, and to ensure a better distribution of the benefits of economic development, it is crucial that more is done regionally to boost the Digital Economy, a concept that many, if not all, of the ASEAN Member States seem to have embraced.

Digital awareness and usage in ASEAN are on the rise, and as seen in Figure 1, internet penetration is at all time high levels in the region while mobile connectivity is now 129%¹¹.

Figure 1: Internet Users as a Percentage of Population in ASEAN as of Jan 2019¹²



Source: We Are Social Singapore, Hootsuite, January 2019.

Figure 2 shows the number of new internet users in the ASEAN region has and will to continue to grow over the next few years. The use of such technology is allowing countries to leap-frog up the economic

⁵ ASEAN ICT Masterplan 2020, Appendix A, p.36

⁶ James Manyika et al., “Digital Globalization: The new Era of Global Flows: Executive Summary.” p. ii.

⁷ Ibid.

⁸ Daniel Castro and Alan McQuinn, “Cross-Border Data Flows Enable Growth in All Industries.” February 2015, p.1.

⁹ James Manyika et al., “Digital Globalization: The new Era of Global Flows: Executive Summary.” p. 1

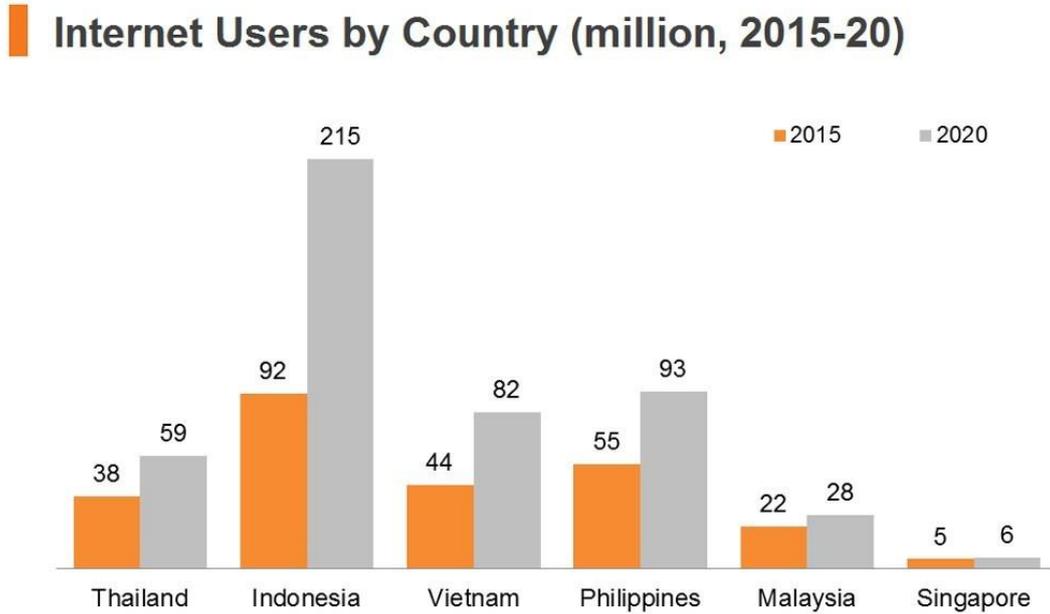
¹⁰ Anupam Chander and Uyen P Le, “Breaking the Web: Data Localisation vs. The Global Internet.” March 18th, 2014 p. 4

¹¹ Digital 2019, We Are Social and Hootsuite, January 2019

¹² Ibid

development ladder, by markedly improving connectivity and bringing services such as banking, insurance, healthcare and education to even the more remote settlements across the region.

Figure 2: Growth of Internet Uses by Country: ASEAN-6 as of May 2016¹³



Source: World Bank, Google

Nevertheless, despite the widespread use of smartphones and the improving access to digitally enabled infrastructure across the region, expenditure on research and development connected with technology in ASEAN remains low. As a collective, ASEAN is only spending around one-quarter on R&D that South Korea does¹⁴. Singapore ranks the highest of the ASEAN Member States by spending around 2.2% of its GDP on R&D, followed by Malaysia ranked as second in the region¹⁵. The remaining ASEAN Member States are outside of the top 50 in the world. Whilst expenditure on R&D does not, by itself, indicate a nation’s readiness to truly embrace the digital economy, it does act as an indicator of innovation and preparedness to invest in new technologies and developments.

Figure 3: ASEAN Expenditure of Research & Development



Source: Global Innovation Index 2017.

¹³2016 Report, E-economy SEA: Unlocking the \$200B opportunity, Google and Temasek

¹⁴ Global Innovation Index 2017

¹⁵ Ibid

In a very practical sense, there are several areas where further regional development and collaboration is needed if ASEAN is to get the greatest possible benefit out of the digital economy. There are several areas that concern businesses across the region, which are examined in more detail in this paper. Some of these relate to practical issues such as helping e-Commerce develop further by simplifying customs procedures. Some relate to regulatory issues around data flows with the need for the region to take a light touch on restrictions. And others relate to human capital development where there is a need to retool existing workers for the future economy and to re-evaluate educational systems to ensure that our future workers have the right skill sets and knowledge for an increasingly digital age. As the EU-ABC Chairman, Donald Kanak, put it in an editorial piece for the *Business Times* in 2018, ASEAN needs to move from a “workforce” to a “thinkforce” if it is to truly capitalise on the digital economy.

ACHIEVING A SUCCESSFUL DIGITAL ECONOMY

Section 1: Digital Infrastructure

Infrastructure has always been important for a country’s economic growth, but a new type of infrastructure is needed to take advantage of the rapid technological advances in information and communications technology. Building this new digital infrastructure which combines both physical and soft aspects will be critical to delivering the next wave of innovation and economic growth to the ASEAN region.

A key challenge for governments is creating the right policies and incentives to ensure that the right physical infrastructure (software, data centres, broadband and/or mobile networks) and soft infrastructure (standards, systems, regulations, education) are in place to support development of the digital economy in their countries. Having the right policies in place can significantly facilitate the creation of a business environment that is conducive to attracting and promoting trade, investment and entrepreneurship.

The vision for the Master Plan on ASEAN Connectivity 2025 is to achieve a seamlessly and comprehensively connected and integrated ASEAN that will promote competitiveness, inclusiveness, and a greater sense of community¹⁶. MPAC2025 has highlighted two strategic areas relating to digital infrastructure to achieve this vision¹⁷:

- **Sustainable infrastructure**
 - Increase public and private infrastructure investment in each ASEAN Member State, as needed
 - Significantly enhance the evaluation and sharing of best practices on infrastructure productivity in ASEAN
 - Increase the deployment of smart urbanisation models across ASEAN
- **Digital Innovation**
 - Support the adoption of technology by micro, small and medium enterprises (MSMEs)
 - Support financial access through digital technologies
 - Improve open data use in ASEAN Member States
 - Support enhanced data management in ASEAN Member States

The idea of the importance of infrastructure was also reiterated in the ASEAN Economic Community Blueprint 2025 on the need for strong Information and Communications Technology infrastructure with pervasive connectivity in ASEAN¹⁸.


 A graphic consisting of a blue triangle pointing to the right, with the text "DIGITAL SERVICES DEPEND ON INFRASTRUCTURE FOR DELIVERY, AND WITHOUT DIGITAL SERVICES, INFRASTRUCTURE PROVIDERS HAVE LITTLE FOR THEIR INFRASTRUCTURE TO DO." written in orange capital letters to its right.

World Economic Forum Report 2014

¹⁶ Master Plan on ASEAN Connectivity 2025, p.7

¹⁷ Ibid

¹⁸ ASEAN Economic Blueprint 2025, Section C.2, Paragraph 50.

Setting up proper digital infrastructure can not only benefit the businesses in the region, but it can also benefit its people. With access to the internet, individuals can access readily available information easily and communicate with one another in an instant compared to the traditional 'snail mail' that could take up to days or even months. This could not only improve convenience for the people, but socially, where its people could strengthen relationships with one another as a society.

A telecommunications network, that consists of technologies, devices, equipment, facilities, networks, and applications that support communication at a distance, forms the backbone of the digital infrastructure and the economy. These networks allow for companies to establish seamless flow of information and communication between their various areas of operation which are no longer limited by geography. For instance, economically, with the presence of internet, businesses are now able to tap into a larger market through e-Commerce, reaching out to residents around the region and world. Hence, this would benefit businesses in the region as it will drive up profits significantly.

While telecoms networks and the telecoms sector underpin the digital economy, the structure and operation of the sector need to be effective, efficient and innovative. Currently, in some Member States, this is not the case. State owned enterprises, near-state owned enterprises, or domestic monopolies are often opposed to new competitors and/or unable to inject the necessary investment needed into the telecoms sector. In addition, state owned enterprises must evolve to be licensed, competitive operators, not instruments of policy.

Broadband network commonly refers to high-speed Internet access that is always on and faster than dial-up access. Broadband includes several high-speed transmission technologies such as digital subscriber lines, cable modem, fibre, satellite and broadband over powerlines. These features are very important in ensuring an ideal telecommunications network in the region.

Finally, mobile networks are radio networks distributed over land through cells where each cell includes a fixed location transceiver known as base station. These cells together provide radio coverage over larger geographical areas. With the widespread adoption of mobile devices and smartphones, mobile networks allow individuals the ability to access the internet to use and perform mobile business applications, wireless ordering, billing and online buying, email accounts, banking and other services.

However, coverage from mobile networks in this region is inconsistent and, in some places, unreliable. The following graphics show the percentage of mobile phone connections that are using 3G or 4G technology (the minimum really required for modern data connections) and the degree of broadband network coverage in each ASEAN member state. It can be seen there is much scope for improvement in both areas across much of the region. Even a developed economy like Singapore cannot yet boast of 100% broadband network coverage, though all its smartphone users are connecting via 3G or 4G networks.

Figure 4: Percentage of Mobile Connections that are Broadband (3G/4G) as of January 2018, Digital in Southeast Asia Report by We Are Social and Hootsuite

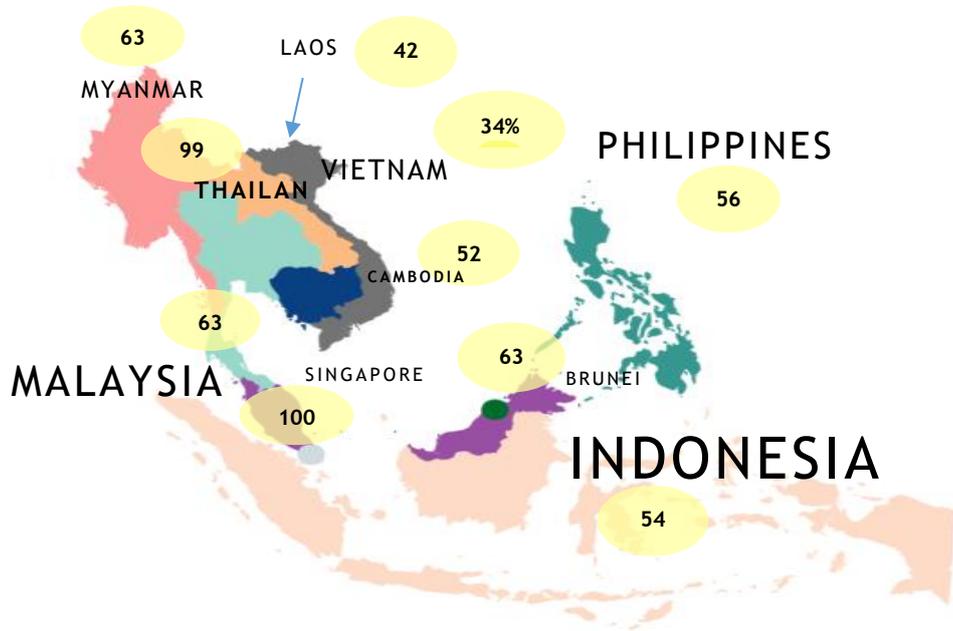
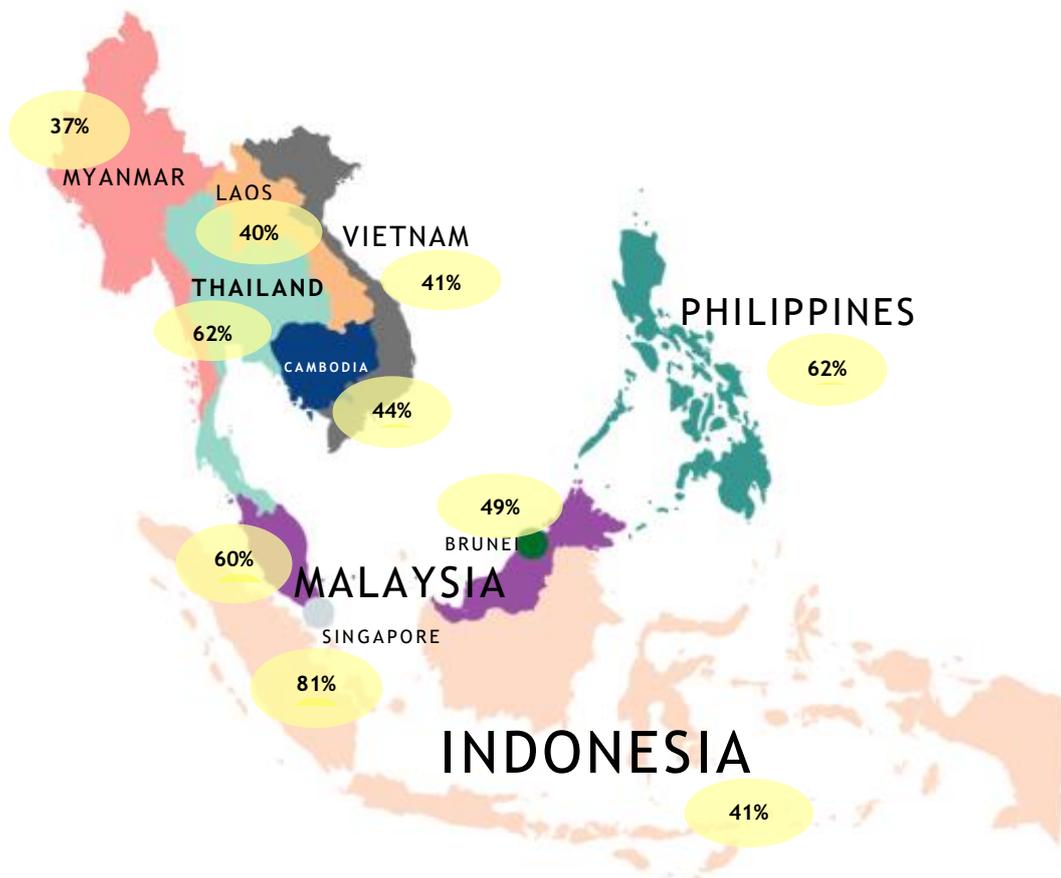


Figure 5: Mobile Network Infrastructure as of January 2018, Digital in Southeast Asia Report by We Are Social and Hootsuite, Maximum score out of 100



ASEAN countries can adopt new and more versatile technology without having to support legacy infrastructures that countries in Europe or North America have. As noted in World Economic Forum's Delivering Digital Infrastructure report "the lack of existing infrastructure will allow countries to adopt and implement the technologies that suit their markets' current situation and projected requirements."¹⁹

In order to build the physical digital infrastructure that meets the ASEAN region's current and future needs, ASEAN members need to work with the business community. The EU-ABC would like to emphasise the importance and its perpetual benefits of investing in digital infrastructure in the ASEAN Region.

While the physical infrastructure is a key part of creating a viable digital economy, but an important part of digital infrastructure is the so-called soft infrastructure, that is the system of rules and regulations and the skills and human capital development. The issue of skills and human capital development are explored in a later section of this paper.

Getting the correct rules and regulations, which can cover foreign ownership or participation, regulated access to infrastructure, infrastructure funding and market access mechanisms, in place to create a predictable and open environment will result in the attraction of investments which will allow for the delivery of better infrastructure and services. As laid out in the MPAC2025, ASEAN states recognise the importance of these issues and the EU-ABC looks forward to working with ASEAN as they maintain their leadership role on this issue.

Simple, transparent policies work best to encourage innovation and growing the digital economy. Existing regulation in the ASEAN region should be reviewed for the possibility of reducing or eliminating rules that impede the digital economy. ASEAN members should look for alternative approaches before adding new regulations or expanding existing regulations to the digital sector. Finally, governments must ensure stability and predictability of the policy environment in order to allow the private sector to make long term investment decisions.

Recommendations:

To help build a strong digital infrastructure in the ASEAN region:

- 1) The EU-ABC recommends that ASEAN members remain committed to opening their own home markets to allow an increase in foreign investment and to lowering or eliminating the rules relating to foreign ownership of telecommunications companies and other digital infrastructure companies.
- 2) The EU-ABC also encourages ASEAN members to continue to invest and expand their own digital structure and to work in a collaborative fashion with other ASEAN states in order to build a truly regional digital infrastructure.
- 3) The EU-ABC recommends that ASEAN members states adopt regional rules and standards to promote cross border integration of the digital infrastructure.
- 4) We also recommend that governments should adopt internationally-accepted regulatory best practices wherever possible.
- 5) Finally, the EU-ABC recommends that ASEAN and ASEAN Member States maintain an ongoing and productive engagement with the private sector and associations to ensure a high level of consultation and discussion between the various actors in the digital economy.

¹⁹ Delivering Digital Infrastructure: Advancing the Internet Economy, World Economic Forum, 2014

Section 2: Managing Data

Data Governance

Data governance refers to the general management of key data resources in a company or organisation. This broad term encompasses elements of data use, storage and maintenance, including security issues and the way data flows from one point to another in an overall IT architecture.

ASEAN has recognised the importance of data government with the signing of the ASEAN Framework on Digital Data Governance in December, 2018²⁰ The Framework sets out the strategic priorities, principles and initiatives to guide ASEAN Member States in their policy and regulatory approaches towards digital data governance (which include both personal and non-personal data) in the digital economy.

As noted in Section 3 of the Framework itself, "ASEAN needs to develop forward-looking and enabling frameworks and policies that facilitate the growth of the digital economy. There is also a need to strengthen the governance of digital data in ASEAN with a view to promoting the growth of trade and flow of data within and among ASEAN Member States in the digital economy."²¹ This helps to ensure that ASEAN, collectively, realises the potential benefits, even with the recognition that the ten ASEAN Member States are currently at different levels of maturity.

The EU-ABC welcomes the Framework on Digital Data Governance and looks forward to engaging with ASEAN and ASEAN Member States for its refinement and implementation.

Free Flow of Data

The free flow of non-personal data, defined as data other than personal data, is a pre-requisite for a competitive digital economy. Moves to restrict the free flow of data will, therefore, inhibit the development of the digital economy and the ability of businesses, both large and small, to take full advantage of it.

While all ASEAN countries place restrictions on sensitive data, there appears to be an increasing trend in the region to put in place legislation that can be seen to inhibit the free flow of data especially using data localisation regulations or laws.

For the purpose of this paper, data localisation refers to "the act of storing data on a device that is physically located within the country and/or processed where the data was created."²² Moreover, laws often prevent data from being transferred out of the country freely by requiring consent to transmit the information across borders to be granted only after assessment – creating barriers to business operations, hindering innovation, and increasing costs to customers.

**FREE FLOW OF NON-
PERSONAL DATA MEANS
UNRESTRICTED
MOVEMENT OF DATA
ACROSS BORDERS. IT IS
A KEY BUILDING BLOCK
OF THE DIGITAL SINGLE
MARKET AND
CONSIDERED THE MOST
IMPORTANT FACTOR FOR
THE DATA ECONOMY**

European Commission

Although data localisation is not a newly conceived notion, its effects are even more pervasive throughout professional and personal life than ever before. The implications will continue to grow as new prohibitions on free data flows of cross-border data transfers reduce services available locally and restrict access to information in society²³.

Data localisation is not only worrying for ICT companies but also for any business using web technologies or worldwide transferred data²⁴. A McKinsey study points out that data flows do not only impact advantages of modern technology, with more than 75% of the benefits concerning traditional industries²⁵. These shared network technologies, for example, are essential for small and medium sized businesses, non-profits and entrepreneurs²⁶.

²⁰ Joint Media Statement, 18th ASEAN Telecommunications and Information Technology Ministers Meeting, December 2018

²¹ Ibid

²² "Meeting the Challenge of Data Localisation Laws." Servers Global Corporation; press release, 2015.

²³ Ibid.

²⁴ Jan Dhont and Katherine Woodcock. "Data localisation requirements: Growing trends and impact for company compliance." Compliance & Ethics Professional, February 2015.

²⁵ "Internet matters: The Net's sweeping impact on growth, jobs, and prosperity." McKinsey Global Institute; press release, May 2011.

²⁶ "Promoting Economic Growth through Smart Global Information Technology Policy: The Growing Threat of Local Data Server Requirements." Business Roundtable; press release, June 2012.

Transferred data across the world enable new instruments that “lower capital risk, expedite transaction processing, facilitate innovation, and make it easier to bring services to new markets quickly and efficiently”²⁷. In summary, free data flows boost efficiency and lower costs in all sectors.

Becoming a single market and production base, within which the free flow of data is allowed, can be a powerful approach for ASEAN. The competitive advantage that a combined entity has in comparison to each individual country can help realise the capability for ASEAN as an association of nations. Up till now, ASEAN’s digital economy represents only 7% of GDP, yet the region has the potential to become one of the world’s top five digital economies by 2025, enabling greater opportunities for ASEAN²⁸.

Foreign companies have a high desire to stay in the ASEAN market and additionally expand their investment and activities in ASEAN. The EU-ABC’s own 2018 Business Sentiment Survey reported that 75% of European companies in ASEAN expected their level of trade and investment in the region to increase over the next 5 years²⁹. As other states ponder on establishing policies on data localisation which generally decrease the attractiveness of the region for both advanced technology providers and traditional industries, ASEAN’s could amass greater competitive advantage and bigger worldwide impact in comparison to economies with strict rules³⁰, thereby improving opportunities made available to consumers and standards of living for the citizens in the region if it adopted a more pragmatic approach to this issue.

The recently published ASEAN Framework on Digital Data Governance³¹ does provide some positivity that ASEAN is not going to head towards an overly restrictive regime when it comes to cross border data flows. That document states “there is also a need to strengthen the governance of digital data in ASEAN with a view to *promoting the growth of trade and flow of data* within and among ASEAN Member States in the digital economy”³² (our emphasis added). Indeed, the Framework states that it is “an initiative that is intended to... promote intra-ASEAN flows of data”³³. These statements, and indeed the whole document, give some hope for industry which is concerned about overly zealous and restrictive laws on data flows being developed in ASEAN.

However, the Framework does include key caveats that are very concerning. Paragraph 7 of the Framework states that “This Framework will not apply to: (a) Measures adopted by an ASEAN Member State to exempt any areas, persons or sectors from the application of the Principles identified under the Framework; and (b) Matters relating to national sovereignty, national security, public safety, and all government activities deemed suitable by an ASEAN Member State to be exempted.”³⁴ In other words, ASEAN Member States can unilaterally decide not to apply the Framework for almost any area or activity.

The EU-ABC recommends that ASEAN members work closely with the business community to adopt international best practices with respect to their policy and regulatory approaches towards digital data governance and data localisation with the objectives to maximise the free flow of data and harmonise regulations.

Challenges relating to Data Localisation

It is difficult to distinguish which kinds of data are prohibited and identify those that need be stored locally,³⁵ and differentiating between personal and non-personal data creates even greater complexity



THE IMPACT OF DATA LOCALISATION HAS AN IMPACT OF -0.7% OF GDP AND A -2.3% IMPACT ON INVESTMENT IN INDONESIA ALONE.

FOR VIETNAM THE IMPACT ON INVESTMENT IS EVEN HIGHER AT -3.1%.

ASEAN Post, April 2018

²⁷ Ibid.

²⁸ *Advancing towards ASEAN Digital*, Bain & Company, in association with Google, Sea and Tan Sri Rebecca, 2018

²⁹ EU-ASEAN Business Council 2018 Business Sentiment Survey, www.eu-asean.eu/publications

³⁰ Stephen J. Ezell, Robert D. Atkinson and Michelle A. Wein, “Localisation Barriers to Localisation Barriers to Trade: Threat to the Global Innovation Economy.” 2013.

³¹ ASEAN Framework on Digital Data Governance, May 2012

³² Ibid, Section 2

³³ Ibid, Section 3

³⁴ ASEAN Framework on Digital Data Governance, May 2012, p. 2, section 7.

³⁵ Neha Misra. “Data Localisation Laws in a Digital World: Data Protection or Data Protectionism?” p. 141.

for stakeholders to grapple with³⁶. By clarifying the existing framework, corporations can be better equipped to handle new localisation laws, especially since these new trade barriers arising from data localisation requirements will increase operational and infrastructure costs³⁷. New rules included in permanent policy amendments of each country also pose further challenges for organisations³⁸. Ultimately, ASEAN can achieve a huge location advantage if equal territory-wide laws are established.

As noted above, costs will be a major consequence occurring from implementation of data localisation requirements for which industries will be unable to plan. For example, increased expenses arising from building infrastructure could lead to a reduction in services and profit loss for several countries³⁹. Data localisation carried out by administrations can only be fulfilled by investing in local IT infrastructure that complies with national laws⁴⁰. Under such conditions, enterprises are mandated to operate under sub-optimal economies of scale and use cost-ineffective locations⁴¹.

Protecting data with the goal of privacy and security is difficult for each ASEAN government as the only way to ensure such safeguarding of privacy is by preventing data from being connected to the internet. However, data stored within national borders further creates alternative risks such as increased cyber-security incidents.

Taking this into consideration, the EU-ABC suggests that the goal to encourage privacy and security may not be best achieved by data localisation, but instead by actively maintaining data and taking advantage of updated secured technologies. Such enhanced technologies in the world can be used synonymously with the free flow of data to protect citizens' and governments' data securely.

Finally, strict data localisation requirements reduce the ability of companies to efficiently allocate resources and hinder their participation within global supply chains⁴². The essential nature of digital trade in the lives of consumers and citizens is made more apparent when new regulations cause people traveling to other countries "would not be able to use their credit cards or cell phones, because both require cross-border data flows"⁴³. In addition, flight operators, haulage services and medical records make use of cross-border data transfers under explicit consent of the owners⁴⁴. Fragmenting the internet and cross-border data flows with strict data residency requirements make the region undesirable for any businesses and users all over the world, which is worrying for ASEAN's growth and attractiveness as an investment and manufacturing hub.

Allowing the free flow of data through both new ICT technologies as well as traditional channels would open numerous and diverse opportunities for the 636 million people located in Southeast Asia⁴⁵. Such a liberal flow of data would enhance trade in goods and service, allowing it to be faster, easier and cheaper⁴⁶. In the world's fastest growing Internet region⁴⁷, Southeast Asian economies could highly benefit from greater freedom of choice and innovation with the presence of companies remaining in such continually competitive economies and region.

Personal Data Protection

As more individuals and businesses move online to conduct their activities, there is a growing need to ensure the proper frameworks are in place to ensure that companies are handling user data properly and that there is transparency for customers on how their data is being used. Without proper data privacy laws, individuals' personal data is vulnerable to misuse and theft.

³⁶ Matthias Bauer, Hosuk Lee-Makiyama, Erik van der Marel, and Bert Verschelde. "The Costs of Data Localisation: Friendly Fire on Economic Recovery."

³⁷ Ibid, p. 3.

³⁸ "Understanding Data Residency: Finding the right Solution for your Business." Cogeco Peer 1, press release, March 2016.

³⁹ "Data Localisation: A Challenge to Global Commerce and the Free Flow of Information." Albright Stonebridge Group, 2015, pp. 7-9

⁴⁰ Jan Dhont and Katherine Woodcock. "Data localisation requirements: Growing trends and impact for company compliance."

⁴¹ Robert D. Atkinson. International Data Flows: Promoting Digital Trade in the 21st Century, November 3rd, 2015.

⁴² "Amcham Singapore Policy Take: Free Cross Border Data Flows for Growth." The American Chamber of Commerce in Singapore, press release, March 5th, 2015.

⁴³ Robert D. Atkinson. International Data Flows: Promoting Digital Trade in the 21st Century, November 3rd, 2015 p. 6

⁴⁴ Ibid.

⁴⁵ "Advancing the ASEAN Economic Community: The Digital Economy and the Free Flow of Data." US-ASEAN Business Council; Deloitte.

⁴⁶ Ibid.

⁴⁷ "Customs & Trade Facilitation in ASEAN." EU-ASEAN Business Council; press release. Singapore, April 2016. <http://eu-asean.eu/wp-content/uploads/2016/04/EU-ABC-Customs-Trade-Facilitation-Paper-April-2016-FINAL.pdf>, accessed November 13th, 2016.

At a regional level, ASEAN states must develop a consensus on the concepts underpinning data protection. While at the national level, ASEAN states should develop comprehensive data privacy laws while consulting each other, with guidelines for companies on responsible personal data collection and on handling breaches.⁴⁸ The ASEAN Framework on Personal Data Protection and Framework on Digital Data Governance can act as starting points for this consensus.

Cybersecurity

While the paper has chosen not to focus on the specific technical aspects of cybersecurity, nevertheless, the EU-ABC recognises the importance of cybersecurity in the digital economy.

As more people use the internet and mobile devices to communicate and buy goods and services online and as more companies use digital tools to operate, the threat of inadequate cybersecurity and its impacts are increasing. A lack of focus on cybersecurity can be greatly damaging to a business. In addition to the direct economic cost of such attacks to the business, cybersecurity breaches can also cause reputational damage. If customers are unsure of the security in a business, they will be more inclined to venture elsewhere, resulting in a loss of sales and profits.

In October 2018, the ASEAN Ministerial Conference on Cybersecurity endorsed in principle the 11 voluntary non-binding norms recommended by the 2015 United Nations Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security which is a positive step in developing regional norms. Ideally, the adoption of these norms will help to overcome the differences in the technological, policy, and legal capacity and capabilities of ASEAN member which will be a major challenge going forward.

The EU-ABC encourages ASEAN Member States to work together to develop a regional regime for cyber security issues.

Recommendations:

To overcome some the issues raised above, the EU-ABC recommends that:

- 1) ASEAN Member States to permit the free flow of data across borders under explicit consent of the owners to avoid productivity loss to the detriment of the ASEAN economy.
- 2) The goal to encourage privacy and security may not be best achieved by data localisation, but instead by actively maintaining data and taking advantage of updated secured technologies.
- 3) Restrictions on cross-border data flows and data localisation requirements be removed. Free flow of data is critical for many industries and for encouraging innovation.
- 4) Such enhanced technologies in the world can be used synonymously with the free flow of data to protect citizens' and governments' data securely.
- 5) ASEAN members continue to refine their personal data protection laws and share best practices for data collection, storage and handling breaches.
- 6) ASEAN members work closely with the business community to adopt international best practices with respect to their policy and regulatory approaches towards digital data governance and data localisation with the objectives to maximise the free flow of data and harmonise regulations.

Section 3: E-Commerce & the Movement of Goods and Services

E-Commerce has changed the way of doing business. E-Commerce is making it easier for businesses to reach a much wider audience at less expense without the traditional physical limitations and by lowering or eliminating certain transaction costs. For consumers, e-Commerce has meant greater choice, convenience, saving time and lower prices.

E-Commerce is the sale and purchase of goods and services through electronic networks and the internet, encompassing a broad range of commercial activity⁴⁹. While widespread adoption of e-Commerce in advanced economies is evident, physical and institutional barriers to its application in developing

⁴⁸ "Handling Big Tech in ASEAN", Chen Chen Lee and Erin Low, Nikkei Asian Review, March 2019

⁴⁹ The Development Dimension of E-Commerce in Asia: Opportunities and Challenges, ADB, June 2016

countries must first be overcome. Governments, multilateral organisations, and the private sector must cooperate in fostering an environment that is conducive to its implementation.

“According to forecasts by Google and Temasek Holdings, Southeast Asia’s digital market would have reached US\$50 billion in 2017 and could exceed US\$200 billion by 2025.

Of that, e-Commerce could rise to US\$88 billion from the projected US\$10.9 billion in 2017 and US\$5.5 billion in 2025.”

Standard Chartered Bank,
November 2018

E-Commerce plays an increasingly important role in supporting job creation and economic growth in ASEAN and will help ASEAN’s companies to expand beyond their home markets. Temasek projects an increase of 1.7 million full time jobs will be created by 2025 as a result of the digital economy⁵⁰. The economic changes shaped by e-Commerce have already had a large impact on the global economy. Consumers across ASEAN have embraced the convenience and savings of being able to order goods online and have them delivered to their home or office. Many Micro, Small & Medium Enterprises (MSMEs) have taken the opportunity to market their goods directly to consumers. Studies show that MSMEs that use on-line platforms are around five times more likely to export than those in the traditional economy⁵¹.

With the signing of cooperation framework to support the development of the digital economy through e-Commerce in November 2018, countries in the ASEAN

region continue to take steps to develop a regional e-Commerce regime. However, developing that regime, which deals with issues such as cross border shipments and payments, easing of customs restrictions, logistics, tax and returns policies, remains an ongoing challenge for the region.

In the area of easing of customs restrictions, regulations on the clearance of cross-border shipments impair a company’s ability to import shipments since the requirements can be onerous, costly and time consuming. In addition, individuals who buy these shipments online may not have the capability to meet complex customs clearances and documentation requirements for these shipments.

Since MSMEs, particularly those companies involved in e-Commerce, typically ship goods with a low-value but on a frequent basis, there is scope to facilitate the clearance of such shipments. Indeed, the ASEAN Business Advisory Council (ASEAN BAC) and the Joint Business Councils⁵² (JBC) have submitted a proposal to ASEAN for a Low-Value Shipment Programme that help to facilitate such shipments. Some of the key elements from the proposal to simplify customs clearance requirements for low-value shipments were:

⁵⁰ Southeast Asia’s Accelerating Internet Economy, Temasek, November 2018

⁵¹ “WTO Business focus Group 1 - MSMEs and E-commerce” International Chamber of Commerce, September 2016.

⁵² This includes bodies such as the EU-ASEAN Business Council, the US-ASEAN Business Council, the Federation of Japanese Chambers of Commerce & Industry in ASEAN, AusCham ASEAN, ASEAN-NZ Business Council etc.

Figure 6: Proposed Low-Value Shipment Programme

Common ASEAN Wide Low Value Dutiable Category	➤ To introduce uniformity across ASEAN
Common ASEAN Wide Threshold Below SDR 1000	➤ To ensure threshold is meaningful
Applies to Intra-ASEAN Trade ATIGA duty rates and domestic charges apply	➤ To reduce trade processing costs for ATIGA shipments, benefitting MSMEs
Simplified Customs Clearance Procedures (Data elements, Consolidated Declarations, Pre-arrival submissions)	➤ To reduce delays and facilitate trade, benefitting MSMEs
Increase Threshold to Waive Form D (SDR1000)	➤ To enhance attractiveness of ATIGA and reduce processing costs
Exemption from Import Licenses	➤ To reduce NTMs/NTBs
Account Based or Periodic Payment of Duties	➤ To further facilitate trade benefitting MSMEs
Simplified Procedures for Duty Refunds for Re-exports	➤ To reduce trade processing costs

Source: EU-ASEAN Proposed Features of ASEAN Low-Value Shipment Program, April 2019

To address potential customs control issues on e-Commerce without impairing legitimate e-Commerce trade, governments could consider establishing an “E-Commerce Trusted Trader Accreditation” programme. ASEAN-wide compliance standards could be established for shippers or sites who are selling goods across borders online against which they can be audited and accredited. Such standards can include, among others, data and paperwork, processes and control procedures etc. It is recommended that such requirements should be co-created together with key stakeholders in the supply chain, including freight forwarders and e-Commerce sites. Accredited traders should be given facilitation benefits, positive risk ratings and lower inspection rates. Where one ASEAN country accredits a shipper, this should be recognised by other ASEAN countries.

While many governments are concerned on the community safety and security risks pertaining e-Commerce and customs clearance mechanisms, the industry expectations for rapid clearance and light touch policy enforcement interventions means border agencies would have to more effectively facilitate the rapidly growing phenomenon. Hence, working closely with experts within the industry to mitigate the security and customs clearance aspects cannot be avoided. Governments need to be open to work in partnership to implement risk mitigation mechanisms while ensuring expedited clearance.

It is imperative that whilst an ASEAN-wide policy on e-Commerce trade facilitation measures are discussed, we propose that a moratorium on new border measures which may negatively impact cross-border clearances of e-Commerce shipments should be instituted.

Recommendations:

To stimulate cross-border e-Commerce in ASEAN, the EU-ABC recommends the following:

- 1) Introduce simplified clearances for low-value shipments in line with WTO and WCO Guidelines such as minimal data elements, consolidated clearance, importer/exporter registration exemptions, common value threshold for such shipments etc.;
- 2) Introduce a requirement that new legislation is evaluated and assessed on its necessity, usefulness and impact before it is implemented. Governments also need to bear in mind that any unilateral regulation taken will also work against other governments as every country importing goods is also a country exporting goods;
- 3) Exempt, as far as possible, licensing or permit requirements by other government agencies for low-value shipments, bearing in mind the need for some licences to apply regardless of shipment value (e.g. those relating to public health and safety);

- 4) Consider an ASEAN-wide “trusted trader accreditation program” for e-Commerce sites and shippers to address customs control concerns, without impairing legitimate e-Commerce trade facilitation.
- 5) Governments need to be open to work in partnership to implement risk mitigation mechanisms while ensuring expedited clearance.

The EU-ABC fully supports the proposal submitted by the Joint Business Councils to ASEAN in 2017 on expedited clearances and simplified customs procedures for low-value shipments that we saw as directly benefitting MSMEs and e-Commerce. We are encouraged that ASEAN and its member states are working with the Joint Business Councils on developing a proposal on this issue.

Section 4: Digital Payments

Domestic payment systems in ASEAN are gradually evolving together with improvements in cross-border payment outcomes. However, ongoing attention is required to ensure the region fully embraces a new standard for cross-border payments.

In the digital economy era, payment systems in the ASEAN region are also gradually evolving to adopt global payments trends like real-time payments, richer payment information, global standards such as ISO 20022 and frictionless end-user experiences.

In ASEAN, there are presently various cross-border payment methods - merchants can be paid using credit cards and cross-border bank remittances in local currencies can be made. There are also other methods including cross-border e-Commerce payment providers such as Payoneer and PayPal, and new domestic cashless payment providers such as Grab Pay, Go Pay, WeChat Pay and Alipay with emergent cross-border potentials.

Despite this progress in payments, until recently the case for much of the cross-border payments in the region was that they take an inordinate amount of time, lacked transparency & predictability – thus putting pressure on working capital, especially for MSMEs – and can be costly as well due to intermediary commissions or transaction charges. This has especially posed a challenge for growing ASEAN businesses that are increasingly providing services or selling goods over ever greater distances. For these businesses getting paid speedily, efficiently, and with minimal costs has become more and more important.

In 2015, the global banking community and SWIFT jointly assessed the challenges in cross-border payments with an aim to identify real underlying problems. It was noted that the SWIFT network takes only 2-3 seconds for messaging between any of its 11,000 users globally, securely processing billions of transactions annually, amounting every 3 days to the value of the World’s GDP⁵³. If it takes only a few seconds for a payment instruction from a bank in Singapore to securely reach another bank in Hanoi or Jakarta, the question arises as to why it still takes a few days for the final funds to be credited to the recipient. The underlying problem was therefore found to be not the underlying technology, but rather in the business process friction existing within correspondent banks.

In response, the SWIFT Global Payment Innovation (GPI) initiative was launched in 2017 as an inclusive global financial community-led program to address this business process friction at global scale. As of 2019, more than 3500 banks representing 80% of global SWIFT traffic are committed to adopting the service, providing end-customers with greater speed, certainty, transparency and traceability in cross-border payments.⁵⁴ The ASEAN financial community is also experiencing strong GPI adoption momentum,


 A graphic element consisting of a blue and white abstract shape that frames the quote.

“SURELY, IN THIS NEW DIGITAL AGE...
CAN WE JUST MAKE SURE HARDWORKING
PEOPLE GET TO REMIT THE FRUITS OF
THEIR LABOUR TO THEIR FAMILIES BACK
HOME AS EFFICIENTLY, AND AT THE
MOST COST-EFFECTIVE WAY POSSIBLE?”

Dr. Vivian Balakrishnan,
Singapore Foreign Affairs Minister at ISEAS
ASEAN Lecture, 5 Dec 2017

⁵³ Financial Systems and Regulations in ASEAN, EU-ABC 2018, p. 5.

⁵⁴ SWIFT Press Release, 28 February 2019

with GPI banks and their end consumers reaping benefits of enhanced speed, certainty, transparency and innovation - ASEAN cross-border payments can now be processed in seconds and minutes – instead of days.

The GPI initiative is already progressing with reviews to integrate with currently live instant payment systems in ASEAN markets like Singapore and Thailand. From a trade perspective, integration with these instant payment systems in ASEAN will open the local settlement window in ASEAN markets as cross-border payments can be settled beyond traditional business hours. The service is also fully scalable globally, allowing for new instant payment schemes in ASEAN in the future to be integrated from launch, and easily extend to relevant use cases like e-Commerce.

As financial services initiatives such as the GPI platform enable more services such as cross-border instant payments, the aim remains to maximise reuse of existing infrastructure and minimise impact to the global financial community adopting these services.

Conducive and efficient retail payment schemes for national and cross-border flows are and will be foundations for a closer e-Commerce ASEAN economy and to build them with a balance between costs, usefulness and future expansion capabilities for cross-border uses. Central banks and financial services authorities must do so in consultation and collaboration with industry players, impacted stakeholders and global initiatives. This will ensure that the regulatory frameworks are holistic, non-discriminatory and inclusive, and can provide both existing and future industry players with enough room to innovate.

Recommendations:

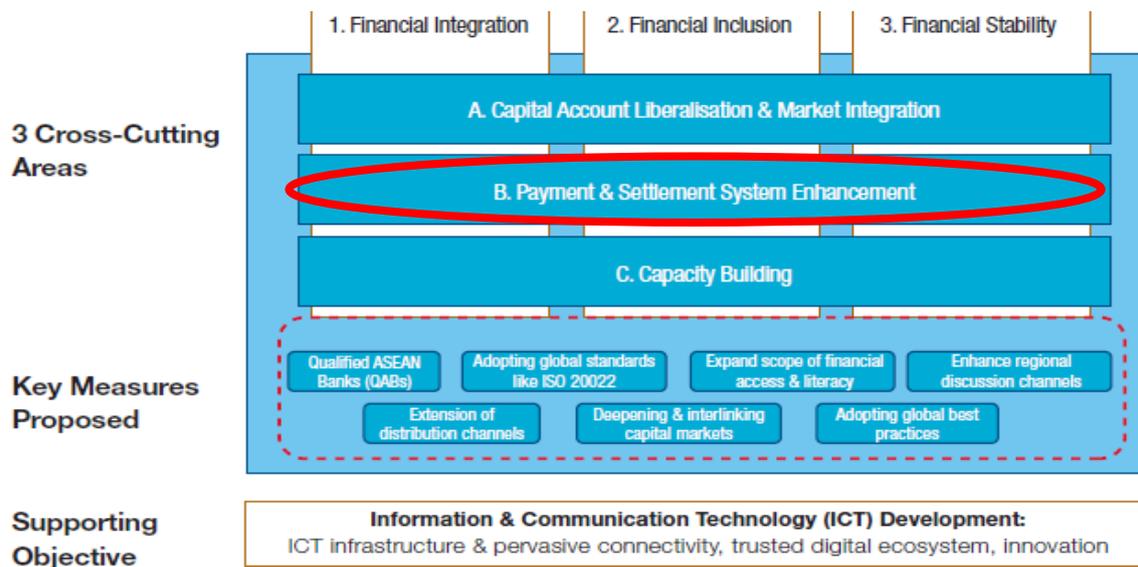
In order to continue to build a lower cost, efficient and secure ASEAN cross-border e-payment environment that can support existing and new payment methods, we recommend the following next steps:

- 1) To progress on such a cross-border efficient lower cost near-instant payment environment, the EU-ABC welcomes moves to put in place enhanced and more efficient payment and settlement systems across ASEAN.
- 2) That central banks and financial services authorities and regulators engage and consult with industry players, stakeholders and global initiatives.
- 3) Review and actively enable the availability of the “last-mile” connectivity of bank branches in ASEAN so that cross-border payments can flow from senders in one country to recipients in another country efficiently. The low costs and time efficiency benefits of such payments will come from the straight-through processing of payment transactions without manual interventions.
- 4) The use of ISO 20022 message format. Transmission of cross-border payments need to include information necessary for anti-money laundering, sanctions and other compliance checking (“compliance checking”) by banks. Otherwise, without such needed information, cross-border Business-to-Business (B2B) payments will be rejected on good compliance basis and therefore not as cost effective nor time efficient as they could be.
- 5) To ensure compliance information and interpretation consistency. Consistent information required for compliance checking by financial intermediaries in the different ASEAN countries on cross-border B2B low-value payments also need to be available to avoid rejections of these cross-border payments.

Section 5: Payments and Settlement Systems

As part of ASEAN's Economic Community Blueprint 2025, financial integration was identified as a key strategic objective⁵⁵. As the graph below indicates, a key element in achieving financial integration, financial inclusion and financial stability in ASEAN is in putting in place enhanced payment and settlement systems. In much the same way as Singapore has put in place the FAST system for instant transfers between participating domestic banks, allowing for instantaneous financial transactions even between different banks, the technology and protocols already exist today to allow for similar high speed, low cost, transfers across borders within ASEAN.

Figure 7: ASEAN 2025 Vision: Strategic Objectives for ASEAN Financial Integration



Source: SWIFT – Achieving Financial Integration in the ASEAN Region, March 2017

With the signing of a Memorandum of Understanding in 2017 amongst leading ASEAN payment system providers, cross-border collaboration shows the possibility of integrating ASEAN's economies further.⁵⁶ Businesses and consumers will be able to enjoy immediate payment routing and addressing via mobile numbers, in addition to real-time request-to-pay for cross-border payment collections, instead of having to wait for days and incur administrative fees. As noted earlier, SWIFT GPI is an example of a global initiative that can easily be adopted by the ASEAN financial community for integrating the most efficient cross-border and domestic payment channels available, even enabling a cross-border instant payment experience for payments into ASEAN markets with domestic instant payment systems.

On retail payments, ASEAN member countries have been developing their own national retail payment schemes, such as Indonesia's National Payment Gateway that was launched in 2017, the National Payment Corporation of Vietnam launched in 2016 (NAPAS), and the Myanmar Payments Union in 2011. These schemes aim to integrate the countries' domestic retail payment systems and cut costs for banks and merchants and will in turn promote non-cash transactions. However, direct integration between payment systems still needs deeper assessment of challenges in areas like foreign exchange management, account and liability management.

As per the AEC Blueprint 2025, global standards must be adopted for domestic and cross-border interoperability⁵⁷. Government-driven domestic payments systems will need to be based on global

⁵⁵ ASEAN ECONOMIC COMMUNITY BLUEPRINT 2025, S.17 p.11

⁵⁶ Paynet Press Release, 16 November 2017

⁵⁷ ASEAN ECONOMIC COMMUNITY BLUEPRINT 2025, S18ii, p.14

standards, i.e. ISO 20022, EMV⁵⁸, and PCI DSS⁵⁹ specifications. This will allow financial services providers to provide customers and merchants with secure and reliable payment solutions, which are crucial in the promotion of non-cash transactions. National retail payments infrastructures based on globally interoperable standards will be also be able to use the global supply chain to reduce costs.

The AEC Blueprint 2025 established a goal for harmonizing messaging standards in the ASEAN region through adoption of ISO 20022 in domestic and regional payment market infrastructures by 2025.⁶⁰ However, if we review the current state of ISO 20022 adoption the high value payment systems in ASEAN, we note that only one market – Brunei – has currently adopted the standard. Some of the other markets have taken initial steps, but have not implemented the standard yet.

“I STRONGLY BELIEVE THAT COLLABORATION AT THE OECD/G20 LEVEL IS ESSENTIAL TO DEVELOPING FAIR AND TRANSPARENT TAX RULES FOR BUSINESSES OFFERING DIGITAL SERVICES, AND ENSURE A LEVEL PLAYING FIELD FOR ALL. THIS IS AN APPROACH THAT WE FULLY SUPPORT AND THAT IS MORE LIKELY TO PROTECT THE INTERESTS OF LOCAL BUSINESSES AND ECONOMIES ALIKE.”

Gillian Tans, CEO, Booking.Com, 2019

Recommendations:

- 1) The EU-ABC recommends the adoption of global standards such as ISO 20022 to improve domestic and cross-border operability.⁶¹ This recommendation is in line with the AEC 2025 Blueprint.
- 2) The EU-ABC also recommends central banks and financial services authorities across ASEAN to also consider the aspects of technological innovations and consumers’ convenience in developing regulations and national payment schemes. Regulatory frameworks in the payments sector must facilitate participants’ quick adoption of innovative payment technologies, such as the latest chip, contactless, mobile contactless, and digital payment solutions. The adoption of such technologies will support the governments’ financial inclusion goals.

Section 6: Digital Taxation

ASEAN is among the fastest growing e-Commerce markets and is making huge investments to develop an ecosystem that can sustain and promote increasing digital trade. With the growth of e-Commerce sales in the ASEAN region expected to grow to US\$240 billion by 2025, the issue of taxation is also being reviewed by governments and public policy makers⁶².

Governments in the region have either introduced a digital tax (Singapore, Malaysia) or are considering doing so. ASEAN countries view digital taxes as a way for levelling the playing field between local businesses who pay taxes and international business who pay taxes but pay it in their home country and for expanding their own government’s revenue base. While the primary premise of the tax in levelling the playing field is commendable, a recent paper by the Institute for Democracy and Economic Affairs in

⁵⁸ EMV -- which stands for Europay, Mastercard and Visa -- is a global standard for cards equipped with computer chips and the technology used to authenticate chip-card transactions.

⁵⁹ The Payment Card Industry Data Security Standard (PCI DSS) is a set of security standards designed to ensure that ALL companies that accept, process, store or transmit credit card information maintain a secure environment.

⁶⁰ ASEAN Economic Community Blueprint 2025, Section 18.ii, p.14

⁶¹ ISO 20022 is a common global standard for financial messaging and provides an extensible repository of messages supporting all business processes in the financial industry. ISO 20022 provides an approach to unifying multiple existing financial standards and is today accepted as the de facto standard promoting global interoperability. The AEC 2025 Blueprint specifies adoption of ISO 20022 by 2025 as a key objective for regional financial integration and development of payments and settlements systems within ASEAN Markets.

⁶² “e-Conomy SEA 2018: Southeast Asia’s internet economy hits an inflection point.” Google and Temasek Holdings, Nov. 2019.

Kuala Lumpur concluded that there was “no definitive evidence that digital companies pay less tax than traditional companies.”⁶³

The private sector has three main concerns with the introduction of any digital tax. The first concern is that a digital tax will add an extra layer of taxation which could lead to the increase of online goods and services costs for consumers thus making them less willing to purchase the product.

A second concern for companies is the lack of regional coordination for introducing a digital tax. SMEs could be disproportionately affected as they may face the burden of registering, collecting and remitting GST to each relevant national government across the ASEAN region. As these smaller companies generally have limited resources, an increased burden such as tax collection and remittance could be

overwhelming and may result in companies opting not sell their products internationally thus limiting their ability to grow.

“THE TRANSFORMATION FROM WORKFORCE TO THINK-FORCE IS EDUCATION... THOSE SKILLS INCLUDE PROBLEM SOLVING, CRITICAL THINKING, INTERPRETATION, OPENNESS TOWARDS NEW IDEAS AND THE WILLINGNESS TO CHALLENGE OLD IDEAS. EDUCATION THAT STRENGTHENS COMMUNICATIONS AND RELATIONSHIP SKILLS WILL ALSO BE NEEDED?”

Donald Kanak, Chairman of the EU-ASEAN Business Council, *Business Times*, March 2018

Finally, the introduction of a digital tax may result in mean higher digital business infrastructure costs like cloud services and the use of e-Commerce platforms as companies pass on the taxes to their users. These higher costs could compromise the recent innovation gains that countries have made and hamper the development of the ASEAN future digital economy as entrepreneurs look to other regions to develop their services.

Recommendations:

While the EU-ABC recognises that governments are increasingly interested in introducing a form of digital tax in order, we

would make the following recommendations to allow for the continued growth of the digital economy in Southeast Asia;

- 1) That ASEAN members adopt a harmonized multilateral approach to taxing digital goods and services will help ensure regulatory harmonization, while encouraging the cross-border flow of e-Commerce and the growth of the overall digital economy;
- 2) That ASEAN Member States adopt international best practices, standards and frameworks such as those developed by the WTO, APEC and OECD.
- 3) Finally, we recommend that ASEAN and ASEAN Member States maintain an ongoing and productive engagement with the private sector and associations to ensure a high level of consultation and discussion between the various actors on issues relating to digital taxation.

Section 7: Human Capital Development

The digital economy is creating new jobs, new organisations and new sectors but it is also eliminating old careers. For public policy makers, increasing emphasis must be placed on preparing their fellow citizens for these changes if a country expects to successfully adapt to the digital economy. Education, training and lifelong learning – or human capital development – are the linchpin of a competitive and innovative economy. As traditional sectors are increasingly driven by knowledge, the key step government can take in preparing for the digital economy is to invest in their people.

The issue of human capital development or “human capacity necessary”, is acknowledged in the ASEAN ICT Masterplan (AIM) 2020 as it outlines recommendations for the region’s transition into a digital economy⁶⁴. AIM 2020 wants to strengthen the digital workforce via reskilling programmes and create standards through which the workforce is ICT-literate and competitive.

⁶³ “Tax in The Digital Age” Brief Ideas, Institute for Democracy and Economic Affairs, Sept 2018.

⁶⁴ ASEAN ICT Masterplan 2020, p. 15.

Recent research has shown that there are common barriers to a workforce for the digital economy. These barriers include a lack of recognition that digital skills are needed, limited resources, a perception that learning is for the young, a lack of clear leadership, and poor access to training possibilities.⁶⁵ National Governments and ASEAN will both need to play a role in making sure that these barriers are being overcome by the implementation of AIM 2020.

Perhaps the largest barrier to human capital development in the ASEAN region is a lack of funds. Although demand for education has risen in the region due to expanding demographics, urbanisation and an increasing middle class, governments have struggled to match this demand with the necessary funds. Information tracked by the World Bank shows countries spending in the ASEAN region is between 2% and 5% of government expenditure on all levels of education.⁶⁶ While the upper reach of this number is similar to spending levels in the European Union, the countries that spend at this level remain the outliers in the ASEAN region. Increasing investment in education is important as research has shown a positive relationship between a country's level of human capital development and its overall economic performance.⁶⁷ By investing in education and its citizens, a country is also investing in its economic future.

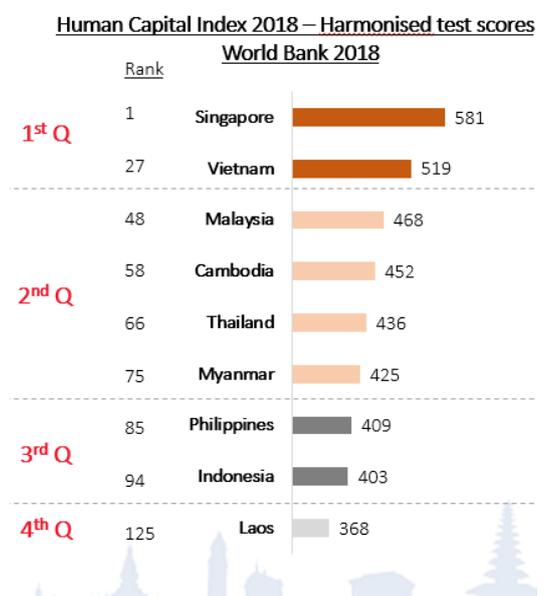
As both the future employer and the provider of education services, the private sector plays a key role in the area of human capital development. It is crucial for both the public and private sector to be communicating and working together in order to develop the necessary policies for adapting to the digital economy. Singapore's Skills Future program, co-created by Employers, Industry Associations, Education Institutions, Unions and Government for the Singapore workforce, is an example of the level of co-operation needed. The Skills Framework provides key information on sector, career pathways, job roles, as well as existing and emerging skills required for the occupations along with the education and training opportunities to meet these roles⁶⁸.

Lastly, the private sector has both the ability and the willingness to invest in developing human capital. ASEAN members should look for ways of engaging with the private sector in order to understand their needs and to determine what barriers to investment they may face. By developing and implementing policies that encourage and increase private sector investment, governments should be able to increase overall spending on human capital development.

Recommendations:

In order to prepare the digital economy and the needs to develop human capital, the EU-ASEAN Business Council recommends that:

- 1) ASEAN members countries maintain their commitment to implement AIM 2020;
- 2) ASEAN and national governments continue to prioritize expanding educational access, promoting higher education opportunities, and the promotion the developing human capital if it is to successfully create the conditions to compete in the digital economy;
- 3) ASEAN members continue to invest in their education systems to meet the growing demand for education amongst its population;
- 4) Public policy makers work with the private sector in developing innovative delivery and funding models for increasing human capital development and for identifying which skills and knowledge will be in demand in the future.



⁶⁵ “Delivering digital skills”, Nesta, April 2018

⁶⁶ Government expenditure on education, total (% of GDP), World Bank, as of 2015

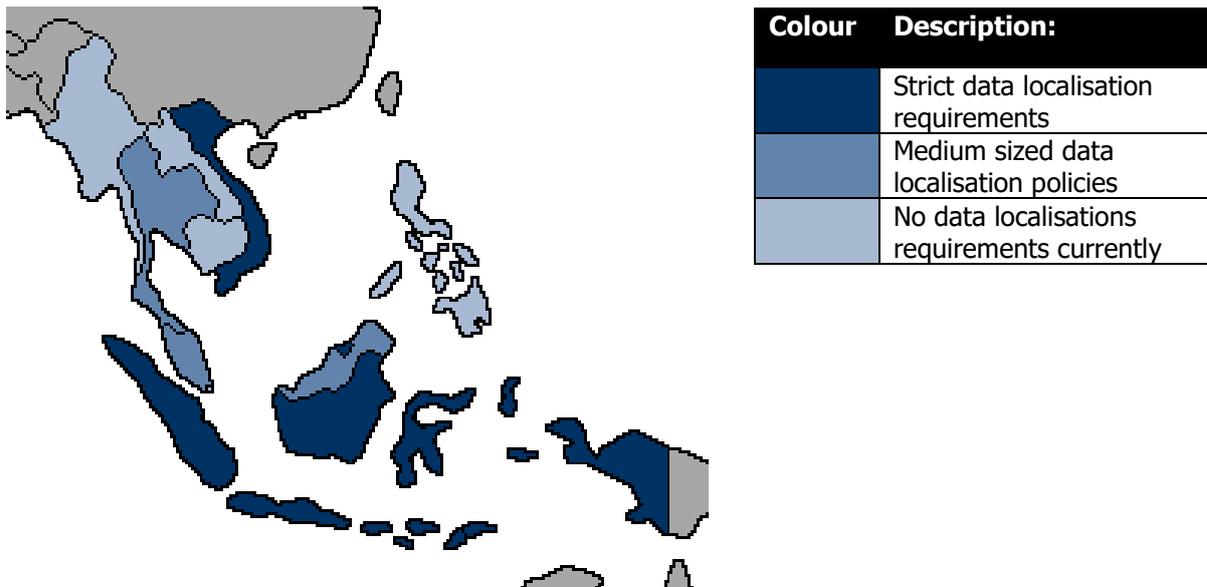
⁶⁷ World Economic Forum 2017. The Global Capital Report 2017: Preparing people for the future of work.

⁶⁸ SKILLS FRAMEWORK, Skills Future Singapore Agency, May 2019

Annex A: Country Studies of Data Localisation & E-Commerce Regimes in ASEAN Member States

The following section gives an overview of data localisation policies and its stamping in the individual ASEAN Member States. In figure 9 below, these different countries are marked in shades of blue to show the specificity of administrations rules regarding the economy. Details concerning individual countries are briefly explained below within the table.

Figure 9: Data Localisation in ASEAN



Brunei Darussalam

The Nation of Brunei demands strict data localisation requirements, data to be saved and processed on servers within the borders of the country⁶⁹. Companies must store information in the territory of Brunei.⁷⁰

Cambodia

A comprehensive policy on protection and processing of personal data does not exist⁷¹. No forced data localisation laws are published within the Kingdom of Cambodia. Thus, foreign investors and IT providers do not have to follow specific requirements⁷².

Indonesia

Law No. 11 of 2008 on Electronic Information and Translation and Government Regulation⁷³ and secondly the Government Regulation No. 82 of 2012 regarding System and Electronic Transactions⁷⁴ are significant. These two models are not established on the basis of international agreements⁷⁵. Especially, Law No. 82 demands "a broad and undefined group of companies, 'electronic systems operators for public service' to set up a data center and disaster recovery center in Indonesian territory for the purpose of law enforcement and data protection."⁷⁶ Service providers have to store some of their data in local

⁶⁹ "Data Localisation: A Challenge to Global Commerce and the Free Flow of Information." Albright Stonebridge Group, 2015, p. 5

⁷⁰ "Promoting Economic Growth through Smart Global Information Technology Policy: The Growing Threat of Local Data Server Requirements." Business Roundtable; press release, June 2012. p. 5

⁷¹ "ASEAN Insights: Personal Data Protection." ZICOLaw; press release, July 2013, p. 3.

⁷² International Business Publications, Usa. Doing business and investing in Cambodia: Strategic, practical information, regulations, ... contacts. [Place of publication not identified]: Intl Business Pubns Usa, 2015a, p. 196.

⁷³ Sc http://www.flevin.com/id/lgso/translations/JICA%20Mirror/english/4846_UU_11_2008_e.html

⁷⁴ Government of the Republic of Indonesia, October 12th, 2012,

http://www.flevin.com/id/lgso/translations/JICA%20Mirror/english/4902_PP_82_2012_e.html

⁷⁵ "Data protection regulations and international data flows: Implications for trade and development." United Nations Conference on Trade and Development

press release. New York and Geneva, 2016. http://unctad.org/en/PublicationsLibrary/dtlstict2016d1_en.pdf, accessed November 21st, 2016. p. 44

⁷⁶ Matthias Bauer, Hosuk Lee-Makiyama, Erik van der Marel, and Bert Verschelde. "The Costs of Data Localisation: Friendly Fire on Economic Recovery." p. 12)

storage⁷⁷. Corporations offering internet enabled services to any customers are demanded to store information in local data centers⁷⁸. Such broad language has allowed regulators, such as the central bank and financial services authority, to require data onshoring for payment service providers, banks, and other financial institutions.

Despite requiring 'electronic systems operators' to set up data centers and disaster recovery centers onshore, the government does not have a strong data privacy regulation in place.

Lao PDR

Regarding the Lao People's Democratic Republic, there are recently no policies on data storing within the borders or forced localisation⁷⁹. But several policies are under revision focusing on "new laws need to be introduced to enable future trade initiatives"⁸⁰.

Malaysia

The first year Malaysia's Personal Data Protection Act (PDPA) took effect was in 2014⁸¹. International data transfer demands approval so relevant burdens have been set up.⁸² In fact, the location the data is transferred to is specified by the Minister of Information, Communications and Culture.⁸³ The Act has already been published in 2010 and includes requirements to store data about Malaysians citizens on local servers in the borders of Malaysia^{84 85}. Some exceptions are offered and enabled to send data through borders providing several conditions⁸⁶.

In September 2017, The Central Bank of Malaysia released the Exposure Draft on Outsourcing⁸⁷ for public consultation. The Exposure Draft requires foreign cloud services providers to locate data onshore, and to allow Bank Negara access to cloud server locations whenever requested. These requirements are not in line with internationally recognised security best practices for data security and creates confidentiality risks for businesses. Foreign cloud providers will also need to seek approval in order to operate in Malaysia. The criteria for approval have not been specified and has caused significant uncertainty for all cloud players in the ecosystem. There exists a large knowledge gap among regulators and the cloud services industry that needs to be remedied.

Myanmar

Currently, there are no laws concerning the data localisation topic available in Myanmar and no plans on draft regulations are published⁸⁸. Only legislations affecting certain personal data, but no comprehensive data privacy policy is in force⁸⁹.

Philippines

The Data Privacy Act 2012 was signed in August 2015⁹⁰. The model follows the EU Data Protection Directive as well as the Asia-Pacific Economic Cooperation Privacy Framework⁹¹. This framework focuses on sensitive personal information to be protected but does not include prohibits on cross border data

⁷⁷ Anupam Chander and Uyen P Le, "Breaking the Web: Data Localisation vs. The Global Internet."

⁷⁸ "Data Localisation Snapshot." Information Technology and Innovation Foundation, press release, September 15th, 2016. <https://www.itic.org/public-policy/SnapshotofDataLocalisationMeasures9-15-2016.pdf>.

⁷⁹ "Laos Investment Climate Statement 2015." U.S. Department of State, press release, June, 2015. <http://www.state.gov/documents/organization/241836.pdf>, accessed November 22nd, 2016, p. 10

⁸⁰ "ASEAN Insights: Personal Data Protection." ZICOlaw; press release, July 2013, p. 3

⁸¹ Luke Grubb and Sally Murphy, "How data privacy regulations changed across Asia-Pacific in 2014." 2015.

⁸² Anupam Chander and Uyen P Le, "Breaking the Web: Data Localisation vs. The Global Internet." p. 5.

⁸³ "ASEAN Insights: Personal Data Protection." ZICOlaw; press release, July, 2013, p. 3.

⁸⁴ Ministry of Communications and Multimedia Malaysia, 2015.

⁸⁵ "Meeting the Challenge of Data Localisation Laws." Servers.Global Corporation, press release, 2015.

⁸⁶ Anupam Chander and Uyen P Le, "Breaking the Web: Data Localisation vs. The Global Internet." p. 21.

⁸⁷ Bank Negara Malaysia Exposure Draft on Outsourcing, September 2017

⁸⁸ "ASEAN Insights: Personal Data Protection." ZICOlaw; press release, July 2013, p. 3

⁸⁹ Luke Grubb and Sally Murphy, "How data privacy regulations changed across Asia-Pacific in 2014." Latham & Watkins LLP; press release, March 4th, 2015. <http://www.lexology.com/library/detail.aspx?g=1d6e5a73-614b-4d70-9451-5166bfb47384>, accessed November 12th, 2016.

⁹⁰ Senate and House of Representatives of the Philippines, "Republic Act No. 10173." 2012, <http://www.officialgazette.gov.ph/2012/08/15/republic-act-no-10173/>

⁹¹ "Philippine Data Privacy Law is Signed into Law." Hogan Lovells US LLP; Hogan Lovells International LLP, press release. <http://www.hldataprotection.com/2012/08/articles/international-eu-privacy/philippine-data-privacy-law-is-signed-into-law/>, accessed November 22nd, 2016.

transfers⁹². The government uses this act to ensure innovation and growth by the free flow of data across borders⁹³.

Singapore

The Personal Data Protection Act (PDPA) 2012 was fully implemented in 2014 and regards all companies located in Singapore apart from governmental organisations. Reasonable purposes and consent must be given before collecting data from citizens⁹⁴. A specific provision limits direct marketing⁹⁵. Restrictions on cross-border data transfers only require a comparable Act to the PDPA 2012 by the organisation to which the personal data is sent⁹⁶.

Thailand

Currently there is no specific statutory law on storing data inside the jurisdiction and no "distinction between an overseas transfer and local transfers"⁹⁷ is formulated. The Cybersecurity Bill and Personal Data Protection Bill were passed by the National Legislative Assembly (NLA) in late February 2019.⁹⁸ Both Bills are in the process of being promulgated in the Royal Gazette. The Personal Information Protection draft focuses on preventing non-consensual personal data dissemination with exception for state's request.

Vietnam

Since September 1st, 2013 the Decree 72 is effective⁹⁹. It is a policy on Management, Provision and Use of Internet Services and Online Information. This Decree addresses the content of "harm national security, social order and safety"¹⁰⁰. The Decree demands Internet service providers to store a copy of information, to give access for inspection authorities within Vietnam¹⁰¹. At least one server must be located within Vietnam for a range of different internet services.¹⁰² Also a Draft Circular is announced in Vietnam. It includes the requirement all OTT service providers to store their data leastwise on one server within the borders of the Socialist Republic of Vietnam¹⁰³.

On 10 November 2017, the Ministry of Finance introduced a revised Draft Law on Tax Administration. This draft law aims to simplify tax administration and increase tax inspections and is expected to come into effect on either 1 January 2020, or 1 July 2020. As of the latest version, several proposals currently being considered will bring significant changes to the competitiveness of Digital Economy in Vietnam. One of which is that "*payments for cross-border transactions are required to be processed through a domestic payment gateway (i.e. National Payment Corporation of Vietnam, or NAPAS) – in an effort collect tax revenues from online sales of goods and services.*"

Requiring all Digital Economy players - from e-Commerce to online providers, to Over-the-Top (OTT) companies – to use only a single payment gateway would lead to stifling of innovation. As Vietnam's economy becomes more digital, consumers will demand more innovation in payments, such as contactless payments, digital wallets for omni-channel acceptance, products like Apple Pay and Samsung Pay, and QR code-based acceptance. Mandating all payments to only be processed by one single payment gateway would mean that the pace of innovation could only move as fast as the single payment gateway. It will be questionable whether innovative Digital Economy and payment services can be technically and/or commercially provided in Vietnam. In addition, mandating all digital payments to pass through a single gateway creates a single point of failure for all payment transactions, as it would invite hackers and cyber criminals to target the gateway.

⁹² International Business Publications, Usa. Doing business and investing in Philippines: Strategic, practical information, regulations, ... contacts. [Place of publication not identified]: Intl Business Pubns Usa, 2015b, p. 43

⁹³ "ASEAN Insights: Personal Data Protection." ZICOLaw; press release, July 2013, p. 3

⁹⁴ Luke Grubb and Sally Murphy, "How data privacy regulations changed across Asia-Pacific in 2014." 2015.

⁹⁵ Ibid.

⁹⁶ "Customs & Trade Facilitation in ASEAN." EU-ASEAN Business Council, 2016.

⁹⁷ Dr. Chanvitaya Suvarnapunya and Pattama Jarupunphol, "Francise 2014." Law Business Research Ltd, 2006, http://thaifranchisedownload.com/dl/group227_7613_20160524101258.pdf p. 166.

⁹⁸ "Get Ready: The First Thailand Personal Data Protection Act Has Been Passed", Baker Mackenzie, March 1, 2019.

The Law on Cybersecurity (drafted by the Ministry of Public Security (MPS)) was passed by the Vietnamese National Assembly in May 2018.¹⁰⁴ While the server localisation provision (in the draft law) has been removed, telecommunications and Internet service providers are still required to place personal or users' data in Vietnam (third-party servers allowed). The data localisation requirement in the signed law is broadly covering all technology companies. The Vietnamese government promised that the specific requirements for which types of companies that must store data onshore and set up representative office in Vietnam will be clarified in the decrees guiding the implementation of the Law which should be available at the same time with the effective date of the law, on 1 of January 2019. Unfortunately, those decrees are still under progress of drafting at this moment and seem not to be issued in early May, as the MPS expectation.

Personal Data Protection legal document: MPS is considering issuing a legal document to stipulate parties' responsibilities in protecting personal data. This could be a non-head decree (a decree without a law above), or it could be a guiding document issued by the Prime Minister. Its form will be decided in the coming time. It is mostly sure that it would not be put under the Law of Cybersecurity. The MPS is under the process of learning international best practice and gathering reference documents from businesses and industry associations.

¹⁰⁴ "Vietnam National Assembly Passes the Law on Cybersecurity" Global Compliance News, July 2018

ABOUT THE EU-ASEAN BUSINESS COUNCIL

The EU-ASEAN Business Council (EU-ABC) is the primary and sole voice for European business across the ASEAN region.

It is recognised by both the European Commission and the ASEAN Secretariat, and is an accredited entity under Annex 2 of the ASEAN Charter. Independent of both bodies, the Council has been established to help promote the interests of European businesses operating within ASEAN and to advocate for changes in policies and regulations which would help promote trade and investment between Europe and the ASEAN region. As such, the Council works on a sectorial and cross-industry basis to help improve the investment and trading conditions for European businesses in the ASEAN region through influencing policy and decision makers throughout the region and in the EU, as well as acting as a platform for the exchange of information and ideas amongst its members and regional players within the ASEAN region.

The EU-ABC conducts its activities through a series of advocacy groups focused on industry sectors and cross-industry issues. These groups, usually chaired by a Multi-National Corporation, draw on the views of the entire membership of the EU-ABC as well as the relevant committees from our European Chamber of Commerce membership, allowing the EU-ABC to reflect the views and concerns of European business in general. Groups cover, amongst other areas, Insurance, Automotive, IPR & Illicit Trade, Customs & Trade Facilitation, Healthcare and FMCG.

Executive Board

The EU-ABC is overseen by an elected Executive Board consisting of corporate leaders representing a range of important industry sectors and representatives of the European Chambers of Commerce in Southeast Asia. The Executive Board is led by its Chairman Mr Donald Kanak.

Membership

The EU-ABC's membership consists of large European Multi-National Corporations and the nine European Chambers of Commerce from around Southeast Asia. As such, the EU-ABC represents a diverse range of European industries cutting across almost every commercial sphere from car manufacturing through to financial services and including Fast Moving Consumer Goods and high-end electronics and communications. Our members share a common aim to enhance trade, commerce and investment between Europe and ASEAN.



To find out more about the benefits of Membership and how to join the EU-ASEAN Business Council please either visit www.eu-asean.eu or write to info@eu-asean.eu.

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