



Note

Challenges Faced by S&SEA e-Commerce Providers

A summary of the public & private sector views in seven S&SEA countries

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Summary

Electronic commerce, or e-commerce, is a rapidly growing branch concerning the trade of goods and services through electronic means. As electronic commerce is a relatively new field, e-commerce providers in developing and least-developed countries in South & South East Asia (S&SEA) face challenges regarding digital infrastructure, regulations, ability to compete globally, and other barriers. Those specific challenges come out after interviews of some e-commerce providers in seven (7) South & South East Asian countries.

For the purpose of this note, CUTS International defines an “e-commerce provider” as any private enterprise that provides digital services , and specifically looking at e-commerce providers engaged in cross-border trade.

Specific challenges faced by e-commerce providers in S&SEA, related to policies, laws & regulations

Status of laws and regulations related to e-commerce in the region

In the region, some countries have already enacted specific policies, laws and regulation on e-commerce. For instance, the Electronic Transactions Act, No. 19 of 2006 (ETA) is the primary legislation that applies to the e-commerce in Sri Lanka.¹ The Act covers several key areas including the legal recognition of electronic documents, standards on retention and presentation of electronic information, e-signatures, electronic contracts, use of electronic records in Government institutions and statutory bodies and the admissibility of electronic evidence. The ETA was amended in October 2017, making Sri Lanka the first country in South Asia and the second country in Asia to adopt the UN Electronic Communication Convention (UN ECC). This amendment is believed to (i) provide greater legal certainty to e-commerce providers in the country, (ii) ensure the validity of electronic contracts, and (iii) facilitate cross-border trade.²

In Viet-Nam, there are (to name a few) a Law on Information Technology No 67/2006/QH11 of June 29, 2006 and Decree No. 71/2007/ND-CP detailing the implementation of this law, a Law on E-transactions No.51/2005/QH11 of November 29, 2005, a Decree No. 52/2013/ND-CP of May 16, 2013 of the Government on E-commerce, and even a Law No. 24/2018/QH14 of June 12, 2018 on Cyber-Security. However, it was pointed out that despite the efforts of the government of Viet-Nam to put into place a comprehensive legal framework, there remains a lack/absence of necessary regulations to govern different types of digital services, especially new models of business (i.e. Uber and Grab).

In the cases of least developed countries of the region, in most cases there are not specific legislations regarding e-commerce, including financial and tax-related rules. However, many of them are working on it, and try to catch up to provide a supportive policy and regulatory framework to their e-commerce providers. This is the case of Cambodia where they have yet enacted an e-commerce law by the time writing this note, but the draft is being reviewed and expected to pass this year.³ In Lao PDR, the Tax Department has issued an official notification to the Lao Business Forum secretariat/LNCCI4, dated 23 January 2018, explaining that it is working on the division of the Excise Tax Law and Income Tax Law from the original Tax Law. The final draft of each law was supposed to be reviewed and approved at the National Assembly Meeting by the end of 2018. However, there has been no clear response yet as to whether Internet excise will be removed.

¹ Daily FT, 'Geneva ITC Calls for Opening of Sri Lanka E-Commerce Gateways', 16 March 2018, available at: <http://www.ft.lk/business/Geneva-ITC-calls-for-opening-of-Sri-Lanka-e-commerce-gateways/34-651334>, [accessed on: April 2019].

² Daily FT, 'Major Boost with Sri Lanka Harmonising E-Commerce Legislation with New Amendment', 19 October 2017, available at: <http://www.ft.lk/front-page/Major-boost->

[with-Sri-Lanka-harmonising-e-commerce-legislation-with-new-amendment/44-641819](#), [accessed on: April 2019].

³ The latest draft has 12 chapters divided into 90 articles, covering topics such as "e-commerce, e-signature, e-government, intermediary or service provider, online consumer protection, online personal information protection, unsolicited message, e-payment, e-evidence, and penalties".³

⁴ Summary of Prioritized Issues and Progress Public-Private Dialogue through the Lao Business Forum

On a related note, in Pakistan, while there is lack of awareness among the e-commerce providers regarding rules and legislations. Few are aware of the policies and regulations pertaining to finance & taxation and those who are aware, have cited both positive and negative impact those policies inflict on their businesses. On a positive note, the policy of income tax exemption for the e-commerce providers till 2020 (as ratified by previous Government in 2017) has increased the profitability of the enterprises and is attracting investments in the e-commerce sector. Prior to this relaxation, 10 percent income tax was paid by filer e-commerce providers while non-filer ecommerce providers paid 20 percent. On the downside, the conversion charges on payments from abroad has increased the transaction cost of the e-commerce providers partially offsetting any increases in profitability.

A common concern was about the need to establish a clear system for registering online businesses, which would help in collecting data, taking appropriate taxation policy, supporting businesses, etc. This would also help in revising/developing a good consumer protection framework in those countries, where the lack or absence of clear rules regarding product quality and liability, and dispute settlement mechanisms for digitally-made transactions, might **potential erode consumers' trust** and affect the long-term growth of the e-commerce sector.

Finally, many respondents pointed out the lack of Information Technology (IT) experts in the formulation of IT related policy, which is partially responsible for the poor performance of the IT and e-commerce sector as the policies formulated do not

quite cater to the issues facing the sector.

Status of cross-border trade & competition in the region

Many of the interviewed e-commerce providers aim to enter foreign markets, although a majority presently cater only to the domestic market. A Sri Lankan e-commerce provider in the health sector stated that a key challenge in entering foreign markets is the necessity to adapt to the regulations of that country. In this regard, the company noted that many countries have modeled their legislation based on the General Data Protection Regulations (GDPR) of the EU. Hence, having similar legislation in Sri Lanka would not only support Sri Lankan e-commerce providers by making the shift to foreign markets less challenging, but also increase the confidence of foreign businesses to partner with domestic companies. However, e-commerce providers in the health sector noted that such regulations need to be reconciled with local regulations. There are currently contradictions between certain local regulations and GDPR. For example, the GDPR allows customers to understand and request the deletion of data stored about themselves, whereas the National e-Health Guidelines issued by the Ministry of Health do not provide for such rights.⁵

A most common complaint amongst Vietnamese providers of digital content is that they are subject to a lot of stringent regulations by the Government, including industry-specific rules, competition and consumer protection laws, *in addition to* censorship policy. All the while, they have to compete with global/foreign companies such as Google, Facebook

⁵ EU-Sri Lanka Trade Related Assistance: National Public-Private Dialogue on E-Commerce Platform Policy/ Regulatory Issues held on 2nd April 2019.

and YouTube, etc. who face much lower regulatory burdens, and whose contents are not subject to the same censorship regime. This results in a lot of difficulties for Vietnamese e-commerce providers to compete on equal footing with global/foreign companies right on their home market.

However, E-commerce providers have mixed views regarding the regulation of the e-commerce sector of the country to face competition from foreign firms. Some entities such as the Tourist Hotels Association of Sri Lanka, which face increasing competition from international e-commerce providers such as Airbnb and Booking.com, have requested the government to regulate e-commerce businesses.⁶

Interestingly, the Ho Chi Minh City Tax Department recently examined revenue data related to the companies stored at a bank headquartered in District 3, HCM City, which showed that 423,000 transactions worth a total \$672.8bn VND (approximately US\$29.64mn) were made in 2016. According to this bank and three other credit institutions, a total of \$1,052bn VND (nearly US\$46.34mn) were sent to Facebook and Google headquarters as earnings in Vietnam, in the same year, made via advertising and other commercial activities on their platforms. Local tax authorities, however, were unable to collect a single penny due to lack of appropriate tax regulations.⁷

The specific issue of online

⁶ U.S. Department of Commerce, 'Sri Lanka - ECommerce', 10 October 2018, available at: <https://www.export.gov/article?id=Sri-Lanka-eCommerce>, [accessed on: April 2019].

⁷ See, for example, <<https://tuoitrenews.vn/news/business/20171214/vietnam-taxman-has-self-to-blame-for-failure-to-have-facebook-google-pay-taxes/43146.html>>, and <<http://sggpnews.org.vn/national/tax-payment-of-google-facebook-in-vietnam-considered-not-sufficient-74380.html>>

consumer privacy or protection in e-commerce

With respect to consumer privacy protection, awareness among the e-commerce providers is generally low. In Pakistan, few were aware of the recent introduction of a draft law on data protection and privacy by the IT and telecom ministry.⁸ While those who are unaware of the consumer privacy protection law in Pakistan and in other concerned countries seem to have formulated their own standards and rules to keep the consumer privacy intact, often based on international best practises. Nonetheless, instances of consumer privacy violation continue to prevail. Pakistan's history has a number of scams and frauds that have gone unpunished and not reimbursed by the government; this was a general perception of the respondents. This lack of regulation has lessened the domestic and foreign consumer confidence in the governmental policies.

In Sri Lanka, though the Consumer Affairs Authority Act (CAAA), No. 9 of 2003 provides a framework for the protection of consumers in a traditional setting, it is not sufficient to resolve disputes in a digital era where transactions occur on digital platforms.⁹ The CAAA does not confer the Consumer Affairs Authority (CAA) with any specific authority to regulate online trade and services.¹⁰ However, a new consumer protection

⁸ Data Protection Law. *Dawn*. Date accessed: April 18, 2019. Retrieved: <https://www.dawn.com/news/1455963>

⁹ The Island, 'Gaps Exist in Digital Consumer and Data Protection Laws in Sri Lanka' Experts Discuss Consumer Rights in the Digital Age at Forum Organized by IPS', 17 March 2017, available at: http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=162068, [accessed on: April 2019].

¹⁰ Bamunu Achchige Rishanthi Ruwanthika Ariyaratna, *OUSL Journal* 13, no. 2 (2018): 5–23, 'Protection of

framework, which includes new legislation that suits the e-commerce marketplace in the country is being drafted. The framework aims to protect consumers at pre-purchase, purchase and post-purchase stages by strengthening consumer rights and knowledge under five priority areas: access, education, awareness, payments and data protection.¹¹

In Myanmar there is a policy brief overview for a Data Protection Law, that aims at ensuring consumer privacy: released at the Digital Rights Forum in January 2019. This brief only aims to contribute to an informed discussion in Myanmar on these topics, to support the Myanmar Government, private sector and civil society in establishing a law that would protect data and human rights.

It is important to note that inappropriate regulations will increase the cost of doing business, limit innovation, hamper growth and ultimately result in lessened consumer welfare. An example is the Law on Cyber-Security, enacted in 2018 in Viet-Nam which prescribes a forced data localization regime by requiring all foreign online service providers (including Facebook, Google, and Twitter) to store their Vietnamese users' data exclusively in Vietnamese data centers. This restrictive policy is seen by many as going against the government's market liberalization commitments, while also affecting the overall security level of the data storage system. In fact, and this applies for the all region, large scale enterprises may have the capacity to bear the additional costs and establish local data centers; however, SMEs will not be able to do the same. This

would put local SMEs in the e-commerce sector in Sri Lanka at a disadvantaged position. Hence, as pointed out by a leading online shopping platform, data localization laws similar to those of Australia would be preferred by local players, whereby the government identifies specific safe harbor countries in which e-commerce providers can locate their data.¹²

Specific challenges faced by e-commerce providers in S&SEA, related to internal & external capacity constraints

Internal constraints are those that originate from organizational resources i.e. barriers that are informational, functional or marketing related. They are differentiated from external constraints that a firm faces during the process of exports i.e. procedural, governmental or environmental.

Examples of internal capacity constraints

From the findings of the interviews, the internal capacity constraints faced by S&SEA commerce providers could be summarized as: low level of marketing expertise; poor online visibility; poor public relations/networking skills; inadequate technical knowledge; poor market information; lack of awareness regarding national and international

Consumer Rights on the Internet: Prospects and Challenges for the Sri Lankan Legal System'.

¹¹ 'Sri Lanka Updating E-Commerce Consumer Protection Laws', 6 September 2018, available at: https://economynext.com/Sri_Lanka_updating_e_commerce_

[consumer_protection_laws-3-11805-7.html](#), [accessed on: April 2019].

¹² EU-Sri Lanka Trade Related Assistance: National Public-Private Dialogue on E-Commerce Platform Policy/ Regulatory Issues held on 2nd April 2019.

rules and policies; and lack of interoperability and transferability of data between e-commerce platforms.

One concrete example of those constraints is, while the regulations are in place to accept e-signatures following the recent updates to the Electronics Transaction Act, regulatory support has not translated into practical usage in both the private sector and public sector. In Sri Lanka, all banks and legal institutes still request physical signatures even in the presence of e-signatures.^{13,14}

Demand for IT workers is increasing by 47 percent per year, and to meet this demand Vietnam will need an estimated one million more workers in the sector by 2020.¹⁵ If this demand is not met, undoubtedly the digital competitiveness of Vietnamese business would suffer. It is therefore extremely crucial for the country to invest more in developing a highly-qualified IT workforce with sufficient English proficiency in the future. To prevent the continuous brain drain in the region, some were of the view that the government should have policies aimed at retention of workers in the country to support the industry.¹⁶

Examples of external capacity constraints

From the findings of the interviews, the external capacity constraints faced by S&SEA commerce providers could be summarized as: absence of competition policy; weak protection of intellectual property rights; power outages disrupting internet

connection; poor internet services (slow speed, frequent disconnections etc.); absence of international payment system providers such as PayPal leading to complex payment procedures; issues in accessing business finance/credit; stringent national rules and regulations for business start-up and operations; weak consumer privacy protection policies; inadequate digital service trade facilitation by the government; lack of trust in electronic-payment culture; insufficiency of legal systems to enforce digital service contracts; stringent international rules and regulations; incidences of cyber crime, and absence of a national and/or regional platform providing export market information.

In Cambodia, Laos PDR and in Nepal, the fact that the internet coverage is mostly available in cities and in urban areas were pointed out as one of the main barriers to operate and expand in the e-commerce sector. However, it was emphasised that those countries can learn from each other, within the ASEAN region, on how to approach this challenge. Given the fast pace of technological change and the continual decline in prices, barriers are expected to diminish especially due to their geographic location within the dynamic ASEAN region.

Audience who opt for online services still represents a small number of Cambodian populations, with very little trust of online stores.¹⁷ They are extremely skeptical that goods/products will actually arrive at their place once money is paid in advance.¹⁸ It is the same for Sri Lankans, who are new to the concept of

¹³ Key Person Interview with a local IPG provider. 7 May 2019.

¹⁴ Key Person Interview. Tickets.lk, 6 May 2019.

¹⁵ According to the Ministry of Information and Communication of Vietnam, see <http://english.mic.gov.vn/Pages/TinTuc/133206/Vietnam-lacks-high-quality-IT-workforce.html>

¹⁶ Key Person Interview. Busseat.lk. 7 May 2019

¹⁷ *E-Commerce in Cambodia*. Retrieved from <https://digitalrain.agency/e-commerce-cambodia/>

¹⁸ *E-Commerce in Cambodia*. Retrieved from <https://digitalrain.agency/e-commerce-cambodia/>

online purchases, and tend to have security concerns regarding online payments as well as their personal data.¹⁹ Therefore, convincing consumers to try out products of a store that they have not visited in person tends to be somewhat daunting for e-commerce entities, especially for startups that are yet to prove their trustworthiness.

Another concrete example of those external constraints is that a recent Central Bank regulation in Sri Lanka requires all mobile applications handling payments to be audited by a Central Bank approved entity. However, such approved entities demand extremely high fees (approximately Rs. 1 million) for such services. Hence, this regulation has proven to be more of a burden than an asset to the e-commerce sector.²⁰

The limited operations of key global Internet Payment Gateways have restricted the capacity of e-commerce operators, especially with regard to cross-border trade. Many of the companies interviewed cited the absence of Paypal as a business impediment. Even though local financial technology start-ups have come up with alternative IPGs to international ones and those provided by local banks and financial institutions, all of these have been in operation only for a few years and do not have brand credibility. Moreover, financial institutes that provide IPGs in the country tend to charge high

usage fees in the forms of initial charges, monthly recurring fees and transaction fees, which reduce the profit margins of e-commerce providers, especially those of small-scale businesses and start-ups.

Finally, a majority of e-commerce providers stated that they have limited access to comprehensive and up-to-date information on regulations, and market opportunities in relation to both domestic and foreign markets. Hence, many businesses rely on their own independent research to keep themselves informed on such topics. This has proven to be a challenge in making effective business decisions. In this regard, a number of e-commerce providers interviewed expressed the pertinent need to establish a single source to obtain up-to-date information that is easily accessible by the public.

To conclude this note, it could be interestingly pointed out that no special challenges/capacity constraints were mentioned by women e-commerce service providers interviewed in the region, except from traditional trade and gender related challenges.

¹⁹ Kantar, 'Increased Use of Mobile in Sri Lanka, Is ECommerce Next?', available at: <http://www.tnsglobal.com/asia-pacific/intelligence->

[applied/increase-use-mobile-sri-lanka-ecommerce-next](#), [accessed on: April 2019].

²⁰ Key Person Interview. Tickets.lk, 6 May 2019.



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