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The Impact of Data and Privacy Frameworks on Foreign Direct Investment and Technology Transfers in Cambodia

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Synopsis

Data from the United Nations Trade and Development organization indicates that annual FDI into Cambodia has averaged 13% of the country's GDP from 2010 to 2022. Much of Cambodia's foreign investment is sourced from the PRC in the form of infrastructure and manufacturing investments. A critical driver of Cambodia's future economic growth will be the strategic utilization of technology to transition into higher value-add industries. This paper investigates the relation between Cambodia's data policies and the development of these advanced industries critical to the country's future growth. This paper begins with background information and summary statistics on FDI in Cambodia, followed by an assessment of the country's technical readiness for technological innovation. Building technical capacity in Cambodia will likely require the coordination and absorption of foreign technical knowledge. The analysis then delves into the relationship between FDI and data policies such as privacy laws, data transfer agreements, and cybersecurity standards. A comparative analysis of Cambodia's data policies with those of other ASEAN countries and select East Asian nations highlights areas where improvements to Cambodia's laws can be made. This paper also explores the impact of Cambodia's current laws on technological and economic development. The conclusion hypothesizes that foreign entities are more likely to invest in Cambodia if the country has transparent, robust, and internationally compliant data policies in place. The findings suggest that robust privacy laws, a stable regime of internet rights, foundational cybersecurity policies, and the free flow of data can power Cambodia's future economic growth.

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List of Abbreviations

Abbreviation	Definition
AEC	ASEAN Economic Community
AI	Artificial Intelligence
AIC	Aisa Internet Coalition
APPI	Japan Act on the Protection of Personal Information
APT	Asia Pacific Telecommunity
BRI	Belt & Road Initiative
CDC	Council for the Development of Cambodia
CFAA	U.S. Computer Fraud and Abuse Act of 1986
CIB	Cambodia Investment Board
CII	Critical Information Infrastructure
Civil Code	Civil Code of the Kingdom of Cambodia 2007
COPPA	U.S. Children's Online Privacy Protection Act
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CSA	Cyber Security Agency of Singapore
DEA	Digital Economy Agreement
DEFA	Digital Economy Framework Agreement
ERIA	Economic Research Institute for ASEAN and East Asia
EU	European Union
FASMEC	Federation of Associations for Small and Medium Enterprises of Cambodia
FDI	Foreign Direct Investment
Fintech	financial technology
FTA	Free Trade Agreement
GDA	Global Data Alliance
GDPR	General Data Protection Regulation
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Commission of Jurists
ICT	Information and Communications Technology
IMF	International Monetary Fund
IP	Intellectual Property
ITIF	Information Technology and Innovation Foundation
ITU	International Telecommunication Union
KYC	Know Your Customer
MISTI	Ministry of Industry Science Technology and Innovation
MOC	Ministry of Commerce
MOI	Ministry of Interior
MPTC	Ministry of Posts and Telecommunications
MoU	Memorandum of Understanding
NBC	National Bank of Cambodia
NCCP	National Committee for Consumer Protection
PDPA	Singapore Personal Data Protection Act
Penal Code	Criminal Code of the Kingdom of Cambodia
PII	Personally Identifiable Information
PIPA	South Korea Personal Information Protection Act
PIPL	PRC Personal Information Protection Law
PRC	People's Republic of China

QIP	Qualified Investment Project
RCEP	Regional Comprehensive Economic Partnership
SEZ	Special Economic Zone
SME	Small and Medium sized Enterprises
SOE	State Owned Enterprise
South Korea	Republic of Korea
TIFA	Trade and Investment Framework Agreement
UAE	United Arab Emirates
UNCTAD	United Nations Trade and Development
USAID	U.S. Agency for International Development
VOA	Voice of America

Foreign Direct Investment in Cambodia

Cambodian Foreign Direct Investment Statistics

FDI into Cambodia comprises a comparatively high percentage of the nation's GDP when compared to other ASEAN nations. FDI equaled 12.1% of Cambodia's GDP in 2022 whereas the Lao People's Democratic Republic, the next closest ASEAN country in the metric besides Singapore, totaled only 5.7%.¹ Additionally, there are slight variations between figures reported by various data collecting organizations like the CDC and external entities like UNCTAD. The CDC is the highest decision-making body for private and public sector investment in Cambodia, chaired by the Prime Minister and composed of senior ministers from relevant government agencies, with a mission to promote and facilitate foreign and local investments to foster a healthy private sector and achieve sustainable economic development. FDI into Cambodia reportedly totaled \$4.92 billion USD in 2023.² For the first two months of 2024, the CDC reported \$1.3 billion in FDI.³ Attracting high quality FDI is especially important considering that the Lowy Institute reported a 30% drop in official development finance in 2022 following the pandemic.⁴

Not all FDI is created equal or has the same propensity to move Cambodia's exports further up the value chain. Historically, most of the FDI into Cambodia's manufacturing has been funneled towards the lower value-added textile and garments industry.⁵ This is due to the textile industry's reliance on the lower cost of labor in Cambodia to promote exports. General garments exports comprised 68% of Cambodia's total exports from 2015-2022 according to the IMF.⁶ ERIA researchers stated that these "FDI industries create fewer backward linkages to domestic industries, investment in R&D, and development and investment in human capital; have little impact on increasing local wages; and also cause less investment in critical infrastructure for the network economies linked to GVC networks."⁷ The next phase of Cambodia's economic and industrial development is "unlikely to happen naturally and will require government intervention and/or policy reforms."⁸ This paper will touch on the data policy reforms that will best position Cambodia to succeed in its next stage of development.

¹ World Bank, *Foreign Direct Investment, Net Inflows (% of GDP) (2022)*, <https://data.worldbank.org/indicator/BX.KLT.DINV.WD.GD.ZS?end=2022&locations=KH-TH-VN-LA-MY-BN-MM-PH-ID&start=1990&view=chart>.

² *Cambodia Attracts \$1.3 Billion in FDI Inflows*, KHMER TIMES (Mar. 11, 2024), <https://www.khmertimeskh.com/501453553/cambodia-attracts-1-3-billion-in-fdi-inflows/>.

³ *Chinese Investment Passes \$1.3B in Jan-Feb, 40% of Total*, PHNOM PENH POST (Mar. 10, 2024), <https://www.phnompenhpost.com/business/chinese-investment-passes-1-3b-in-jan-feb-40-of-total>.

⁴ *International Aid Decline Raises Concerns for Cambodia's Economic Stability*, PHNOM PENH POST (Jun. 13, 2024), <https://www.phnompenhpost.com/business/international-aid-decline-raises-concerns-for-cambodia-s-economic-stability->.

⁵ Jayant Menon & Sothea Oum, *Investment Facilitation and Promotion in Cambodia: Impact of Provincial-level Characteristics on Multinational Activities*, ERIA (2024), <https://www.eria.org/uploads/Investment-Facilitation-and-Promotion-in-Cambodia-Impact-of-Provincial-level-Characteristics-on-Multinational-Activities-.pdf>.

⁶ IMF, *Cambodia: 2023 Article IV Consultation*, IMF Country Report No. 23/123 (2023).

⁷ Jayant Menon & Sothea Oum, *Investment Facilitation and Promotion in Cambodia: Impact of Provincial-level Characteristics on Multinational Activities*, ERIA (2024), <https://www.eria.org/uploads/Investment-Facilitation-and-Promotion-in-Cambodia-Impact-of-Provincial-level-Characteristics-on-Multinational-Activities-.pdf>.

⁸ Jayant Menon, *Cambodia: Policies to Increase the Inclusiveness, Resilience, and Sustainability of Economic Growth*, EURASIA REV. (June 2, 2024), <https://www.eurasiareview.com/02062024-cambodia-policies-to-increase-the-inclusiveness-resilience-and-sustainability-of-economic-growth-analysis/>.

Infrastructure is one of the primary areas that has received significant foreign investment in recent years. Infrastructure can be a force multiplier for the development of the country. The NBC reported that infrastructure QIPs totaled \$2.676 billion USD in 2022 and 2023 combined.⁹ This was equal to 38% of the value of all investment projects over the two-year span.¹⁰ Additionally, the Lowy Institute reported that transportation and storage projects accounted for 31.1% of all development financing in the period from 2015 to 2022.¹¹ Cambodia should seek out investment projects, whether financed by foreign investment or borrowings, that have the highest probability of delivering sustainable growth in an inclusive manner.¹² Cambodia should continue to pursue infrastructure investments that enable the private-sector expansion of higher value add industries.

Jayant Menon from ISEAS - Yusof Ishak Institute has proposed “setting-up an independent Foreign Investment Review Board, operating as a non-statutory body with inter-ministerial and multi-stakeholder representation, to assess individual proposals in a purely advisory capacity.”¹³ The objective of the review process would be to ensure that FDI is targeted toward higher value add sectors and industries.¹⁴

Technology Transfers

Although Reth Soeng and Thach Kao from ERIA have complained that “[d]igital transformation has become a popular buzzword in government policy documents,” attracting foreign investment alongside technology transfers remain an important aspect of generating sustainable economic growth.¹⁵ Cambodia views digitalization as “an important driver for promoting national economic activities and inclusiveness; enhancing internal business processes, efficiency, and productivity; promoting inclusiveness; and boosting international commercial activities, i.e. international trade, and [FDI].”¹⁶ Jayant Menon from the ISEAS - Yusof Ishak Institute emphasized that Cambodia must remain open to importing skills and technology to help it achieve its economic goals.¹⁷

Even more important than the exact annual dollar value of FDI is the ability of Cambodia to accrue technology transfers. Technology transfers can play a pivotal role in Cambodia’s development by serving as a catalyst for economic growth and industrial advancement. Technology transfers are more than simple fixed asset investments and involve the movement of skills, knowledge, technologies, and manufacturing methods from an external entity into Cambodia via licensing agreements, joint ventures, and other informal means. Technology transfers also contribute to the development of human capital because

⁹ National Bank of Cambodia, *Economic and Monetary Statistics Bulletin*, Jan. 2024, https://www.nbc.gov.kh/download_files/publication/eco_mon_sta_eng/Review%20363%20Jan-2024_En.pdf.

¹⁰ *Id.*

¹¹ Lowy Institute, *Southeast Asia Aid Map*, <https://seamap.lowyinstitute.org/country/cambodia/>.

¹² Jayant Menon, *Cambodia: Policies to Increase the Inclusiveness, Resilience, and Sustainability of Economic Growth*, EURASIA REV. (June 2, 2024), <https://www.eurasiareview.com/02062024-cambodia-policies-to-increase-the-inclusiveness-resilience-and-sustainability-of-economic-growth-analysis/>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ ECONOMIC RESEARCH INSTITUTE FOR ASEAN AND EAST ASIA, *Investment Facilitation and Promotion in Cambodia: Impact of Provincial-level Characteristics on Multinational Activities*, https://www.eria.org/uploads/10_Chapter-9-The-Case-of-Cambodia.pdf.

¹⁶ *Id.*

¹⁷ Jayant Menon, *Cambodia: Policies to Increase the Inclusiveness, Resilience, and Sustainability of Economic Growth*, EURASIA REV. (June 2, 2024), <https://www.eurasiareview.com/02062024-cambodia-policies-to-increase-the-inclusiveness-resilience-and-sustainability-of-economic-growth-analysis/>.

advanced technologies are often introduced via training programs. The knowledge spillover will help to extend the benefits of the technology transfer beyond the immediate recipients.

Cambodia must attract investment into higher value-added industries to increase productivity, acquire advanced technologies, and develop higher quality exports. The Phnom Penh Post reported that economists at the 2024 Economic and Real Estate Situation conference emphasized the need for Cambodia to diversify its exports into higher value-added goods.¹⁸ The enhanced competitiveness that results from technology transfers can lead to increased exports, a favorable balance of trade, and a stronger economy. Te Taingpor, president of the FASMEC, “stressed the significance of knowledge and technology in promoting and enhancing local production capacity.”¹⁹ Cambodia should promote industries and development that enable it to conduct what is referred to as “moving up the value-chain by engaging in higher value-added activities and in manufacturing, and is associated with greater participation in global value or supply chains.”²⁰

One caveat is that technology transfers will not occur without a robust legal and regulatory framework. A data regime that enables companies and the public at large to benefit from digital transformation can enable the operating income of firms “to increase from 5% to 15%, their operating costs [] to fall by between 10% and 20%, and internal business [efficiency] to improve by more than 30%.”²¹ In Indonesia, Malaysia, the Philippines, Singapore, and Thailand, ICT infrastructure was “positively associated with the economic performance of these countries through enhancing total factor productivity.”²² Data policies can range from digital governance strategies to privacy laws all in the name of facilitating FDI inflows by reducing time and cost impediments.²³ As an example, prior studies have demonstrated that “e-government is positively associated with FDI,” with the estimate that if there was a “1% increase in the level of readiness to adopt and implement digital government in Cambodia, all else being equal, [it would] lead[] to an estimated 4.66%–6.33% increase in Cambodia’s exports to the rest of the world.”²⁴ Cambodia’s willingness to adopt digital policies that adhere to international standards may fuel the countries next stage of development.

ERIA researchers reported that “[i]n addition to the garment sector, the assembly and manufacturing of electronics and automobile parts are becoming more visible in recent years, contributing to the pace of diversification of the manufacturing sector.”²⁵ One example of a higher value-add manufacturing investment is ADATA Technology's commitment to build an electronics processing plant for USB hard drives from 2024 to 2027 for around \$100 million

¹⁸ Hin Pisei, *Economists: Focus on Added Value Needed*, PHNOM PENH POST (Mar. 12, 2024), <https://www.phnompenhpost.com/business/economists-focus-on-added-value-needed>.

¹⁹ *Id.*

²⁰ Jayant Menon, *Cambodia: Policies to Increase the Inclusiveness, Resilience, and Sustainability of Economic Growth*, EURASIA REV. (June 2, 2024), <https://www.eurasiareview.com/02062024-cambodia-policies-to-increase-the-inclusiveness-resilience-and-sustainability-of-economic-growth-analysis/>.

²¹ ECONOMIC RESEARCH INSTITUTE FOR ASEAN AND EAST ASIA, *Investment Facilitation and Promotion in Cambodia: Impact of Provincial-level Characteristics on Multinational Activities*, https://www.eria.org/uploads/10_Chapter-9-The-Case-of-Cambodia.pdf.

²² *Id.*

²³ *Id.*

²⁴ ECONOMIC RESEARCH INSTITUTE FOR ASEAN AND EAST ASIA, *Investment Facilitation and Promotion in Cambodia: Impact of Provincial-level Characteristics on Multinational Activities*, https://www.eria.org/uploads/10_Chapter-9-The-Case-of-Cambodia.pdf.

²⁵ Jayant Menon & Sothea Oum, *Investment Facilitation and Promotion in Cambodia: Impact of Provincial-level Characteristics on Multinational Activities*, ERIA (2024), <https://www.eria.org/uploads/Investment-Facilitation-and-Promotion-in-Cambodia-Impact-of-Provincial-level-Characteristics-on-Multinational-Activities-.pdf>.

USD.²⁶ Overall, the CDC reported that investment into industrial projects accounted for 92 percent of FDI in 2023.²⁷ Shandre Mugan Thangavelu, the head of the Jeffrey Cheah Institute for Southeast Asia, emphasized that it is “critical to maintain market-based and rule-based market access through multilateral and bilateral FTAs to develop horizontal and vertical diversification of GVC activities.”²⁸ Many modern FTAs include provisions to standardize digital rules and regulations. Most economic analysis and commentary indicate that Cambodia achieve greater progress towards its economic development goals if it joined several of the DEAs and other data policy standardization efforts actively being negotiated.

Technology Imports & Exports

Cambodia is becoming increasingly dependent on the PRC where the “total sectoral input has increased from about 5 percent in 2007 to about 18 percent in 2020.”²⁹ Garment exports “comprised around 70% of the country’s total exports” in 2017.³⁰ Cambodia has begun the process of diversifying its exports to include “higher value-added GVC [global value-chain)] goods, including electronic, electrical, furniture, leather and wood products,” but, the country still has a long way before it achieves parity with other ASEAN member states in this respect.³¹ The United States was the destination export market for 40% of Cambodia’s goods in 2022, although that decreased to 34% in the first five months of 2024.³² The decrease follows the general post-pandemic slowdown in goods imports in the United States. Traditionally the EU has been the second largest export market for Cambodia, but Shandre Mugan Thangavelu from the Jeffrey Cheah Institute for Southeast Asia reported that “ASEAN surpassed the EU in 2023 to become the second-largest regional export market.”³³ This may be a positive development if Cambodia is able to diversify its export market to include its rapidly expanding neighbors.

Cambodia’s Digital Infrastructure

Cambodia’s digital infrastructure has developed rapidly over the last decade. Digital infrastructure encompasses the “development of broadband access, hardware, software, data cent[ers], and modern network.”³⁴ Although Cambodia only ranked 106th in the Network

²⁶ *Cambodian Economy Set to Grow with ADATA Technology’s \$100 Million Investment*, KHMER TIMES (Dec. 20, 2022), <https://www.khmertimeskh.com/501407744/cambodian-economy-set-to-grow-with-adata-technologys-100-million-investment/>.

²⁷ *Cambodia Attracts \$1.3 Billion in FDI Inflows*, KHMER TIMES (Mar. 11, 2024), <https://www.khmertimeskh.com/501453553/cambodia-attracts-1-3-billion-in-fdi-inflows/>.

²⁸ *Export Diversification and Structural Transformation of Cambodia’s Post-Covid Recovery*, PHNOM PENH POST (June 12, 2024), <https://www.phnompenhpost.com/opinion/export-diversification-and-structural-transformation-of-cambodia-s-post-covid-recovery>.

²⁹ IMF, Cambodia: 2023 Article IV Consultation, IMF Country Report No. 23/123 (2023).

³⁰ Jayant Menon & Sothea Oum, *Investment Facilitation and Promotion in Cambodia: Impact of Provincial-level Characteristics on Multinational Activities*, ERIA (2024), <https://www.eria.org/uploads/Investment-Facilitation-and-Promotion-in-Cambodia-Impact-of-Provincial-level-Characteristics-on-Multinational-Activities-.pdf>.

³¹ *Export Diversification and Structural Transformation of Cambodia’s Post-Covid Recovery*, PHNOM PENH POST (June 12, 2024), <https://www.phnompenhpost.com/opinion/export-diversification-and-structural-transformation-of-cambodia-s-post-covid-recovery>.

³² *Id.*

³³ *Id.*

³⁴ ECONOMIC RESEARCH INSTITUTE FOR ASEAN AND EAST ASIA, *ASEAN Digital Community 2045*, <https://www.eria.org/uploads/ASEAN-Digital-Community-2045-DP.pdf>.

Readiness Index 2021 out of 130 economies, the nation's telecommunications infrastructure has progressed rapidly in urban areas.³⁵

Telecommunications Services Providers

More than three in four Cambodians used the Internet in 2020, and that number has only grown since.³⁶ Additionally, over half of Cambodia's internet traffic was conducted on mobile devices in 2020.³⁷

Cambodia has several undersea fiber internet cables that serves the countries' cross-border internet connections. One undersea fiber cable, the Asia-Africa-Europe-1 cable, spans 25,000 kilometers and connects Cambodia to Europe and Hong Kong.³⁸ The country has a land-based internet 'backbone' network of 19,279 km of fiber optic cable.³⁹

Cambodia has numerous fixed broadband providers, but only had a subscription rate of 1% in 2020.⁴⁰ S.I.Net and Ezecom are the largest providers while other providers include Digi, ONLINE, WiCAM, MekongNet, Opennet, and Today Communication.⁴¹ There is also Cambodia's state-owned provider, Telecom Cambodia. Recent developments in the fixed broadband market include a July 2022 deployment by Nokia of its XGS Passive Optical Network solution for SINET.⁴² Additionally, MekongNet signed a MoU with Huawei to provide high-speed internet and improved connectivity services in the country in September 2022.⁴³ Greater fiber availability and subscriptions in Cambodia would enhance access to modern, bandwidth intensive internet services for recreational and commercial purposes.

The wireless internet market is comparatively more advanced and widely adopted in Cambodia. It was estimated that at least 91% of the population was covered by 4G networks in 2020.⁴⁴ As of February 2023, it has been reported that 4G networks cover 95.7% of the population and 74% of the land area.⁴⁵ Additionally the average monthly mobile internet traffic consumption was around 11.6 GB in 2020, and that figure has almost certainly grown since.⁴⁶

³⁵ National Information Society Agency, *Technical Assistance Report for Open Government Data in Cambodia: APT Expert Mission 2022* (prepared for the Cambodian Ministry of Posts and Telecommunications).

³⁶ *Id.*

³⁷ STATISTA, *Share of Internet Traffic by Device in Cambodia*, <https://www.statista.com/statistics/803927/share-of-internet-traffic-by-device-cambodia/>.

³⁸ MORDOR INTELLIGENCE, *Cambodia Telecom Market - Size, Share & Industry Analysis*, <https://www.mordorintelligence.com/industry-reports/cambodia-telecom-market>.

³⁹ *Q&A with the Telecommunications Regulator of Cambodia*, INTERNATIONAL INSTITUTE OF COMMUNICATIONS, <https://www.linkedin.com/pulse/q-telecommunications-regulator-cambodia--1e>.

⁴⁰ National Information Society Agency, *Technical Assistance Report for Open Government Data in Cambodia: APT Expert Mission 2022* (prepared for the Cambodian Ministry of Posts and Telecommunications).

⁴¹ MANGOTANGO ASIA, *eCommerce: Readiness and Opportunities in Cambodia, Overview of Cambodia's eCommerce Market Landscape* (Jan. 2017), https://unctad.org/system/files/official-document/dtlstict2017d2_en.pdf.

⁴² MORDOR INTELLIGENCE, *Cambodia Telecom Market - Size, Share & Industry Analysis*, <https://www.mordorintelligence.com/industry-reports/cambodia-telecom-market>.

⁴³ *Id.*

⁴⁴ National Information Society Agency, *Technical Assistance Report for Open Government Data in Cambodia: APT Expert Mission 2022* (prepared for the Cambodian Ministry of Posts and Telecommunications).

⁴⁵ *Q&A with the Telecommunications Regulator of Cambodia*, INTERNATIONAL INSTITUTE OF COMMUNICATIONS, <https://www.linkedin.com/pulse/q-telecommunications-regulator-cambodia--1e>.

⁴⁶ National Information Society Agency, *Technical Assistance Report for Open Government Data in Cambodia: APT Expert Mission 2022* (prepared for the Cambodian Ministry of Posts and Telecommunications).

The largest wireless carriers are Metfone, Smart Axiata, and Cellcard. These three providers account for 90% of wireless subscribers in Cambodia.⁴⁷ The corporate name for Metfone is Viettel (Cambodia) Pte., Ltd., which is owned by a Vietnam state-owned enterprise. Metfone is the largest telecommunications operator in Cambodia with more than nine million subscribers and nearly 50 percent of the market share.⁴⁸ Its annual revenue is estimated at \$144 million.⁴⁹ Smart Axiata is owned by an assortment of Malaysian sovereign wealth funds and has an estimated 8 million subscribers.⁵⁰ Its annual revenue is estimated at \$369 million.⁵¹

Cambodia also had several smaller wireless carriers, but the industry has undergone significant consolidation in recent years. CamGSM Co., Ltd. (“Cellcard”), another wireless carrier in Cambodia, is owned by the Royal Group of Cambodia. Other wireless carriers in the country include Cambodia Advance Communications Co., Ltd. (“qb”), Xinwei Cambodia Telecom Co., Ltd (“CooTel”), Southeast Asia Telecom (Cambodia) Co., Ltd. (“SEATEL”). The carrier “qb” was reportedly stripped of its spectrum license in 2020.⁵² CooTel is owned by Beijing Xinwei Technology Group.⁵³ SEATEL is believed to be owned by the Southeast Asia Telecom Group, a Singapore-registered company whose investors include Hong Kong’s First Oriental Holdings Limited and Sun Bright International Holdings Ltd.⁵⁴

Data Centers

While the internet infrastructure in Cambodia has developed at a rapid rate in the last decade, it still has considerable progress to make in its domestic server and cloud infrastructure. Many of the most popular apps, websites, and services are hosted on servers outside the country. This is likely due to both the lack of server availability and Cambodia’s data policies. It was announced in 2023 that EZECOM would partner with Amazon Web Services to offer the “digital expertise of a leading cloud service provider in computing, storage, database, security, management, and networking.”⁵⁵

Technology Services

The most popular websites and mobile applications in Cambodia include social media websites, banking apps, and video games. The overall social media penetration rate in Cambodia was 74% in 2021.⁵⁶ Facebook is one of the most popular social media apps in

⁴⁷ *Cambodia Telecom Market 2024-2032*, MARKWIDE RESEARCH (2024), <https://markwideresearch.com/cambodia-telecom-market/>.

⁴⁸ *Metfone Celebrates 14th Anniversary*, KIRIPOST (2024), <https://kiripost.com/stories/metfone-celebrates-14th-anniversary>.

⁴⁹ *Metfone Profile*, ROCKETREACH, https://rocketreach.co/metfone-profile_b50f7608f9c8b713.

⁵⁰ *Case Study: TELCO-Smart Axiata*, HUBSPOT, <https://cdn2.hubspot.net/hubfs/2238292/Case%20Studies/Case%20Study-TELCO-Smart%20Axiata.pdf>.

⁵¹ *Smart Axiata Profile*, ROCKETREACH, https://rocketreach.co/smart-axiata-profile_b5d477a6f42e3fe8.

⁵² *Cambodia Strips CadComms of Licence and Spectrum*, DEVELOPING TELECOMS (2020), <https://developingtelecoms.com/telecom-business/telecom-regulation/9693-cambodia-strips-cadcomms-of-licence-and-spectrum.html>.

⁵³ *Chinese Firm Joins Crowded Telecom Market*, CAMBODIA DAILY (2014), <https://english.cambodiadaily.com/news/chinese-firm-joins-crowded-telecom-market-35465/>.

⁵⁴ *With \$500M, Seatel Aims to Gain on Faster 4G Network*, CAMBODIA DAILY (2015), <https://english.cambodiadaily.com/news/with-500m-seatel-aims-to-gain-on-faster-4g-network-77682/>.

⁵⁵ *ICT Market Fragmented with No Dominant Players*, KHMER TIMES (Oct. 31, 2023), <https://www.khmertimeskh.com/501384046/ict-market-fragmented-with-no-dominant-players/>.

⁵⁶ National Information Society Agency, *Technical Assistance Report for Open Government Data in Cambodia: APT Expert Mission 2022* (prepared for the Cambodian Ministry of Posts and Telecommunications).

Cambodia with more than “12.6 million users which accounts for 73.9 percent of the total population.”⁵⁷

Cambodia also has some software development companies like Morakot Technology, Khmerload, and Pathmazing that spearheading this burgeoning industry in the country.⁵⁸ Two major investors in Cambodia’s tech scene include the Smart Axiata Digital Innovation Fund and Belt & Road Capital.⁵⁹

In terms of government digital services, Cambodia has a platform for “exchanging data between different government bodies in a standardi[z]ed and secure manner” called CamDX.⁶⁰ The platform is governed by the Ministry of Economy and Finance with a total of eleven government institutions participating.⁶¹ The CamDX platform enables business owners to easily conduct online business registration while ensuring the completed data is “sent to all relevant government institutions simultaneously.”⁶² CamDX plans to launch an electronic KYC service that allows “banks and other financial institutions to request KYC data directly from the Ministry of Interior.”⁶³

CamDX is part of a larger Cambodian initiative to increase the availability and ease of access of public government data after APT declared that Cambodia was “a latecomer in the field of open data.”⁶⁴ APT emphasized that “opening up government data is fundamentally to improve openness and transparency of government while at the same time facilitating economic growth.”⁶⁵ This E-government service demonstrates that Cambodia possess the technical capability and resources to implement out a nationwide digital service.

The government organization within the country that is charged with “coordinat[ing] digital policies and initiatives” is the National Council.⁶⁶ The organization is led by the Prime Minister and seeks “to advance digital technology, improve ICT infrastructure, and elevate digital skills to bolster economic growth and citizens’ quality of life, focusing on strategy, regulation, and addressing cybersecurity and privacy issues.”⁶⁷ Another government entity involved with Cambodia’s digitization efforts is the Digital Government Committee, which “oversees digital initiatives within the government to enhance public service, transparency, and technological innovation, setting policies and standards, and fostering inter-agency collaboration.”⁶⁸

Fintech is another area where Cambodia has seen significant digitization initiatives. Available technologies in the country include mobile and QR code payments and e-wallet

⁵⁷ *Id.*

⁵⁸ William A. Heidt, *Op-Ed: Bringing Southeast Asia's Tech Boom to Cambodia*, U.S. EMBASSY IN CAMBODIA (Oct. 27, 2017), <https://kh.usembassy.gov/ambassador-heidts-op-ed-technology/>.

⁵⁹ *Why We Believe in Cambodia and Its Tech Ecosystem*, CAMBODIANESS (Jan. 24, 2021), <https://cambodianess.com/article/why-we-believe-in-cambodia-and-its-tech-ecosystem>.

⁶⁰ ECONOMIC RESEARCH INSTITUTE FOR ASEAN AND EAST ASIA, *Investment Facilitation and Promotion in Cambodia: Impact of Provincial-level Characteristics on Multinational Activities*, https://www.eria.org/uploads/10_Chapter-9-The-Case-of-Cambodia.pdf.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ National Information Society Agency, *Technical Assistance Report for Open Government Data in Cambodia: APT Expert Mission 2022* (prepared for the Cambodian Ministry of Posts and Telecommunications).

⁶⁵ *Id.*

⁶⁶ Jocelle Batapa-Sigue, *Digital Governance Forum 2024: Strengthening ASEAN Collaboration and Innovation*, JOCELLE BATAPA-SIGUE (May 5, 2024), <https://jocellebatapasigue.com/2024/05/05/digital-governance-forum-2024-strengthening-asean-collaboration-and-innovation/>.

⁶⁷ *Id.*

⁶⁸ *Id.*

accounts for domestic and cross-border payments and transfers. As early as 2016, the NBC introduced the “Fast and Secure Transfer” payment system “to facilitate instant fund transfers.”⁶⁹ The “cashless payment systems frequently used in eCommerce requires significant data flows between local and international merchants, banks, and card associations.”⁷⁰ Cross-border payments is one area where clear rules on data flows is essential. Fintech is one area that is likely to be most impacted by Cambodia’s proposed data localization requirements due to the volume of data transfers required in a modern economy.

One objective that Cambodia seeks to achieve through digital payments is the de-dollarization of its economy. Chea Serey, the NBC governor, commented at Nikkei's Future of Asia conference in Tokyo about the utilization of Cambodia’s Bakong digital financial system to increase domestic use of the Cambodian riel.

The availability and reliability of Cambodia’s digital infrastructure is critical to “modern services such as banking and finance, e-commerce, data management services, logistics and aviation” and will propel the nation “to develop competitive service sectors in the next phase of growth.”⁷¹ Data policies should plan for the requirements of these industries pursuing digitization.

Data policies play a crucial role in supporting Cambodia's FinTech efforts, particularly as the country seeks to expand its digital economy and enhance financial inclusion. The Cambodia Financial Technology Development Policy 2023-2028 emphasizes the importance of creating a robust regulatory environment that fosters innovation while ensuring financial stability.⁷² This policy aims to increase access to financial services, especially for the unbanked and underbanked populations, and to improve efficiency and competition within the financial sector.⁷³ Additionally, the Bakong System, a blockchain-based payment platform, exemplifies the integration of advanced data policies to facilitate secure and efficient digital transactions across the country.⁷⁴ By promoting the adoption of enabling technologies such as AI, big data, and blockchain, Cambodia is positioning itself to harness the full potential of FinTech, driving economic growth and social welfare in the process.⁷⁵

The development of well-thought-out, internationally standardized, and human rights-compliant data policies is essential for strengthening Cambodia's digital infrastructure. Such policies are crucial for fostering a reliable and secure digital environment that can attract FDI, which is vital for the country's economic growth and development. According to the World

⁶⁹ U.S. Department of State, *2023 Investment Climate Statements: Cambodia*, U.S. Department of State, <https://www.state.gov/reports/2023-investment-climate-statements/cambodia/>.

⁷⁰ MANGOTANGO ASIA, *eCommerce: Readiness and Opportunities in Cambodia, Overview of Cambodia’s eCommerce Market Landscape* (Jan. 2017), https://unctad.org/system/files/official-document/dtlstict2017d2_en.pdf.

⁷¹ *Export Diversification and Structural Transformation of Cambodia’s Post-Covid Recovery*, PHNOM PENH POST (June 12, 2024), <https://www.phnompenhpost.com/opinion/export-diversification-and-structural-transformation-of-cambodia-s-post-covid-recovery>.

⁷² *How Data-Driven Technology Can Upgrade Cambodia’s E-Government*, KONRAD-ADENAUER-STIFTUNG, <https://www.kas.de/en/web/kambodscha/single-title/-/content/how-data-driven-technology-can-upgrade-cambodia-s-e-government>.

⁷³ Silas Everett, *Data-Driven Policymaking in Cambodia: Progress and Challenges*, THE ASIA FOUNDATION (Aug. 31, 2022), <https://asiafoundation.org/2022/08/31/data-driven-policymaking-in-cambodia-progress-and-challenges/>.

⁷⁴ *Cambodia Financial Technology Development Policy*, Cambodian Digital Economy and Business Committee, <https://mef.gov.kh/download-counter?post=9533>.

⁷⁵ Silas Everett, *Data-Driven Policymaking in Cambodia: Progress and Challenges*, THE ASIA FOUNDATION (Aug. 31, 2022), <https://asiafoundation.org/2022/08/31/data-driven-policymaking-in-cambodia-progress-and-challenges/>.

Bank's Cambodia Economic Update, enhancing digital infrastructure is a key component of Cambodia's strategy to boost exports and integrate more deeply into regional and global markets.⁷⁶ Furthermore, UNCTAD's data highlights the importance of stable and transparent regulatory frameworks in maintaining investor confidence and sustaining FDI inflows, which have been volatile globally.⁷⁷ By aligning its data policies with international standards, Cambodia can ensure the protection of individual rights while facilitating the free flow of information, thereby enhancing its competitiveness and resilience in the digital age.

Cambodia's Legal Regime for FDI

The broader legal regime that supports FDI in the country is worth a quick mention. These laws and policies are just as crucial to ensuring Cambodia accrues the necessary technology developments as shrewd data policies. Prominent policies include IP laws, licensing rules, R&D incentives, and investment laws.

Cambodia has numerous ICT policies. In 2014, Cambodia adopted its first digital policy framework in the Cambodian ICT Masterplan 2020.⁷⁸ Two years later, the 2016 publication of the Telecom/ICT Development Policy 2020 was designed “to serve as a roadmap and mechanism for the successful development of the ICT sector.”⁷⁹ The National Digital Economic and Social Council was created by Royal Decree No. 0821/564 in 2021 to establish the following three committees: Digital Economy and Business Committee; Digital Government Committee; and Digital Security Committee.⁸⁰ Also in 2021, the Digital Economy and Society Policy Framework 2021–2035 was released to build “the digital economy as a new source of economic growth and an ecosystem that increases productivity and economic efficiency is the road to improving the well-being of the people of Cambodia.”⁸¹ The following year the Digital Government Policy, 2022–2035 was released. It sought to create structures and a legal framework that would enable the “standardization and architecture of digital government, which are in line with the international best practices.”⁸² The specific reference to international best practices is quite telling due to the numerous deviations that several of the draft laws make to normal data laws. Lastly, Cambodia hosted the Cambodia-International Digital Government and Digital Technology Expo on February 16, 2024, where digital governance, emerging technologies, cybersecurity, and digital transformation strategies were discussed.⁸³

In terms of official laws, Reachakrets, and prakas, the 1994 Law on Investment has been amended several times to shepherd the FDI environment. The 2003 Amendment to the Law on Investment created an application process for QIPs managed by the CDC. Cambodian or foreign investors were allowed to form a QIP as a “joint venture between

⁷⁶ *Global Foreign Direct Investment Flows Over the Last 30 Years*, United Nations Conference on Trade and Development, <https://unctad.org/data-visualization/global-foreign-direct-investment-flows-over-last-30-years>.

⁷⁷ *World Investment Report*, UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, <https://unctad.org/topic/investment/world-investment-report>.

⁷⁸ ECONOMIC RESEARCH INSTITUTE FOR ASEAN AND EAST ASIA, *Investment Facilitation and Promotion in Cambodia: Impact of Provincial-level Characteristics on Multinational Activities*, https://www.eria.org/uploads/10_Chapter-9-The-Case-of-Cambodia.pdf.

⁷⁹ *Id.*

⁸⁰ National Information Society Agency, *Technical Assistance Report for Open Government Data in Cambodia: APT Expert Mission 2022* (prepared for the Cambodian Ministry of Posts and Telecommunications).

⁸¹ *Id.*

⁸² ECONOMIC RESEARCH INSTITUTE FOR ASEAN AND EAST ASIA, *Investment Facilitation and Promotion in Cambodia: Impact of Provincial-level Characteristics on Multinational Activities*, https://www.eria.org/uploads/10_Chapter-9-The-Case-of-Cambodia.pdf.

⁸³ *Digital Government Forum 2024 and Cambodia-International Digital Technology Expo*, YAHOO! FINANCE (Feb. 19, 2024), <https://finance.yahoo.com/news/digital-government-forum-2024-cambodia-155100626.html>.

Cambodian entities, between Cambodian entities and foreign entities, or between foreign entities, except when the joint venture is intended for land ownership that requires a Cambodian's combined shareholding of at least 50%.”⁸⁴ Additionally QIPs could enjoy “long periods of profit tax exemption as mandated by the Law on Taxation, duty-free imports of production equipment, and export tax exemptions.”⁸⁵

In 2021, Cambodia passed a new Law on Investment.⁸⁶ The new law enabled approval of QIP registration within 20 working days, and created three types of incentives.⁸⁷ First, basic incentives included “income tax exemptions, export tax exemptions, special depreciation rates, and eligibility for customs duty exemptions and VAT exemptions for the import of construction equipment and materials.”⁸⁸ Second, additional incentives included VAT exemptions for the purchase of locally produced production inputs.”⁸⁹ Third, special incentives were “granted to investment projects that have a high potential to contribute to national economic development.”⁹⁰ The 2021 Law on Investment focused on specific sectors such as agro-processing, electronics, machinery, industrial parts, infrastructure, and green energy.

Separately, Cambodia ratified the Convention on the Settlement of Investment Disputes between the States and Nationals of Other States in 2004, which provides “a mechanism for foreign investment protection through international arbitration.”⁹¹ Foreign investors in Cambodia also have access to political risk insurance through the Multilateral Investment Guarantee Agency of the World Bank.⁹²

Cambodia's financial regulators also play a role in attracting high quality FDI. The NBC regulates the operations of banks in Cambodia and has allowed foreign banks to register and operate freely in the country.⁹³ In addition, the Cambodia Financial Intelligence Unit (CAFIU) actively monitors and combats financial crimes, enhancing the integrity of the financial system and boosting investor confidence.⁹⁴ Another positive development is that Cambodia is no longer under Financial Action Task Force's “Increased Monitoring.”^{95,96} This

⁸⁴ Jayant Menon & Sothea Oum, *Investment Facilitation and Promotion in Cambodia: Impact of Provincial-level Characteristics on Multinational Activities*, ERIA (2024), <https://www.eria.org/uploads/Investment-Facilitation-and-Promotion-in-Cambodia-Impact-of-Provincial-level-Characteristics-on-Multinational-Activities-.pdf>.

⁸⁵ *Id.*

⁸⁶ U.S. Department of State, *2023 Investment Climate Statements: Cambodia*, U.S. Department of State, <https://www.state.gov/reports/2023-investment-climate-statements/cambodia/>.

⁸⁷ *Doing Business in Cambodia: Overview*, Practical Law Country Q&A 3-524-4317 (Thomson Reuters 2023).

⁸⁸ U.S. Department of State, *2023 Investment Climate Statements: Cambodia*, U.S. Department of State, <https://www.state.gov/reports/2023-investment-climate-statements/cambodia/>.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Jayant Menon & Sothea Oum, *Investment Facilitation and Promotion in Cambodia: Impact of Provincial-level Characteristics on Multinational Activities*, ERIA (2024), <https://www.eria.org/uploads/Investment-Facilitation-and-Promotion-in-Cambodia-Impact-of-Provincial-level-Characteristics-on-Multinational-Activities-.pdf>.

⁹² U.S. Department of State, *2023 Investment Climate Statements: Cambodia*, U.S. Department of State, <https://www.state.gov/reports/2023-investment-climate-statements/cambodia/>.

⁹³ *Id.*

⁹⁴ *Cambodia Financial Intelligence Unit*, NATIONAL BANK OF CAMBODIA, <https://cafiu.nbc.gov.kh/en/>.

⁹⁵ *Outcomes FATF Plenary, 22-24 February 2023*, FINANCIAL ACTION TASK FORCE, <https://www.fatf-gafi.org/en/publications/Fatfgeneral/outcomes-fatf-plenary-february-2023.html>.

⁹⁶ Jayant Menon & Sothea Oum, *Investment Facilitation and Promotion in Cambodia: Impact of Provincial-level Characteristics on Multinational Activities*, ERIA (2024), <https://www.eria.org/uploads/Investment-Facilitation-and-Promotion-in-Cambodia-Impact-of-Provincial-level-Characteristics-on-Multinational-Activities-.pdf>.

should help to allay investor worries about money laundering and financial misconduct in Cambodia. Furthermore, the Credit Bureau Cambodia provides comprehensive credit reporting services that improve transparency and reduce credit risk, making the financial sector more attractive to foreign investors.⁹⁷

Cambodia allows for 100% foreign ownership of companies, except in the cigarette manufacturing, movie production, rice milling, and gemstone mining and processing industries.⁹⁸ Additionally, foreign investment is subject to restrictions in land ownership that limits foreign land ownership to 49% of any joint venture between a foreign and Cambodian entity.⁹⁹ Cambodia does not have any “forced localization policy that obligates foreign investors to use domestic contents in goods or technology.”¹⁰⁰ Additionally, the country “does not currently require foreign information technology providers to turn over source code.”¹⁰¹ This is a key data policy that allows companies to have confidence that critical algorithms and software will remain confidential when expanding into Cambodia. Further detail on the topic of Cambodia’s IP laws is presented later in this report. All of these policies increase Cambodia’s investment attractiveness.

Currently, there are “no restrictions on the conversion of capital for investors.”¹⁰² The country does not “impose capital control measures, and the foreign exchange law allows foreigners to transfer their profits out of Cambodia without any restrictions.”¹⁰³ Cambodia’s remittance policies are generally accommodating and “QIPs can freely remit abroad foreign currencies purchased through authorized banks for the discharge of financial obligations incurred in connection with investments.”¹⁰⁴ Additionally, Cambodia’s 1997 Law on Foreign Exchange dictates that “there shall be no restrictions on foreign exchange operations through authorized banks.”¹⁰⁵ One exception to this rule is that the NBC may “issue temporary restrictions on the activities of authori[z]ed intermediaries in times of economic or financial crisis.”¹⁰⁶ Banks must also report transactions to the National Bank of Cambodia.¹⁰⁷ The relative ease with which foreign investors can move funds helps to inspire confidence in the economic stability of the country. This is further supported by the government-managed exchange rate, which is pegged to the U.S. dollar to maintain macroeconomic stability.¹⁰⁸

Cambodia’s industrial development policy is primarily driven by the CDC.¹⁰⁹ The policy emphasizes the promotion of high-tech industries, innovation, and research and

⁹⁷ Credit Bureau Cambodia, <https://www.creditbureau.com.kh/>.

⁹⁸ U.S. Department of State, *2023 Investment Climate Statements: Cambodia*, U.S. Department of State, <https://www.state.gov/reports/2023-investment-climate-statements/cambodia/>.

⁹⁹ *Doing Business in Cambodia: Overview*, Practical Law Country Q&A 3-524-4317 (Thomson Reuters 2023).

¹⁰⁰ U.S. Department of State, *2023 Investment Climate Statements: Cambodia*, U.S. Department of State, <https://www.state.gov/reports/2023-investment-climate-statements/cambodia/>.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Jayant Menon & Sothea Oum, *Investment Facilitation and Promotion in Cambodia: Impact of Provincial-level Characteristics on Multinational Activities*, ERIA (2024), <https://www.eria.org/uploads/Investment-Facilitation-and-Promotion-in-Cambodia-Impact-of-Provincial-level-Characteristics-on-Multinational-Activities-.pdf>.

¹⁰⁴ U.S. Department of State, *2023 Investment Climate Statements: Cambodia*, U.S. Department of State, <https://www.state.gov/reports/2023-investment-climate-statements/cambodia/>.

¹⁰⁵ *Id.*

¹⁰⁶ *Doing Business in Cambodia: Overview*, Practical Law Country Q&A 3-524-4317 (Thomson Reuters 2023).

¹⁰⁷ U.S. Department of Commerce, *Cambodia - Foreign Exchange Controls*, Privacy Shield Framework, <https://www.privacyshield.gov/ps/article?id=Cambodia-foreign-exchange-controls>.

¹⁰⁸ *Id.*

¹⁰⁹ U.S. Department of State, *2023 Investment Climate Statements: Cambodia*, U.S. Department of State, <https://www.state.gov/reports/2023-investment-climate-statements/cambodia/>.

development as key areas for investment. Examples of investment incentives available to foreign entities includes “100 percent foreign ownership of companies, corporate tax holidays, reduced corporate tax rates, duty-free import of capital goods, and no restrictions on capital repatriation.”¹¹⁰ Additionally, the policy outlines incentives for industries that support regional and global production chains, agriculture, tourism, and digital industries, further enhancing Cambodia's attractiveness as an investment destination.

Cambodia’s SEZs have received particular attention from the CDC, although several economic papers question the utility of the zones. SEZs attempt to “concentrate economic infrastructure and public goods in one geographical area” and pilot “experimental new policies and approaches.”¹¹¹ The zones may also help to alleviate concentrated employment in certain areas.¹¹² SEZs in Cambodia are heavily concentrated in the export manufacturing industry.¹¹³ SEZs accounted for 15% of Cambodia’s exports in 2018, an increase from 4% in 2011.¹¹⁴ In addition to SEZs, the Ministry of Industry and Handicraft authorizes Industrial Zones.

Researchers from the ERIA found that “SEZs do not incentive[z]e foreign firms to locate themselves in the respective SEZs in the provinces.”¹¹⁵ Rather, the factors that had a positive effect on foreign investment likelihood in Cambodian districts are “roads, supply, rainfall (water supply), land area, and a young working population.”¹¹⁶ The researchers indicate that the inefficiency of the SEZs may distract the country’s investment policy makers from more promising economic ventures.¹¹⁷ Despite these findings, the Cambodian government continues to expand its SEZs, with plans to create more zones to attract investment from countries such as Korea, Japan, and the PRC.¹¹⁸ Ultimately, the Cambodian government may find higher economic returns on its time and energy by focusing on nationwide development inputs such as education and the rule of law rather than focusing on SEZs.

Cambodia’s membership in regional trade bodies and acceptance of several FTAs puts the country in a good position to attract FDI. Many of the agreements and frameworks now include varying degrees of data policies due to the growing importance of digital trade and technology in the modern economy. Cambodia has “most favo[red] nation and/or generaliz[ed] system of preference status” the United States, the EU, Korea, and Japan.¹¹⁹ This enhances Cambodia’s market access and reduces tariffs. Cambodia has also been a member of the RCEP since 2022.¹²⁰

Cambodia membership in the WTO also results in some requirements for the country’s data policies. The WTO Joint Statement on E-Commerce has rules regarding data

¹¹⁰ *Id.*

¹¹¹ Jayant Menon & Sothea Oum, *Investment Facilitation and Promotion in Cambodia: Impact of Provincial-level Characteristics on Multinational Activities*, ERIA (2024), <https://www.eria.org/uploads/Investment-Facilitation-and-Promotion-in-Cambodia-Impact-of-Provincial-level-Characteristics-on-Multinational-Activities-.pdf>.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ U.S. Department of State, *2023 Investment Climate Statements: Cambodia*, U.S. Department of State, <https://www.state.gov/reports/2023-investment-climate-statements/cambodia/>.

¹¹⁹ *Doing Business in Cambodia: Overview*, Practical Law Country Q&A 3-524-4317 (Thomson Reuters 2023).

¹²⁰ U.S. Department of State, *2023 Investment Climate Statements: Cambodia*, U.S. Department of State, <https://www.state.gov/reports/2023-investment-climate-statements/cambodia/>.

transfers and data localization.¹²¹ Additionally, the WTO General Agreement on Trade in Services requires the free transmission of computer-related services under the cross-border provision.¹²² Cambodia is theoretically required to “permit the provision such services under the WTO Government Procurement Agreement.”¹²³ Several provisions in Cambodia’s draft data laws threaten the nation’s compliance with these WTO requirements and objectives.

Cambodia’s membership in ASEAN since 1999 grants it access to ASEAN FTA. The overall purpose of the AEC is to create a single market and production base among member states. The ASEAN+3 framework, which includes ASEAN, the PRC, Japan, and South Korea, enhances regional cooperation and integration.¹²⁴ This framework has been instrumental in various areas such as economic cooperation, financial stability, and addressing transnational issues. ASEAN also has FTAs with Australia, New Zealand, the PRC, Japan, South Korea, and India.¹²⁵ Cambodia’s bilateral FTA with South Korea and another bilateral FTA with the PRC both came into effect in 2022.¹²⁶ It also signed a FTA with the UAE in 2023.¹²⁷ The United States and Cambodia signed the TIFA in July 2006 with the last TIFA meeting taking place between the signatories in January 2019.¹²⁸ The lack of recent TIFA meetings is concerning due to Cambodia’s heavy reliance on the United States as an export market.

The trade agreements that Cambodia is a member of significantly influence technology investments in the country. Specifically, RCEP enhances market access and reduces trade barriers, making Cambodia an attractive destination for technology investments.¹²⁹ This includes the tariff-free importation of ICT equipment.¹³⁰ Additionally, Cambodia’s bilateral investment treaties further bolster investor confidence by providing legal protections and facilitating smoother entry for foreign technology firms.¹³¹ These agreements collectively create a conducive environment for technology investments by ensuring market stability, reducing risks, and promoting economic integration. Consequently, Cambodia’s participation in these regional and bilateral agreements has been instrumental in attracting technology investments, fostering innovation, and driving economic growth.

Cambodia’s integration into the global financial system is influenced by its efforts to comply with international standards set by organizations like the Financial Action Task Force. Despite being previously listed as a high-risk jurisdiction, Cambodia has made several strides in addressing deficiencies related to money laundering and terrorist financing, as highlighted

¹²¹ *Cambodia Data Protection and Privacy Framework*, GLOBAL DATA ALLIANCE (Oct. 5, 2023), <https://globaldataalliance.org/wp-content/uploads/2023/10/10052023gdacambodiadatapro.pdf>.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *ASEAN Plus Three Economic Relation*, ASSOCIATION OF SOUTHEAST ASIAN NATIONS, <https://asean.org/our-communities/economic-community/integration-with-global-economy/asean-plus-three-economic-relation/>.

¹²⁵ *Export Diversification and Structural Transformation of Cambodia’s Post-Covid Recovery*, PHNOM PENH POST (June 12, 2024), <https://www.phnompenhpost.com/opinion/export-diversification-and-structural-transformation-of-cambodia-s-post-covid-recovery>.

¹²⁶ *Cambodia Attracts \$1.3 Billion in FDI Inflows*, KHMER TIMES (Mar. 11, 2024), <https://www.khmertimeskh.com/501453553/cambodia-attracts-1-3-billion-in-fdi-inflows/>.

¹²⁷ *Export Diversification and Structural Transformation of Cambodia’s Post-Covid Recovery*, PHNOM PENH POST (June 12, 2024), <https://www.phnompenhpost.com/opinion/export-diversification-and-structural-transformation-of-cambodia-s-post-covid-recovery>.

¹²⁸ U.S. Department of State, *2023 Investment Climate Statements: Cambodia*, U.S. Department of State, <https://www.state.gov/reports/2023-investment-climate-statements/cambodia/>.

¹²⁹ *Cambodia | International Investment Agreements Navigator*, UNCTAD, <https://investmentpolicy.unctad.org/international-investment-agreements/countries/33/cambodia>.

¹³⁰ *Id.*

¹³¹ *Id.*

in the Financial Action Task Force's 2023 follow-up report.¹³² This progress is crucial for enhancing the country's financial credibility and attracting foreign investments. The integration is further complicated by regional challenges in cross-border data flows, which impact economic indicators and trade patterns.¹³³ As Cambodia continues to develop its digital infrastructure, the utilization of technology and data becomes increasingly important. Effective data management and regulatory compliance are essential for fostering a secure and efficient financial environment that can support the growth of technology-driven sectors. Moreover, Cambodia's economic growth, underscores the potential for increased technological investments in the finance, provided that regulatory frameworks continue to evolve in line with global standards.¹³⁴ These developments collectively position Cambodia to better integrate into the global financial system, leveraging technology to enhance economic resilience and competitiveness.

Cambodia has several public-private sector partnerships, including the Government-Private Sector Forum.^{135, 136} Cambodia also has a plan to launch a commercial court in 2024 in Phnom Penh.¹³⁷ The objective of the court is to improve transparency and efficiency in resolving trade and investment-related disputes, thereby boosting investor confidence and reducing the reliance on offshore arbitration.¹³⁸ Ensuring proper data policies are in place will increase the likelihood of success for the commercial court.

The IMF recently emphasized that “[g]overnance and anti-corruption reforms are important to attract new FDIs and sustain high growth” in Cambodia.¹³⁹ Unfortunately, Cambodia continues to struggle in this regard. The country was ranked number 134 out of 141 countries in terms of corruption in the World Economic Forum’s 2019 Global Competitiveness Report.¹⁴⁰ Cambodia also had the second lowest ranking among ASEAN member states in Transparency International’s 2022 Corruption Perception Index where it was ranked the 150th worst country in terms of corruption.¹⁴¹ Cambodia’s economic performance is likely to be negatively impacted if corruption is not effectively dealt with since “[e]mpirical evidence has established the relationship between digital government and reduced corruption.”¹⁴²

Attempts have been made to combat corruption with the 2010 Anti-Corruption law. The law seeks to “combat corruption by criminalizing bribery, abuse of office, extortion,

¹³² U.S. Dep't of State, 2024 Investment Climate Statements: Cambodia, <https://www.state.gov/reports/2024-investment-climate-statements/cambodia/>.

¹³³ Int'l Monetary Fund, Government Finance Statistics Mission – Cambodia, <https://www.elibrary.imf.org/view/journals/029/2024/025/article-A001-en.xml>.

¹³⁴ *Cambodia Overview*, WORLD BANK, <https://www.worldbank.org/en/country/cambodia/overview>.

¹³⁵ *Government Private Sector Forum – Introduction*, INT'L BUS. CHAMBER OF CAMBODIA, <https://ibccambodia.com/gpsf-intro/>.

¹³⁶ *Government-Private Sector Forum*, CAMBODIAN FED'N OF EMP'RS & BUS. ASS'NS, <https://www.camfeba.com/representative.html>.

¹³⁷ Orm Bunthoeurn, *Commercial Court Could Function 'as Early as 2024': Justice Ministry Officials*, OPEN DEV. CAMBODIA (Feb. 3, 2023), <https://opendevelopmentcambodia.net/en/news/commercial-court-could-function-as-early-as-2024-justice-ministry-officials/>.

¹³⁸ U.S. Department of State, *2023 Investment Climate Statements: Cambodia*, U.S. Department of State, <https://www.state.gov/reports/2023-investment-climate-statements/cambodia/>.

¹³⁹ IMF, Cambodia: 2023 Article IV Consultation, IMF Country Report No. 23/123 (2023).

¹⁴⁰ U.S. Department of State, *2023 Investment Climate Statements: Cambodia*, U.S. Department of State, <https://www.state.gov/reports/2023-investment-climate-statements/cambodia/>.

¹⁴¹ *Id.*

¹⁴² ECONOMIC RESEARCH INSTITUTE FOR ASEAN AND EAST ASIA, *Investment Facilitation and Promotion in Cambodia: Impact of Provincial-level Characteristics on Multinational Activities*, https://www.eria.org/uploads/10_Chapter-9-The-Case-of-Cambodia.pdf.

facilitation payments, and accepting bribes in the form of donations or promises.”¹⁴³ The law also established the Anti-Corruption Unit and requires all civil servants to “declare their financial assets to the government every two years.”¹⁴⁴ Governance and anti-corruption reforms are critical to attract FDI by reducing the cost of doing business and “draw[ing] investments from a wider range of source countries.”¹⁴⁵ Some data policies that may help to chip away at the persistent corruption problems include incorporating whistleblower protections and ensuring access to information.¹⁴⁶

PRC's FDI: Prioritizing Infrastructure Expansion and Tariff Arbitrage Over Technological Transfers

The PRC is the major FDI player in Cambodia with its stock of FDI reaching “\$19.2 billion [USD] by the end of 2022.”¹⁴⁷ Since 2021 the PRC has “accounted for more than two-thirds of the country’s greenfield FDI capital expenditure.”¹⁴⁸ The pandemic resulted in reduced PRC investment in Cambodia. The Lowy Institute reported that “China’s development spending in Cambodia nearly doubled from 2015 to 2021 but fell dramatically to \$386 million in 2022.”¹⁴⁹ Things seem to have rebounded for the country with the CDC stating that Cambodia recorded FDI inflows of \$1.3 billion in 2023, with 80% of the financing from the PRC.¹⁵⁰

Chea Vuhty, Secretary-General of CDC’s CIB stated that the PRC accounted for about 39 percent of total investment capital in the first two months of 2024.¹⁵¹ Later in the same Khmer Times article, it was reported that “[i]nvestment from China accounts for about two-thirds of total investment capital.”¹⁵² In May 2024, the CTC reported that PRC investment accounted for 49.67% of total financing compared to just over 30% for domestic financing.¹⁵³

The PRC’s BRI has been a driving factor behind many of the PRC’s investments in Cambodia. BRI has enabled the PRC to be “seen as more active (81 percent) than all but Japan (95 percent)” in the region by a recent survey of developing nations.¹⁵⁴ Over the past decade, BRI projects have transformed Cambodia into a key trade hub within ASEAN by constructing roads, bridges, and other infrastructure. For instance, the PRC has built eight

¹⁴³ U.S. Department of State, *2023 Investment Climate Statements: Cambodia*, U.S. Department of State, <https://www.state.gov/reports/2023-investment-climate-statements/cambodia/>.

¹⁴⁴ *Id.*

¹⁴⁵ IMF, *Cambodia: 2023 Article IV Consultation*, IMF Country Report No. 23/123 (2023).

¹⁴⁶ *Id.*

¹⁴⁷ U.S. Department of State, *2023 Investment Climate Statements: Cambodia*, U.S. Department of State, <https://www.state.gov/reports/2023-investment-climate-statements/cambodia/>.

¹⁴⁸ *Cambodia Carries the Strongest FDI Momentum into 2024*, FDI INTELLIGENCE, <https://www.fdiintelligence.com/content/feature/cambodia-carries-the-strongest-fdi-momentum-into-2024-83236>.

¹⁴⁹ *International Aid Decline Raises Concerns for Cambodia’s Economic Stability*, PHNOM PENH POST (Jun. 13, 2024), <https://www.phnompenhpost.com/business/international-aid-decline-raises-concerns-for-cambodia-s-economic-stability->.

¹⁵⁰ U.S. Department of State, *2023 Investment Climate Statements: Cambodia*, U.S. Department of State, <https://www.state.gov/reports/2023-investment-climate-statements/cambodia/>.

¹⁵¹ *Cambodia Attracts \$1.3 Billion in FDI Inflows*, KHMER TIMES (Mar. 11, 2024), <https://www.khmertimeskh.com/501453553/cambodia-attracts-1-3-billion-in-fdi-inflows/>.

¹⁵² *Cambodia Attracts \$1.3 Billion in FDI Inflows*, KHMER TIMES (Mar. 11, 2024), <https://www.khmertimeskh.com/501453553/cambodia-attracts-1-3-billion-in-fdi-inflows/>.

¹⁵³ *Chinese Financing Nears 50% of Total Investment in May; U.S. Lags at Less Than 1%*, PHNOM PENH POST, <https://webcache.googleusercontent.com/search?q=cache:https://www.phnompenhpost.com/business/chinese-financing-nears-50-of-total-investment-in-may-us-lags-at-less-than-1->.

¹⁵⁴ Samantha Custer et al., *The BRI at 10: A Report Card from the Global South*, AIDDATA (Oct. 18, 2023), <https://www.aiddata.org/blog/the-bri-at-10-a-report-card-from-the-global-south>.

bridges and 3,287 kilometers of roads in Cambodia, totaling more than \$3 billion in concessional loans.¹⁵⁵

However, the benefits of BRI investments in Cambodia remain subject to debate with concerns about the quality and sustainability of these projects. Physical infrastructure projects have historically received the most FDI money in Cambodia, although manufacturing has constituted a larger percentage in recent years.¹⁵⁶ While the initiative has facilitated significant infrastructure development, such as roads, bridges, and the Sihanoukville Special Economic Zone, it has also sparked debate over the sustainability and quality of these projects.¹⁵⁷ Cambodia's heavy reliance on Chinese loans, which constitute 41% of its total foreign debt, raises concerns about potential debt traps and overreliance on a single country for economic and non-economic needs.¹⁵⁸ Some argue that this could undermine Cambodia's sovereignty and strain its relations with other ASEAN countries.¹⁵⁹ Other experts, like Jayant Menon, suggest that fears of a debt trap may be overstated, noting that BRI projects have enhanced Cambodia's export competitiveness and reduced costs for consumers and producers.¹⁶⁰ Despite these benefits, the economic gains from Chinese investments are often concentrated within Cambodia's Chinese community, limiting the trickle-down effect to local businesses.¹⁶¹ Moreover, the rapid development associated with BRI projects has led to social challenges, such as increased crime and rising property costs in areas like Sihanoukville.¹⁶² As Cambodia navigates its future with the PRC, it faces the challenge of diversifying its economic partnerships while managing its substantial debt obligations.¹⁶³

The PRC seems less concerned with Cambodia's corruption challenges with Sovinda Po from the Royal University of Phnom Penh and Christopher Primiano from Huntingdon College declaring that “Chinese actors are less concerned about the issue.”¹⁶⁴ According to a William & Mary AidData's cross-sectional survey of key personnel in low and middle-income countries, “[c]orruption was top-of-mind as a negative spillover from PRC projects for respondents across regions, attracting the largest share of negative responses (25 to 66 percent unfavorable).”¹⁶⁵ Even though the survey found that key personnel from those countries thought that PRC funding came with “fewer economic, political, or environmental conditions attached (41 percent)” and “more favorable financial terms (37 percent)[,]” the “PRC-financed projects discouraged greater transparency in reporting on

¹⁵⁵ *After 10 Years of China's BRI Projects in Cambodia, Benefits Up for Debate*, VOA NEWS, <https://www.voanews.com/a/after-10-years-of-china-s-bri-projects-in-cambodia-benefits-up-for-debate/7316544.html>.

¹⁵⁶ U.S. Department of State, *2023 Investment Climate Statements: Cambodia*, U.S. Department of State, <https://www.state.gov/reports/2023-investment-climate-statements/cambodia/>.

¹⁵⁷ *BRI Has Huge Socio-Economic Impact on Cambodia: Scholar*, CGTN, <https://news.cgtn.com/news/2023-10-10/BRI-has-huge-socio-economic-impact-on-Cambodia-scholar-1nNjMkKE5lS/index.html>.

¹⁵⁸ *After 10 Years of China's BRI Projects in Cambodia, Benefits Up for Debate*, VOA NEWS (Oct. 17, 2023), <https://www.voanews.com/a/after-10-years-of-china-s-bri-projects-in-cambodia-benefits-up-for-debate/7316544.html>.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *China Belt and Road Initiative (BRI) Investment Report 2023*, GREEN FIN. & DEV. CTR. (2023), <https://greenfdc.org/china-belt-and-road-initiative-bri-investment-report-2023/>.

¹⁶² *Id.*

¹⁶³ *China's Belt and Road Initiative and Its Implications for Japan's Security Strategy*, NAT'L INST. FOR DEF. STUD. (2023), https://www.nids.mod.go.jp/english/publication/joint_research/series17/pdf/chapter01.pdf.

¹⁶⁴ Kimkong Heng, *Cambodia's Strategic Positioning Between the United States and China*, E. ASIA FORUM (Jan. 27, 2024), <https://eastasiaforum.org/2024/01/27/cambodias-strategic-positioning-between-the-united-states-and-china/>.

¹⁶⁵ Samantha Custer et al., *The BRI at 10: A Report Card from the Global South*, AIDDATA (Oct. 18, 2023), <https://www.aiddata.org/blog/the-bri-at-10-a-report-card-from-the-global-south>.

project finances, terms, or progress (32 percent)” and “built less capacity in local partners (32 percent).”¹⁶⁶

With the significant investment that PRC entities are making in Cambodia, is worth considering the contract terms that often accompany these investments. Recent research into the PRC’s BRI funding point to common terms in the debt contracts that may create future challenges for sovereign borrowers. To start, the PRC still does not “participate in the OECD’s Creditor Reporting System, the OECD Export Credit Group or the Paris Club.”¹⁶⁷ This will make it more difficult to reach multinational consensus on refinancing if a country has difficulty making loan scheduled payments.

The primary caveat is that the research did not analyze contracts specific to Cambodia due to the lack of public availability of such documents. The only ASEAN country with documents analyzed by the researchers was the Philippines. Ultimately, the researchers found that the “contract terms are similar across recipient countries, with little evidence that Chinese state-owned banks tailor their contracts to specific borrower characteristics, including default risk.”¹⁶⁸ The researchers found several eyebrow-raising clauses common amongst the contracts including cancellation, acceleration, stabilization, and “confidentiality clauses that bar borrowers from revealing the terms or even the existence of the debt.”¹⁶⁹ The report found that half of the contracts in the sample included “cross-default clauses that can be triggered by actions ranging from expropriation to actions broadly defined by the sovereign debtor as adverse to the interests of ‘a PRC entity.’”¹⁷⁰ Additionally, “[m]ore than 90% of the Chinese contracts we examined, including all CDB contracts, have clauses that allow the creditor to terminate the contract and demand immediate repayment in case of significant law or policy changes in the debtor or creditor country.”¹⁷¹ These clauses may allow creditors to influence the domestic affairs of the debtor nation, especially in a crisis. The report also found that “the majority of the 100 Chinese contracts are governed by Chinese law.”¹⁷²

Many of the contracts also included lender-controlled revenue accounts and so called “no Paris Club” clauses that prevents collective debt restructuring common in the event of a sovereign debt default.¹⁷³ These clauses have the effect of benefitting PRC creditors in terms of seniority and repayment priority over other lenders such as multilateral or regional entities.¹⁷⁴ Additional research and investigation would be required to determine if similar contractual terms apply to the various PRC investment projects in Cambodia.

PRC affiliated technology enterprises like Alibaba, Tencent, and Huawei have made some notable technology investments in Cambodia in recent years. One such investment includes Alibaba's Logistics Hub where the company announced in March 2019 plans to make Cambodia its logistics hub for the Greater Mekong region, with the possibility for cloud infrastructure to support logistics operations.¹⁷⁵ PRC gaming company Tencent and

¹⁶⁶ *Id.*

¹⁶⁷ Bradley C. Parks et al., *How China Lends: A Rare Look into 100 Debt Contracts with Foreign Governments*, AidData (2021), <https://www.aiddata.org/publications/how-china-lends>.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Alibaba's Logistics Hub: New Use for Kampong Chhnang's Old Airport*, KHMER440 FORUM, https://www.khmer440.com/chat_forum/viewtopic.php?t=67708.

Cellcard announced plans in 2022 to develop an e-sports platform. Cellcard also announced in June 2021 that it had selected ZTE as its 5G partner for future telecommunications upgrades. Alibaba and Cambodia's MOC signed an agreement in October 2023 that will help boost “digital trade and e-commerce in Cambodia” by allowing Cambodia to join Alibaba's electronic World Trade Platform.¹⁷⁶ Lastly, Huawei claims that its ICT equipment covers to 80% of the Cambodia population.¹⁷⁷ The company also employs over 200 Cambodians and provides “technology training courses to about 1,000 workers each year.”¹⁷⁸

The impact of PRC FDI in Cambodia, particularly through the BRI, has been substantial yet contentious, especially in the context of technology transfers. While Chinese investments have significantly contributed to Cambodia's infrastructure development, such as roads, bridges, and energy projects like the \$3 billion natural gas joint venture by China Machinery Engineering Corporation, the extent of technology transfer remains debatable.¹⁷⁹ The focus of these investments has largely been on physical infrastructure rather than on sectors that promote domestic technological innovation and capacity building.¹⁸⁰ Consequently, while these projects support industrial growth and have the potential to enhance technological development indirectly, they often lack direct technology transfer or skills development for the local workforce.¹⁸¹ This situation raises some concern about Cambodia's long-term technological self-reliance and the sustainability of its economic growth, as the country remains heavily reliant on Chinese expertise and financial backing. The challenge for Cambodia is to leverage these investments to foster local technological capabilities and ensure that the benefits of such projects are more evenly distributed across its economy.¹⁸²

Other FDI Sources

The remainder of Cambodia's FDI is primarily sourced through ASEAN and other east Asian nations. There has been a recent push by the government to attract other sources of investment with the Cambodian Prime Minister traveling abroad to discuss with the leadership of other Asian countries.

Japanese FDI in Cambodia

Japan ranks as the fourth largest investor in Cambodia, with total investments reaching approximately \$2.769 billion in the first quarter of 2023, marking an 11.6% increase from the previous year.¹⁸³ Japanese investments span various sectors, including finance, construction, real estate, and manufacturing, with notable projects such as the Minebea machinery and motor factory, AEON Mall, and other initiatives in agriculture. The

¹⁷⁶ *Cambodia's E-commerce Market: Growth Opportunities and Challenges*, HKTDC RESEARCH (2023), <https://research.hktdc.com/en/article/MTU0MTQ1OTgzNg>.

¹⁷⁷ *Huawei Expands Network Coverage to 80 Percent in Cambodia*, KHMER TIMES (Aug. 20, 2024), <https://www.khmertimeskh.com/501500211/huawei-expands-network-coverage-to-80-percent-in-cambodia/>.

¹⁷⁸ *Id.*

¹⁷⁹ *Cambodia Signs Investment, Development Deals with China*, PHNOM PENH POST (Aug. 15, 2024), <https://www.phnompenhpost.com/national-politics/cambodia-signs-investment-development-deals-china>.

¹⁸⁰ Kimkong Heng, *China's Continuing Influence Over Cambodia's Economy*, E. ASIA FORUM (May 1, 2024), <https://eastasiaforum.org/2024/05/01/chinas-continuing-influence-over-cambodias-economy/>.

¹⁸¹ *2023 Foreign Investment Opportunities in Cambodia*, ASEAN BRIEFING (Dec. 12, 2023), <https://www.aseanbriefing.com/news/2023-foreign-investment-opportunities-in-cambodia/>.

¹⁸² *As Cambodia Launches \$36.6bn Building Drive, China, Japan Fight for Spoils*, AL JAZEERA (May 16, 2024), <https://www.aljazeera.com/economy/2024/5/16/as-cambodia-launches-36-6bn-building-drive-china-japan-fight-for-spoils>.

¹⁸³ *Gov't Seeks More Japan Investment*, PHNOM PENH POST (July 10, 2024), <https://www.phnompenhpost.com/post-in-depth/gov-t-seeks-more-japan-investment>.

establishment of the Cambodia-Japan SEZ is anticipated to further attract Japanese enterprises, enhancing the quality of domestic manufacturing and boosting Cambodia's export capacity.¹⁸⁴ Remarks from the Cambodian Deputy Prime Minister, Sun Chanthol, during a session titled “Cross-border Digital Synergy: Enhancing Asia-Pacific Cooperation” at the Future of Asia Forum hosted by Nikkei demonstrated interest in growing Japanese investment to help curb its economic dependence on the PRC.¹⁸⁵

In addition to infrastructure and manufacturing, Japan is also investing in Cambodia's digital economy. One interesting collaboration between the Japanese company Soramitsu and the NBC resulted in Bakong, a blockchain-based payment system that was launched in July 2019.¹⁸⁶ As of the end of 2022, Bakong had 8.5 million users and handled around \$15 billion in payments, demonstrating Japan's commitment to fostering digital financial infrastructure in the region.¹⁸⁷ Furthermore, Japan's broader economic engagement in ASEAN includes initiatives to train 100,000 highly skilled digital professionals over the next five years, which will benefit Cambodia by addressing the region's digital talent shortage and supporting the growth of its IT sector.¹⁸⁸

Japanese FDI in Cambodia has played a significant role in advancing the country's technological landscape, particularly through initiatives like the blockchain-based Bakong payment system. Bakong and other technological investments are likely just the beginning of further technological transfers into Cambodia. Japanese investments have extended beyond financial technology, as seen in the commitment to enhance broader investment cooperation between Cambodia and Japan, which includes sectors like infrastructure and manufacturing.¹⁸⁹ These efforts underscore Japan's influence in fostering technological advancements and economic growth in Cambodia, contributing to a more diversified and resilient economic landscape.

Republic of Korea's FDI in Cambodia

By the end of 2022, South Korea's stock of FDI in Cambodia totaled \$5 billion USD.¹⁹⁰ One prominent project is the Korea-Cambodia Friendship Bridge which was announced in 2023.¹⁹¹ It is expected to cost around \$245 million USD and take around four years to complete.¹⁹² Additionally the Khmer Times reported that the “South Korean

¹⁸⁴ *Id.*

¹⁸⁵ Sun Chanthol, *Cambodia Deputy PM Says Japanese Investment to Help Curb Its China Dependence*, NIKKEI ASIA (May 22, 2024), <https://asia.nikkei.com/Editor-s-Picks/Interview/Cambodia-deputy-PM-says-Japanese-investment-to-help-curb-its-China-dependence2>.

¹⁸⁶ ECONOMIC RESEARCH INSTITUTE FOR ASEAN AND EAST ASIA, *Investment Facilitation and Promotion in Cambodia: Impact of Provincial-level Characteristics on Multinational Activities*, https://www.eria.org/uploads/10_Chapter-9-The-Case-of-Cambodia.pdf.

¹⁸⁷ *Japan Blockchain Startup Seeks to Build Asian Digital Payment Network*, NIKKEI ASIA (May 23, 2024), <https://asia.nikkei.com/Spotlight/Cryptocurrencies/Japan-blockchain-startup-seeks-to-build-Asian-digital-payment-network>.

¹⁸⁸ Toshihiko Yamazaki, *Prime Minister Kishida: "Train 100,000 Digital Talent" in Collaboration with ASEAN*, NIKKEI ASIA (May 20, 2024), <https://www.nikkei.com/article/DGXZQOUA208EX0Q4A520C2000000/>.

¹⁸⁹ *Cambodia, Japan Committed to Enhance Investment Cooperation*, KHMER TIMES (Aug. 28, 2024), <https://webcache.googleusercontent.com/search?q=cache:https://www.khmertimeskh.com/501515570/cambodia-japan-committed-to-enhance-investment-cooperation/>.

¹⁹⁰ U.S. Department of State, *2023 Investment Climate Statements: Cambodia*, U.S. Department of State, <https://www.state.gov/reports/2023-investment-climate-statements/cambodia/>.

¹⁹¹ *Top Cambodia Infrastructure Projects in 2023*, KHMER TIMES (Jan. 5, 2023), <https://www.khmertimeskh.com/501217485/top-cambodia-infrastructure-projects-in-2023/>.

¹⁹² *Korea Friendship Bridge Work to Begin Soon*, KHMER TIMES (Mar. 15, 2023), <https://www.khmertimeskh.com/501359850/korea-friendship-bridge-work-to-begin-soon/>.

government has pledged USD \$1.5 billion in economic development loans to the Kingdom under the Economic Development Cooperation Fund.”¹⁹³

ASEAN FDI in Cambodia

ASEAN investment into Cambodia has also been a key contributor to the country’s growth. The FDI stock of Malaysia alone stood at \$2.8 billion USD by the end of 2022.¹⁹⁴ Additionally, Cambodia and Indonesia have promised to expand cooperation on tech innovation.¹⁹⁵ It is estimated that ASEAN will “contribute \$1 trillion USD, or about 10%, to global digital trade” by 2030.¹⁹⁶

One especially positive aspect for the development of Cambodia is the fact that “ASEAN’s digital economy is projected to triple by the end of the decade through the natural adoption of digital technologies, growing from approximately US\$300 billion to almost US\$1 trillion by 2030.”¹⁹⁷ The projected growth of the digital economy will be highly dependent on the data policies implemented in the region. The ASEAN Technology Transfer Centre is expected to significantly enhance Cambodia’s economic development by fostering innovation, improving technological capabilities, and facilitating the transfer of advanced technologies.¹⁹⁸

United States’ FDI in Cambodia

FDI by firms headquartered in the United States has been rather limited. Some factors that reportedly dissuade U.S. and other western investors include “systemic corruption, a limited supply of skilled labor, inadequate infrastructure (including high energy costs), a lack of transparency in some government approval processes, and preferential treatment given to local or other foreign companies that engage in acts of corruption or tax evasion or take advantage of Cambodia’s weak regulatory environment.”¹⁹⁹ In addition to corporate investments, the United States government “has provided \$3 billion in foreign assistance for health, education, food security, economic growth, national reconciliation, democracy and human rights, the environment, and clearance of unexploded ordnance and landmines” over the last 30 years.²⁰⁰ USAID has funded Development Innovation projects that foster U.S.-Cambodia tech partnerships by assisting Cambodia’s civil society and technology

¹⁹³ *Top Cambodia Infrastructure Projects in 2023*, KHMER TIMES (Jan. 5, 2023),

<https://www.khmertimeskh.com/501217485/top-cambodia-infrastructure-projects-in-2023/>.

¹⁹⁴ U.S. Department of State, *2023 Investment Climate Statements: Cambodia*, U.S. Department of State,

<https://www.state.gov/reports/2023-investment-climate-statements/cambodia/>.

¹⁹⁵ *Indonesia Aims to Expand Cooperation with Cambodia in the Fields of Science, Technology, Innovation, and SME Support*, KHMER TIMES (Aug. 22, 2024), <https://www.khmertimeskh.com/501504852/indonesia-aims-to-expand-cooperation-with-cambodia-in-the-fields-of-science-technology-innovation-and-sme-support/>.

¹⁹⁶ *ASEAN Digital Community 2045*, ECONOMIC RESEARCH INSTITUTE FOR ASEAN AND EAST ASIA (ERIA), https://www.eria.org/uploads/ASEAN-Digital-Community-2045-rev_.pdf.

¹⁹⁷ *ASEAN DEFA Study Projects Digital Economy Leap to US\$2tn by 2030*, ASEAN, <https://asean.org/asean-defa-study-projects-digital-economy-leap-to-us2tn-by-2030/>.

¹⁹⁸ *Cambodia Commits to Building Robust STI Ecosystem*, KHMER TIMES (Feb. 28, 2023),

<https://www.khmertimeskh.com/501324945/cambodia-commits-to-building-robust-sti-ecosystem/>.

¹⁹⁹ U.S. Department of State, *2023 Investment Climate Statements: Cambodia*, U.S. Department of State,

<https://www.state.gov/reports/2023-investment-climate-statements/cambodia/>.

²⁰⁰ *US Secretary of Defense’s Visit to Phnom Penh: Turning New Page in US-Cambodia Relations*, KHMER TIMES (Aug. 18, 2024), <https://www.khmertimeskh.com/501498888/us-secretary-of-defenses-visit-to-phnom-penh-turning-new-page-in-us-cambodia-relations/>.

communities to design and implement ICT solutions, resulting in 91 technology products that reached 1.6 million Cambodians.²⁰¹

One example of a greenfield FDI project funded by a U.S. domiciled corporation is Ford's vehicle assembly plant in Krakor district, Pursat province.²⁰² Despite the limited overall investment by American companies, there have been a few technology partnerships involving U.S. and Cambodian companies. AWS partnered with EZECOM to offer a selection of cloud services in an effort to improve the country's digital infrastructure and support the nation's digital transformation efforts.²⁰³ Another telecom provider, SINET, recently selected Juniper Networks to upgrade its network infrastructure.²⁰⁴ Lastly, Google Cloud partnered with the OCIC Group "to support the growth of Cambodia's tech community."²⁰⁵

American FDI in Cambodia, while currently limited, may have an outsized impact for fostering economic growth and technological advancement in the country. Increased U.S. engagement is usually seen as beneficial for both American investors and the Cambodian workforce, as it can lead to the transfer of new technologies and skills, enhancing Cambodia's economic resilience and diversification.²⁰⁶ However, a more focused and strategic investment approach would be required to have any chance of counterbalancing the PRC's influence in the region.²⁰⁷

EU FDI in Cambodia

The EU's FDI in Cambodia is similarly limited, but it has attempted to play a larger role in the aftermath of the COVID-19 pandemic.²⁰⁸ The EU, through its Joint European Development Cooperation Strategy for 2021-2027, earmarked EUR 155 million to support Cambodia's integration into ASEAN, focusing on fostering green growth and creating job opportunities.²⁰⁹ This financial support is complemented by investments mobilized through the European Fund for Sustainable Development Plus, which aims to enhance Cambodia's economic resilience and recovery.²¹⁰ Additionally, the EU's Global Gateway initiatives, such as the Green Team Europe Initiative and the Team Europe Initiative on Sustainable

²⁰¹ *Cambodia Development Innovations*, DAI, www.dai.com/our-work/projects/cambodia-development-innovations.

²⁰² *Foreign Investors Bring Advanced Technologies and Create Job Opportunities in Cambodia*, KHMER TIMES (July 28, 2024), <https://www.khmertimeskh.com/501477689/foreign-investors-bring-advanced-technologies-and-create-job-opportunities-in-cambodia/>.

²⁰³ *EZECOM First to Collaborate with AWS to Provide Leading Cloud Service for Cambodia*, KHMER TIMES (Dec. 15, 2022), <https://www.khmertimeskh.com/501040744/ezecom-first-to-collaborate-with-aws-to-provide-leading-cloud-service-for-cambodia/>.

²⁰⁴ *SINET and Juniper Networks to Accelerate Connectivity Across Cambodia's Booming Digital Economy*, JUNIPER NETWORKS (Sept. 21, 2021), <https://investor.juniper.net/investor-relations/press-releases/press-release-details/2021/SINET-and-Juniper-Networks-to-Accelerate-Connectivity-Across-Cambodias-Booming-Digital-Economy/default.aspx>.

²⁰⁵ *Google Cloud and OCIC Group Support Growth of Cambodia's Tech Community*, DATA STORAGE ASEAN, <https://datastorageasean.com/news-press-releases/google-cloud-and-ocic-group-support-growth-cambodias-tech-community>.

²⁰⁶ Charles Freeman, *The U.S. Needs to Engage More with Cambodia, Not Less*, U.S. CHAMBER OF COMMERCE, <https://www.uschamber.com/international/the-u-s-needs-to-engage-more-with-cambodia-not-less>.

²⁰⁷ *International Economic Accounts: U.S. International Transactions*, BUREAU OF ECONOMIC ANALYSIS, <https://apps.bea.gov/international/factsheet/factsheet.html>.

²⁰⁸ *Multianual Indicative Programme 2021-2027 for the Asia and the Pacific Region*, EUROPEAN COMMISSION, https://ec.europa.eu/international-partnerships/system/files/mip-2021-c2021-9231-annex_en.pdf.

²⁰⁹ *Id.*

²¹⁰ *Id.*

Connectivity, underscore the EU's commitment to promoting sustainable development and regional connectivity in Cambodia.²¹¹ These efforts are further bolstered by the EU's engagement in strengthening Cambodia's public financial management, trade policy, and private sector capacities, thereby facilitating a more robust and diversified economic landscape for Cambodia.²¹² Surveys have highlighted that Cambodia's attractiveness for EU foreign direct investment is primarily driven by its strategic location, preferential trade agreements, and competitive labor costs, although significant challenges such as regulatory unpredictability and infrastructure deficits remain.²¹³

Relation between Data Policies and Economic Growth

A primary focus of this paper is to explore the interplay between data policies and economic growth. Although there has been a rapid growth in data policies, the quantity and quality of publicly available research is relatively limited. Common data policies being implemented by national governments and multinational organizations include privacy laws, mandatory cybersecurity standards, and digital trade agreements. Most research has been limited to measuring the impact of specific policies or use cases. This section will seek to explore the relation between data policies, technological readiness indicators, and economic measurements.

Data Transfer and Localization Policies

Data localization and transfer policies are among the most extensively studied data policies. These policies are also commonly referred to as data residency or digital autarky policies. This is most likely due to the financial incentives of researchers and think-tanks, both of whom are often financed by large technology companies looking to reduce data center expenses. Regardless of the research impetus, most analysis indicates that restrictive data transfer policies and data residency laws negatively impact GDP growth, productivity, and investment in the country. A report by the ITIF highlights that data localization requirements can reduce a country's GDP by up to 1.7% due to increased costs and reduced competitiveness.²¹⁴ These policies are likely to act as trade barriers that stifle growth by “raising the cost of collecting, transferring, and storing data across borders.”²¹⁵ This is especially concerning considering the results of one study that estimated “that digital tools helped MSMEs across Asia reduce export costs by 82% and transaction times by 29%.”²¹⁶ As expanding into higher-value exports is expected to be a key driver of Cambodia's future economic growth, restrictions on data flows or digital technology are likely to disproportionately harm the country.

Data transfers are extremely important in the modern economy because they “not only enable local firms to find prospective customers in export markets, [but] they also reduce

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Survey Report: Cambodia's Attractiveness for EU Foreign Direct Investment*, OPEN DEVELOPMENT CAMBODIA https://data.opendevelopmentcambodia.net/en/library_record/survey-report-cambodia-s-attractiveness-for-eu-foreign-direct-investment.

²¹⁴ *Data Localization: Costs, Tradeoffs, and Impacts Across the Economy*, INST. OF INT'L FIN., (Dec. 22, 2020), https://www.iif.com/portals/0/Files/content/Innovation/12_22_2020_data_localization.pdf.

²¹⁵ Yan Carrière-Swallow & Vikram Haksar, *The Economics and Implications of Data: An Integrated Perspective*, INT'L MONETARY FUND (2021), <https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/2019/09/20/The-Economics-and-Implications-of-Data-An-Integrated-Perspective-48596>.

²¹⁶ *Cambodia Data Protection and Privacy Framework*, GLOBAL DATA ALLIANCE (Oct. 5, 2023), <https://globaldataalliance.org/wp-content/uploads/2023/10/10052023gdacambodiadatapro.pdf>.

supply chain-related transaction costs.”²¹⁷ The IIF report emphasizes that data flows are integral to the global economy, powering innovation and connectivity.²¹⁸ Economists have estimated that data localization requirements “reduce GDP by 0.7%–1.7% particularly as such measures reduce trade, slow productivity, and increase prices for affected industries.”²¹⁹ Unless the Cambodian government can proffer an explanatory rationale, it seems likely that the data localization requirement in the proposed personal data protection law would create similar economic impacts.

In terms of productivity, the World Bank’s 2020 World Development Report found that, “restrictions on data flows have large negative consequences on the productivity of local companies using digital technologies” and that countries would “gain on average about 4.5 percent in productivity if they removed their restrictive data policies, whereas the benefits of reducing data restrictions on trade in services would on average be about 5 percent.”²²⁰ This aligns with findings from the OECD, which indicate that digitalization is linked with greater trade openness and increased productivity.²²¹ A critical determinant of economic prosperity is productivity growth. As the prior research indicated, Cambodia’s proposed data residency requirements threaten much needed productivity growth. Lower productivity will be a detriment to the government’s long term economic objectives.

These restrictive data policies also hurt foreign trade. The Information Technology and Innovation Foundation estimates that for each point that OECD market regulations “restrict cross border data flows, a country’s gross trade output is reduced by 7%, its productivity drops by 2.9%, and downstream prices rise by 1.5%.”²²² These are significant reductions that, if applicable in the similar manner to Cambodia, will disrupt progress towards the nation’s economic objectives. The researchers are also worried that “international fragmentation in data markets” will eventually “reduce the potentially sizable efficiency gains from the economies of scale and scope inherent in free movement of data across borders while also reducing financial resilience arising from the distribution of information on large, secure global networks.”²²³ Not only are data residency restrictions an economic concern, but the restrictions also threaten the freedom of information across borders. It will be intriguing to observe how comprehensive DEFA is in reducing data transfer barriers.

Additionally, investment is hurt by restrictive data policies in the form of higher transaction costs for firms that conduct international trade. The Asia-Pacific Economic Cooperation Committee on Trade and Investment reported that “data localization has been associated with investment decreases of up to 4% because such restrictions reduce the

²¹⁷ *Id.*

²¹⁸ *Data Localization: Costs, Tradeoffs, and Impacts Across the Economy*, INST. OF INT’L FIN., (Dec. 22, 2020), https://www.iif.com/portals/0/Files/content/Innovation/12_22_2020_data_localization.pdf.

²¹⁹ *Economic Impact of Adopting Digital Trade Rules: Evidence from APEC Member Economies*, ASIA-PACIFIC ECONOMIC COOPERATION (Apr. 2023), <https://www.apec.org/publications/2023/04/economic-impact-of-adopting-digital-trade-rules-evidence-from-apec-member-economies>.

²²⁰ *World Development Report 2020: Trading for Development in the Age of Global Value Chains*, WORLD BANK (2020), <https://www.worldbank.org/en/publication/wdr2020>.

²²¹ *Data Localization: Costs, Tradeoffs, and Impacts Across the Economy*, INST. OF INT’L FIN., (Dec. 22, 2020), https://www.iif.com/portals/0/Files/content/Innovation/12_22_2020_data_localization.pdf.

²²² *AIC Submission on the Personal Data Protection Bill 2023*, ASIA INTERNET COALITION (2023), <https://aicasia.org/download/830/>.

²²³ Yan Carrière-Swallow & Vikram Haksar, *The Economics and Implications of Data: An Integrated Perspective*, INT’L MONETARY FUND (2021), <https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/2019/09/20/The-Economics-and-Implications-of-Data-An-Integrated-Perspective-48596>.

attractiveness and competitiveness of an economy.”²²⁴ The IIF further notes that data localization can undermine digital trade and economic growth, adding significant costs to businesses and reducing their global competitiveness.²²⁵ The investment hesitancy also plays out in surveys with the US National Trade Estimate identifying “restrictions on data flows and data local[ization] requirements as a leading impediment to foreign direct investment by US companies.”²²⁶ Over the last year, the Cambodian government has been aggressive in seeking FDI from East Asian nations besides the PRC. These overtures are likely to result in less investment than anticipated unless the proposed data restriction policies are abandoned.

One argument that is often made as a rationale for implementing data localization requirements is cybersecurity. Recent research has disabused this notion by indicating that data localization requirements “expand[] the number of potential targets for cyber-attacks—increasing the cost of protecting the whole network.”²²⁷ The IIF highlights that data localization can weaken cybersecurity by concentrating data in fewer locations, making it more vulnerable to attacks.²²⁸ Restrictions on cross-border data flows also limit international cooperation in identifying and blocking malicious cyber activity. If these restrictions are adopted in Cambodia, regional and international partners may find it difficult to advise or assist Cambodia if critical infrastructure is being disrupted by cyber effects.

Specific analysis has been conducted on the impact of the EU’s GDPR and Singapore’s DEA. The GDPR’s restrictions on international data transfers were found to have “no effect in the EU on the Internet’s interconnectivity layer.”²²⁹ This demonstrates that a well-designed privacy policy can minimize its impact to connectivity and the free flow of information. With regards to Singapore’s DEA with Australia and New Zealand, a study by the Asia Competitiveness Institute “found that the output of the ICT, Financial & Insurance, and Business Services sectors is expected to increase by at least 6-7% for the three countries involved.”²³⁰ This substantial increase for an already wealthy nation demonstrates that agreements reducing technical barriers can yield significant economic benefits for the signatory countries.

Privacy Laws

There has been less published research analyzing the economic effects of privacy laws. Part of this is due to the explosion in the number of laws and policies reducing the number of easy distinguishable control groups that are not subject to some form of privacy policy. Privacy as a concept “should not be understood narrowly as preventing the sharing of

²²⁴ *Economic Impact of Adopting Digital Trade Rules: Evidence from APEC Member Economies*, ASIA-PACIFIC ECONOMIC COOPERATION (Apr. 2023), <https://www.apec.org/publications/2023/04/economic-impact-of-adopting-digital-trade-rules-evidence-from-apec-member-economies>.

²²⁵ *Data Localization: Costs, Tradeoffs, and Impacts Across the Economy*, INST. OF INT’L FIN., (Dec. 22, 2020), https://www.iif.com/portals/0/Files/content/Innovation/12_22_2020_data_localization.pdf.

²²⁶ *AIC Submission on the Personal Data Protection Bill 2023*, ASIA INTERNET COALITION (2023), <https://aicasia.org/download/830/>.

²²⁷ Yan Carrière-Swallow & Vikram Haksar, *The Economics and Implications of Data: An Integrated Perspective*, INT’L MONETARY FUND (2021), <https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/2019/09/20/The-Economics-and-Implications-of-Data-An-Integrated-Perspective-48596>.

²²⁸ *Data Localization: Costs, Tradeoffs, and Impacts Across the Economy*, INST. OF INT’L FIN., (Dec. 22, 2020), https://www.iif.com/portals/0/Files/content/Innovation/12_22_2020_data_localization.pdf.

²²⁹ Garrett A. Johnson, *Economic Research on Privacy Regulation: Lessons from the GDPR and Beyond*, NAT’L BUREAU OF ECON. RESEARCH (June 16, 2023), <https://www.nber.org/system/files/chapters/c14784/c14784.pdf>.

²³⁰ Jing Zhi Lim & Taojun Xie, *From Digital to Real Economies: Lessons from Singapore’s Digital Economy Agreements*, ACI PERSPECTIVES (Oct. 26, 2022), <https://aciperspectives.com/2022/10/26/from-digital-to-real-economies-lessons-from-singapores-digital-economy-agreements/>.

personal information, but rather as giving the data subject control over what they share.”²³¹ The subtle differences in the language of privacy laws create technical nuances that are hard to measure. Regardless, researchers at the IMF have concluded that the lack of control and access rights over data results in data “being overused, with privacy insufficiently respected in the absence of meaningful consent”²³² This is the situation that Cambodia finds itself given the nation’s lack of comprehensive privacy legislation. The researchers indicated that the nonrival and only partially excludable nature of data resulted in privacy externalities.²³³

Most economic analysis of privacy policy has focused on the GDPR because of the scale of the EU economy and the GDPR being one of the first major privacy policies.²³⁴ Starting with the negative ramifications of the GDPR, economists found that it “hurt firm performance by imposing costs, decreasing revenue, and thereby hurting profitability.”²³⁵ The law also “hurt competition by creating greater harms for smaller firms and by increasing market concentration in the data vendor market.”²³⁶ The law limited economic dynamism in the economic block “by accelerating market exit and slowing entry.”²³⁷ This resulted in increased market concentration in the data vendor market.²³⁸ In terms of the EU’s technological development, GDPR resulted in reduced venture funding for technology firms, “particularly for more data-related ventures.”²³⁹ This should serve as a warning shot to Cambodian ministries and legislatures that are seeking to implement a bespoke privacy law. If the EU, with its twenty-seven member states, faced this level of negative ramifications from GDPR, the effects will likely be magnified in Cambodia unless the country adopts regional or international privacy standards.

Other researchers have found a “statistically insignificant effect on profit margins[,] ... but a statistically significant -1.9% reduction in profit margins among data-intensive sectors in the EU.”²⁴⁰ It has been estimated that GDPR is similar to “a 20% tax on the cost of data storage.”²⁴¹ In terms of technology investment, “the number of EU venture deals fell by 26% after the GDPR enforcement deadline” with the most affected industries being “early-stage ventures, data-related ventures, business-to-consumer (versus business-to-business) ventures, and ventures in the healthcare and finance industries.”²⁴² Foreign investors appear to have been particularly spooked by the law given the fact that “foreign investment in EU technology ventures [f]ell by more than local investment” due the heightened uncertainty.²⁴³ Ultimately, the GDPR disproportionately hurts smaller firms due to fixed compliance costs. A similar impact might be expected in Cambodia since such a large percentage of the economy is sustained by SMEs.

²³¹ Yan Carrière-Swallow & Vikram Haksar, *The Economics and Implications of Data: An Integrated Perspective*, INT’L MONETARY FUND (2021), <https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/2019/09/20/The-Economics-and-Implications-of-Data-An-Integrated-Perspective-48596>.

²³² *Id.*

²³³ *Id.*

²³⁴ Garrett A. Johnson, *Economic Research on Privacy Regulation: Lessons from the GDPR and Beyond*, NAT’L BUREAU OF ECON. RESEARCH (June 16, 2023), <https://www.nber.org/system/files/chapters/c14784/c14784.pdf>.

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

The obvious benefits to GDPR were enhanced privacy rights to EU citizens and the corresponding worldwide spillover effects. The spillover effects enhance the privacy rights of the rest of the world because EU-focused firms tended to “roll their compliance efforts to all their consumers.”²⁴⁴ Some have argued that the market for data is not functioning efficiently because of market power disparities and asymmetric information resulting from the fact that “most users are not aware of how their data are being used.”²⁴⁵ Some researchers argue that the Coase theorem is “is unlikely to apply to data.”²⁴⁶ If true, this would have broad economic implications since the Coase theorem postures that “as long as the property rights over the goods being allocated are well defined and respected, then a competitive market will be able to achieve a social optimum” and “the initial allocation of property rights across agents will not determine the final market allocation.”²⁴⁷ The researcher’s argument is that an efficient market in personal data is not currently possible because of the lack of consumer knowledge. That could make regulation a reasonable market intervention.

Additionally, there were “post-GDPR reductions in data collection[,]” data processing, and website’s use of third-party cookies.²⁴⁸ Data storage in the EU fell by 26% and processing fell by 15%.²⁴⁹ Prior research indicates that GDPR provided a value of €6.50 per person per month in privacy benefits using a willingness to pay estimation. Lastly, “GDPR increased the return on assets from acquisitions of AI technology companies—particularly for acquisitions related to customer experience and cyber security.”²⁵⁰ Those in favor of the GDPR see the law as a necessary step towards clarifying an “individual’s rights and obligations over data ... for the market to function efficiently.”²⁵¹ Cambodia will have to balance the benefits of individual privacy rights with the economic costs of the proposed bespoke data protection law.

Common complaints prior to the passage of GDPR was that it would devastate online news publishers, but researchers found that EU site traffic volume was “relatively stable except for a small decline in pageviews per user” with no corresponding “impact on news and media websites’ production of new content or social sharing of that content.”²⁵² One word of caution is needed before progressing. It is difficult to directly apply the analysis of GDPR to Cambodia for a whole host of reasons including the vastly different demographics and stages of economic development. Ultimately, there is “a strong case for international dialogue and cooperation to ensure that the digital economy does not become subject to undue fragmentation.”²⁵³ It may be wise for Cambodia to head that advice with regards to its proposed data protection law.

²⁴⁴ *Id.*

²⁴⁵ Yan Carrière-Swallow & Vikram Haksar, *The Economics and Implications of Data: An Integrated Perspective*, INT’L MONETARY FUND (2021), <https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/2019/09/20/The-Economics-and-Implications-of-Data-An-Integrated-Perspective-48596>.

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ Garrett A. Johnson, *Economic Research on Privacy Regulation: Lessons from the GDPR and Beyond*, NAT’L BUREAU OF ECON. RESEARCH (June 16, 2023), <https://www.nber.org/system/files/chapters/c14784/c14784.pdf>.

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ Yan Carrière-Swallow & Vikram Haksar, *The Economics and Implications of Data: An Integrated Perspective*, INT’L MONETARY FUND (2021), <https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/2019/09/20/The-Economics-and-Implications-of-Data-An-Integrated-Perspective-48596>.

Cybersecurity Regulations

It is even more difficult to draw economic conclusions from restrictive or human rights constraining cybercrime laws and cybersecurity regulations. The research here is lacking in part due to the restrictive nature of open research in the locations that typically implement the most draconian cybersecurity laws. Some researchers claim that “private incentives to invest in data security are unlikely to lead to socially optimal levels of investment in cybersecurity” due to the nonrival and partial excludability of data that makes the harms caused by improper data use hard to attribute to specific commercial entities.²⁵⁴

It is also important to identify the different theoretical concepts of cybersecurity. The Western world often views cybersecurity through a technical lens while the view that originates in many authoritarian or socialist states view cybersecurity with an emphasis on the ideological threats to the stability of the regime and the society.²⁵⁵

Some economic analysis has been conducted on the two prominent cybersecurity laws in the region, the PRC’s Cybersecurity Law of 2016 and Vietnam’s 2018 Law on Cybersecurity. As a warning, the research is inherently limited due to shifting agency interpretation and administrative implementation.

The PRC’s Cybersecurity Law has been effectively enforced by the PRC’s “Great Firewall” system, but this depth of internet restriction is not “easily transplanted to other countries lacking a similar internet architecture.”²⁵⁶ The PRC laws require data localization, mandating that companies store data within the PRC, which poses challenges for foreign firms by increasing operational costs and complicating compliance efforts.²⁵⁷ This regulatory environment can deter FDI as companies weigh the costs of compliance against the benefits of entering the PRC market.²⁵⁸ Additionally, the laws grant Chinese authorities access to proprietary information under the guise of security checks, potentially disadvantaging foreign firms while benefiting domestic competitors.²⁵⁹ The stringent cybersecurity requirements also have implications for the PRC’s ambitions in big data and smart city developments, as they create barriers for foreign technology firms that are crucial for these initiatives.²⁶⁰ Furthermore, the broader impact on FDI is underscored by research indicating that internet security and regulatory environments significantly influence investment decisions, with stricter regulations potentially deterring foreign investments.²⁶¹ Overall, while the PRC’s cybersecurity laws aim to protect national security, they also present economic challenges by

²⁵⁴ *Id.*

²⁵⁵ Ngoc S. Bui & Jyh-An Lee, *Comparative Cybersecurity Law in Socialist Asia*, 55 VAND. J. TRANSNAT’L L. 631 (2022), <https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=2755&context=vjtl>.

²⁵⁶ *Id.*

²⁵⁷ Paul M. Leonardi, *The Social Media Revolution: Sharing and Learning in the Age of Leaky Knowledge*, 33 INFO. & ORG. 100312 (2023), <https://www.sciencedirect.com/science/article/abs/pii/S0267364917300791>.

²⁵⁸ Huang Youxing, Jiang Na & Zhang Yan, *Does Internet Security Matter for Foreign Direct Investment? A Spatial Econometric Analysis*, SCI. DIRECT (Jan. 6, 2021), <https://www.sciencedirect.com/science/article/abs/pii/S0736585320302185>.

²⁵⁹ Paul M. Leonardi, *The Social Media Revolution: Sharing and Learning in the Age of Leaky Knowledge*, 33 INFO. & ORG. 100312 (2023), <https://www.sciencedirect.com/science/article/abs/pii/S0267364917300791>.

²⁶⁰ Huang Youxing, Jiang Na & Zhang Yan, *Does Internet Security Matter for Foreign Direct Investment? A Spatial Econometric Analysis*, SCI. DIRECT (Jan. 6, 2021), <https://www.sciencedirect.com/science/article/abs/pii/S0736585320302185>.

²⁶¹ Paul M. Leonardi, *The Social Media Revolution: Sharing and Learning in the Age of Leaky Knowledge*, 33 INFO. & ORG. 100312 (2023), <https://www.sciencedirect.com/science/article/abs/pii/S0267364917300791>.

affecting the attractiveness of the Chinese market for foreign investors and complicating international business operations.²⁶²

The Vietnam Digital Communications Association reported that the Vietnam Law on Cybersecurity “could reduce GDP growth by 1.7% and decrease foreign investment by 3.1%.”²⁶³ Vietnam’s law may also violate the CPTPP since the treaty “does not allow signatories to dictate whether or not a company can conduct business based on where its IT infrastructure is located.”²⁶⁴ It is also important to note that “Vietnam continues to struggle with cybersecurity even after the passage of the law.”²⁶⁵ These factors collectively suggest that while the law aims to enhance national security, it may inadvertently hinder economic growth and deter foreign investment, necessitating a careful balance between regulatory enforcement and economic openness.²⁶⁶

Data Policies

Summary

Stable, transparent, and well-grounded data policies and laws are essential to Cambodia’s future economic growth. Many outside investors require a baseline level of consistency and fairness in the rule of law before investing. For just one example, the 2017 eCommerce report from Asia Development Bank’s Mekong Business Initiative reported that “[s]everal respondents indicated that international TPPs, including PayPal, have expressed interest in entering the Cambodian market – but that these companies find it difficult to enter because of regulations, concerns about fraud, and questions about enforceability of the rule of law.”²⁶⁷ This example was in reference to the Cambodia’s eCommerce law, but the same principles apply to data and privacy laws as well. Cambodia should prioritize standardized and predictable data laws to decrease the risk premium that investors associate with the nation. This will help attract sustainable and high value-add industries to the country.

The broad types of data laws can be broken into a few categories including privacy, cybersecurity, IP, and national security laws. Data privacy laws generally include definitions of data categories, notice and consent requirements, data collection limits, and various opt-out rights for individuals. Cybersecurity laws can be further divided into two categories: cybercrime laws and cybersecurity standards. Cybercrime laws are criminal laws that target malicious and unauthorized access to computer systems. Cybersecurity laws impose minimum technical security requirements on data collectors and processors. Cybersecurity laws also often include breach notification and reporting requirements. Patent, copyright, trademark, and trade secret laws comprise the broader category of IP laws. National security

²⁶² Huang Youxing, Jiang Na & Zhang Yan, *Does Internet Security Matter for Foreign Direct Investment? A Spatial Econometric Analysis*, SCI. DIRECT (Jan. 6, 2021), <https://www.sciencedirect.com/science/article/abs/pii/S0736585320302185>.

²⁶³ Dezan Shira & Associates, *Vietnam Approves New Law on Cybersecurity*, GLOBAL PAYROLL (Dec. 2018), <https://global.payroll.org/publications-resources/Global-Payroll-Magazine/december-2018/vietnam-approves-new-law-on-cybersecurity>.

²⁶⁴ *Vietnam’s Cybersecurity Law Sparks Concerns from Businesses*, NIKKEI ASIA (Dec. 2018), <https://asia.nikkei.com/Politics/Vietnam-s-cybersecurity-law-sparks-concerns-from-businesses>.

²⁶⁵ Thoi Nguyen, *Vietnam’s Struggle with Cyber Security*, EAST ASIA FORUM (Mar. 20, 2024), <https://eastasiaforum.org/2024/03/20/vietnams-struggle-with-cyber-security/>.

²⁶⁶ *Vietnam’s Cybersecurity Law: A Timeline*, THE VIETNAMESE MAGAZINE (Aug. 10, 2023), <https://www.thevietnamese.org/2023/08/vietnams-cybersecurity-law-a-timeline/>.

²⁶⁷ MANGO TANGO ASIA, *eCommerce: Readiness and Opportunities in Cambodia, Overview of Cambodia’s eCommerce Market Landscape* (Jan. 2017), https://unctad.org/system/files/official-document/dtlstict2017d2_en.pdf.

laws include signal collection, content moderation in the form of censorship and defamation, and data localization requirements. Data localization is also commonly referred to as data residency. Cross-border data transfer agreements are another important tool that can help to build the confidence of outside entities looking to invest in Cambodia. This paragraph is not inclusive of every data law in existence but emphasizes some of the key rules of the technological road in the 21st century.

Cambodia

Current Laws & Policies

Cambodia has a litany of policies and laws that are critical to data, technology, and FDI. Cambodia's current data policies are shaped by a combination of national laws and strategic frameworks aimed at fostering a digital economy. A collection of the country's general application laws include limited privacy protection provisions.²⁶⁸ The Digital Economy and Society Framework outlines the country's vision for integrating digital technology across various sectors, emphasizing the importance of data protection and cybersecurity to build trust in digital services.²⁶⁹ Additionally, the MPTC has been active in developing policies that support digital infrastructure and innovation, which are crucial for enhancing connectivity and digital literacy.²⁷⁰ These efforts are complemented by various legislative measures that aim to regulate data usage and ensure compliance with international standards, as seen in the comprehensive list of laws available through Cambodia's Council of Jurists.²⁷¹ Collectively, these initiatives reflect Cambodia's commitment to leveraging data-driven technologies for economic growth while addressing challenges related to data security and privacy.

Policies

Beginning with Cambodia's Pentagonal Strategy, the country aims to foster "crisis-resilient economic growth" and promote "sustainable socio-economic development" by focusing on five core priorities, including the digital economy.²⁷² This strategy underscores the importance of advancing Cambodia's digital infrastructure and systems, with commitments to establish common technical standards, regulatory frameworks, and a National Center for Digital Security, thereby supporting the nation's broader digital transformation and economic goals.²⁷³

²⁶⁸ *Data Protection Guide Cambodia*, MULTILAW (June 23, 2021), https://multilaw.com/Multilaw/Multilaw/Data_Protection_Laws_Guide/DataProtection_Guide_Cambodia.aspx.

²⁶⁹ *Digital Economy and Society Framework*, SUPREME NATIONAL ECONOMIC COUNCIL, <https://data.opendevelopmentcambodia.net/en/dataset/8b25e8a7-ceb5-4659-b96f-9f66d1915a31/resource/b543c324-e2da-4f8c-84c1-64c636dad260/download/digital-economy-and-society-framework-english.pdf>.

²⁷⁰ *Policies*, MINISTRY OF POST AND TELECOMMUNICATIONS OF CAMBODIA, <https://mptc.gov.kh/en/documents/policies>.

²⁷¹ *Laws*, COUNCIL OF JURISTS OF CAMBODIA, <https://www.coj.gov.kh/law>.

²⁷² *Pentagonal Strategy Phase I: For Growth, Employment, Equity, Efficiency, and Sustainability*, THE ROYAL GOVERNMENT OF CAMBODIA OF THE SEVENTH LEGISLATURE OF THE NATIONAL ASSEMBLY (Aug. 24, 2023), https://data.opendevelopmentcambodia.net/en/dataset/6f634b95-5838-42e4-8d57-86a2c604bd78/resource/268ac6ed-3236-402b-bfeb-a03684b1590c/download/pentagonal-strategy-phase-i_english_24.08.2023.pdf.

²⁷³ *Cambodia's Pentagonal Strategy Highlights Importance of Digital Economy*, US-ASEAN BUSINESS COUNCIL (Aug. 2023), <https://www.usasean.org/article/cambodia-pentagonal-strategy-highlights-importance-digital-economy>.

There is also the Cambodia Digital Economy and Society Policy Framework 2021 – 2035, which was released in May 2021 by the Supreme National Economic Council.²⁷⁴ The long term vision set out by the framework includes “building a vibrant digital economy and society by laying the foundations for promoting digital adoption and transformation in all sectors of society – the state, citizens, and businesses – to promote new economic growth and improve social welfare based on the new normal.”²⁷⁵ The framework has two foundations. The first involves “developing digital infrastructure focusing on digital connectivity, financial technology infrastructure and digital payment systems, and logistics and last-mile delivery.”²⁷⁶ The second involves “building trust and confidence in digital systems focusing on responsive and effective legal frameworks and strengthening digital security management.”²⁷⁷ The legal frameworks that are mentioned in the framework likely involve Cambodia’s draft laws on data protection, cybercrime, and cybersecurity.

Digital transformation is an important aspect of the framework since it predicts that technology adoption will “increase productivity and economic efficiency, boost the national economic growth, and build a civilized society where digital citizens can benefit from the use of digital services with high inclusiveness, reliability, and trustworthiness.”²⁷⁸ One way that the framework seeks to conduct the digital transformation is by “building digital infrastructure, attracting domestic and foreign investment, promoting new business ventures, increasing productivity, and promoting economic competitiveness.”²⁷⁹ The government recognizes that foreign technology transfers will be key to achieving its digital goals. Within that same line of thinking, the framework commits Cambodia to “participate in strategic partnership cooperation as well as international digital initiatives on the economics, society, business, finance, research, utilization and technology development, and cybersecurity within bilateral and multilateral frameworks in line with open economy policies that support global trade, international free trade and multilateral system.”²⁸⁰ The reference to bilateral and multilateral frameworks is key when referenced against several of Cambodia’s proposed draft laws that include isolationist articles.

In the framework, Cambodia established the National Digital Economy and Society Council. The council works “to monitor, to provide directions, to set new policies, and to coordinate relevant institutions to implement the Cambodia digital economy and society policy framework.”²⁸¹

The framework also wants the laws and regulations for the digital economy to create “favorable conditions for building an ecosystem of a digital economy and society.”²⁸² The claim of utilizing a “light touch approach” to enforcement may run up against many of the articles in the draft laws on various data policies.²⁸³ Additionally the framework seeks a regulatory regime that promotes competitiveness in the sector.²⁸⁴ Finally, the framework

²⁷⁴ *Digital Economy and Society Framework*, SUPREME NATIONAL ECONOMIC COUNCIL,

<https://data.opendata.gov/cambodia/en/dataset/8b25e8a7-ceb5-4659-b96f-9f66d1915a31/resource/b543c324-e2da-4f8c-84c1-64c636dad260/download/digital-economy-and-society-framework-english.pdf>.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Id.*

proposes “updating/amending and enacting additional laws and regulations to ensure consistency, coherence, and harmonization in line with the development context domestically, regionally, and globally.”²⁸⁵ It critical for maximizing technological development and economic growth that Cambodian laws comply with regional and multilateral standards.

The framework also has a section on foreign investment that highlights the need for the right mix of domestic human capital and foreign technological know-how. It aims to “develop mechanisms to encourage, support and facilitate the private sector in providing digital skills trainings to workers or transferring current skills toward digital skills.”²⁸⁶ This requires cooperation with domestic and foreign companies that have the requisite technical knowledge to educate and train the local workforce. The framework acknowledged that “the share of medium- and high-tech businesses are not yet high in Cambodia compared to countries in the region.”²⁸⁷ That is why attracting and partnering with outside firm that have the requisite technical knowledge will be critical to Cambodia’s development.

The framework “focuses on promoting digital business in three areas: promoting the digital transformation of enterprises, creating the entrepreneurial and startup ecosystems, and enhancing the digital value chain.”²⁸⁸ These three areas are seen as key to delivering future economic growth in the country by establishing “collaboration between public and private sectors in technologies and innovations.”²⁸⁹

Multilateral and bilateral cooperation will be key to achieving the framework’s objectives. Hence, Cambodia seeks to “[p]romote and implement bilateral and multilateral digital economy agreements frameworks aimed at expanding markets for local enterprises and supporting cross-border investment, business and trade activities.”²⁹⁰ As mentioned previously in this paper, Cambodia is a signatory of several free trade agreements, but many of these do not include relevant twenty-first century data provisions. The framework also identified the need for “strong cooperation between countries in the region, such as ASEAN, to promote the development of an environmentally, equitable and non-discriminatory digital economy.”²⁹¹ Many of the draft data laws proposed by the country seem to run counter to this objective by discriminating against outside data sources and content.

The framework also focuses on developing digital infrastructure with the intent to “[a]mend or revise the laws and regulations related to the management of digital infrastructure.”²⁹² Specifically, the government is looking to encourage the “establishment of more domestic data centers” and cloud computing facilities via tax incentives. Unfortunately, the government is unlikely to be able to deliver consistent and sustainable investment in this area through monetary incentives alone. Short term incentives are unlikely to deliver consistent and sustainable investment in this area without carefully planned policies, international cooperation, and technical skills development.

The government seeks to “harness[] digital platforms to connect stakeholders in production and supply chains by sharing real-time data” with the goal of building up more

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.*

innovative and higher value-add industries.²⁹³ The data sharing objectives will be complicated by the data localization requirements in the Draft Data Protection Law.

Another area that the framework highlights is fintech. The country aims to “attract the investment and participation from the private sector in the development of infrastructures related to financial sector especially digital payment gateways, and the development of digital payment system and financial technology, aiming to promote and develop digital financial system”²⁹⁴ As detailed in prior sections, the country has made significant progress in developing its digital financial systems, especially at the consumer level. The MPTC and the NBC will likely take the lead in creating “the relevant regulatory framework and guidelines to enhance the reliability and confidence” of fintech systems while “encourage[ing] the adoption of secure and guaranteed digital payment service.”²⁹⁵ The framework acknowledges that “the development of digital payment infrastructure is still inadequate” due to the limited resources of Cambodia’s banks and financial institutions.²⁹⁶

The framework does not specifically address privacy concerns in the digital age, but it does dive into the cybersecurity challenges that the nation faces. The policy correctly identifies prominent risks including “network security, information security, operational security, application security, and the lack of awareness of users and the general public on cybersecurity.”²⁹⁷ With these risks in mind, the framework seeks to “develop relevant laws and regulations and develop the policy or strategy on cybersecurity.”²⁹⁸ This is likely a reference to the draft data laws and the subsequent prakas that are likely to follow the law’s approval.

Reasonable policy steps such as promoting cybersecurity skills development via accreditation and technical trainings are discussed in the framework.²⁹⁹ The importance of bilateral and multilateral cooperation with the Cambodian public and private sector is also key “to share information, experiences and best practices.”³⁰⁰ Specific articles in the draft cybercrime and cybersecurity laws that degrade certain human rights may make this more challenging given the potential reluctance of many nations to cooperate with Cambodia in the face of human rights concerns.

The framework then goes into detail on seven specific proposals to increase cybersecurity in the country. The proposals include “[s]trengthening technical capacity in terms of human resources and institutional capacity,” preparing relevant laws and regulations, ensuring essential infrastructures is resilient to cyber-attacks, protecting the public from cybercrime, promoting public awareness of cybercrime, and “[c]ooperating with partners at national, regional, and global levels.”³⁰¹ A key concern is that the draft laws implementing these proposals often run counter to the overall objectives in that they often do not follow international standards and may result in decreased international cooperation. Variation in the statutory language is likely to prevent or delay cooperation in times of digital despair due to cyberattacks. The framework also includes the ambiguous proposal of “[n]ational defense in digital space.”³⁰²

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.*

Many of the policy directions and key policy measures are directly related to speeding up the digital transformation of the country via foreign investments and data laws. The first key policy measure seeks to “[a]ccelerate the development of high-speed broadband networks and infrastructure that is affordable with high quality in response to the actual needs, by achieving 95% coverage of the total population in terms of Internet backbone network, submarine cable network, and fixed and mobile broadband infrastructure.”³⁰³

The second key policy measure seeks to “[a]mend or revise the laws and regulations related to the management of digital infrastructure and the enhancement of regulators’ functions in improving competitiveness and providing openness.”³⁰⁴ It also seeks to “build the regulatory framework and principles in supporting and building up confidence and trust among investors, and promote to establish a strong investment network”³⁰⁵ Although it is good that Cambodia recognizes the importance of implementing consistent policies in attracting FDI, some of the vague and non-standard language in the proposed data laws may have the opposite effect than intended.

The seventh key policy measure seeks to “formulate the policy to provide tax incentives for the investment on data and cloud computing facilities to encourage the establishment of more domestic data center.”³⁰⁶

The eleventh key policy measure seeks to “[p]romote the Public-Private Partnership mechanism for the investment of digital infrastructure.”³⁰⁷ Involving domestic and international companies will be key due to digital infrastructure gaps in areas such as cloud services and wired fiber. These are two areas where Cambodia currently lags behind regional peers.

The thirty-eighth key policy measure seeks to “[c]ontinue to develop relevant laws and regulations and develop the policy or strategy on cybersecurity.”³⁰⁸

The thirty-ninth key policy measure seeks to “Develop and invest in infrastructures and national cybersecurity management systems under the national committee to regularly monitor risks on national, regional and global levels.”³⁰⁹

The forty-fourth key policy measure seeks to “[e]stablish bilateral and multilateral cooperation frameworks and establish cooperations with international organizations or associations and the private sector related to cybersecurity to share information, experiences and best practices.” Cambodia’s participation in and leadership of international cybersecurity organizations is dependent on data policies that promote the safe sharing of data. Proposed articles requiring data localization and the criminalization of freedom of expression runs counter to this stated goal.

The fifty-sixth and fifty-seventh key policy measures seek to “encourage and attract digital talents from abroad.”³¹⁰ This policy measure is a natural complement to the objective in ASEAN’s DEFA of fluid transmissibility of technical talent across the region.

The fifty-eighth key policy measure seeks to “[d]evelop mechanisms to encourage, support[,] and facilitate the private sector in providing digital skills trainings to workers or

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.*

transferring current skills toward digital skills.” Government coordination with the private sector is essential to ensuring that the populace acquires the relevant technical skills and the ability to seek continuous technical upskilling after any formal education program concludes.

The seventy-third key policy measure seeks to “[d]evelop joint measures on cybersecurity and data safety to strengthen protection, prevention and response mechanisms against cybersecurity threats.” Cybersecurity threats should be narrowly defined in any law to focus on technical threats to critical infrastructure rather than an expansive view that includes national security and public order. See the conversation surrounding the impending UN Cybercrime Treaty for additional reasoning behind this explicit language.

The eighty-seventh key policy measure seeks to “[e]nsure privacy and security of data sharing and use” in a likely reference to the Constitutional rights of Cambodians and the upcoming draft laws.³¹¹

The eighty-ninth key policy measure seeks to “[e]xpand the scope of using artificial intelligence, data science, big data and other advanced technologies for data sharing and the creation of easy-to-use digital services.”³¹² It will be difficult for Cambodia to fully capture the benefits of AI if data localization requirements hinder information sharing from overseas R&D initiatives.

The one hundred and eleventh key policy measure seeks to “build regulatory framework and principles in supporting and building up confidence and trust among investors, and promote to establish a strong investment network.”³¹³ The laws that Cambodia implements based on this policy should take into account the predictable and stable rules that investors seek. Investors typically prefer to adhere to international norms in order to reduce compliance and overhead costs.

The one hundred and sixteenth key policy measure seeks to “[d]evelop mechanisms for effective cooperation and facilitation among national and international stakeholders through establishing agencies and the digital entrepreneurship ecosystem fund.”³¹⁴ Coordination with international stakeholders will have the highest chance of constructive developments if Cambodia’s laws and prakas adhere to international technical and human rights standards.

The one hundred and seventeenth key policy measure seeks “to promote and attract investments and participation from the private sector in high-tech investment projects, combined with trainings, use and transfer of technologies, as well as research and development and innovation.”³¹⁵ Here the framework correctly identifies essential elements of the country’s next phase of development. As mentioned in the FDI section above, Cambodia will need to attract high value-add technological investments that result in technology transfers to local businesses and people. The most likely way to achieve this is for Cambodia to adopt multinational standard data policies that reflect the evolving needs of the citizens and businesses. This will best position the country to attract this type of investment and training.

The one hundred and twenty-second key policy measure seeks to “[p]romote and implement bilateral and multilateral digital economy agreements frameworks aimed at expanding markets for local enterprises and supporting cross-border investment, business and

³¹¹ *Id.*

³¹² *Id.*

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Id.*

trade activities.”³¹⁶ Similarly, the one hundred and twenty-third key policy measure nudges the country to participate in “bilateral and multilateral digital economy agreements to boost export-import flow of goods and products as well as to assist enterprises in E-commerce and cross-border trade.”³¹⁷ Both of these policy measures will be difficult to achieve if, for example, e-commerce platforms decide not to operate in the country due to the data localization requirement in the draft Data Protection Law.

Constitution of the Kingdom of Cambodia

Several articles of the Constitution of the Kingdom of Cambodia directly relate to privacy and other fundamental human rights in the digital age.

Article 31 states that the “Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights and the covenants and conventions related to human rights, women’s rights and children’s rights.”³¹⁸ This article provides a clear mandate that Cambodia should abide by international human rights law.

Article 40 dictates that the “rights to privacy of residence, and to the confidentiality of correspondence by mail, telegram, fax, telex and telephone, shall be guaranteed.”³¹⁹ Unfortunately, “Cambodia has not elaborated on the meaning or scope of Article 40 by providing any implementing any specific laws or measures about this right to privacy.”³²⁰ Cambodia’s civil law system and the lack of public court decisions hamper the ability to decipher the boundaries to the Constitutional right of privacy.

Article 41 guarantees Cambodians “freedom of expression of their ideas, freedom of information, freedom of publication and freedom of assembly.”³²¹ This Article does come with the exception that “[n]o one shall exercise these rights to infringe upon the honor of others, or to affect the good customs of society, public order and national security.”³²² These restrictions appear to have been interpreted broadly by Cambodian authorities over the years. Lastly, the Article states that “[t]he regime of the media shall be determined by law.”³²³

Directly related to FDI, Article 61 directs the state to “promote economic development in all sectors and particularly in remote areas, especially in agriculture, handicrafts and industry, with attention to policies on water, electricity, roads and means of transportation, modern technology and credit systems.”³²⁴ The emphasis on modern technology highlights Cambodia's commitment to integrating advanced technologies into its development strategy, which is crucial for enhancing productivity and competitiveness across various sectors, thereby attracting more FDI and fostering sustainable economic growth.³²⁵

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Cambodia - Data Protection Overview*, DATAGUIDANCE, <https://www.dataguidance.com/notes/cambodia-data-protection-overview>.

³²¹ Constitution of the Kingdom of Cambodia art. 41 (1993, rev. 2008).

³²² *Id.*

³²³ *Id.*

³²⁴ *Constitution of the Kingdom of Cambodia* art. 61 (1993, rev. 2008)

³²⁵ Seng Sreng, *A Study on Foreign Direct Investment, The Case of Cambodia*, KDI SCHOOL OF PUBLIC POLICY AND MANAGEMENT (2001), <https://archives.kdischool.ac.kr/bitstream/11125/29974/1/A%20Study%20on%20foreign%20direct%20investme nt%2C%20the%20case%20of%20Cambodia.pdf>.

Law on Telecommunications

Cambodia's Law on Telecommunications, enacted in December 2015, has several provisions that raise significant concerns regarding data privacy and freedom of expression.³²⁶ The law grants extensive powers to the government, allowing for increased surveillance and control over telecommunications networks and data.

Article 97 is especially concerning for the surveillance powers that it grants to the government officials, only requiring "approval from legitimate authority."³²⁷ The article permits secret surveillance of any telecommunications without public accountability or safeguards.³²⁸ The article allows for unchecked government intrusion into private communications, potentially violating the Constitutional right to privacy and potentially being used to suppress dissent and freedom of expression.³²⁹

The second concerning provision is Article 6, which requires all telecommunications operators to "provide to MPTC the telecommunications, information and communication technology service data."³³⁰ This gives the Ministry unfettered rights to access user data from service providers without sufficient transparency or oversight provisions.³³¹ This could grant the government enhanced surveillance powers when combined with the data localization requirements and broad definition of service provider in the Draft Data Protection Law.

Article 7 grants MPTC the authority to take "necessary measures" under the undefined circumstances of "force majeure."³³² This vague language could include suspending services or seizing control of telecommunications infrastructure.³³³

Cambodia's Law on Telecommunications presents significant challenges to data privacy and freedom of expression due to its expansive surveillance powers and lack of transparency, which likely contravene international human rights standards.³³⁴ Some argue that the law's vague provisions allow for arbitrary enforcement, which could lead to self-censorship among internet users and hinder digital activism.³³⁵ Despite government assurances that the law is necessary for national security, its implementation has been

³²⁶ Law on Telecommunications, NS/RKM/1215/017 (2015) (Cambodia), https://data.opendevlopmentmekong.net/dataset/84f4a7c4-7613-4140-a4ed-4e43c3c61ece/resource/6716c7ab-7ae0-4a7c-91c5-6cb02035054c/download/20150127_telecommunicaitondraftlaw_en-edited-2.pdf.

³²⁷ *Id.*

³²⁸ *Cambodia's Law on Telecommunications: A Legal Analysis*, CAMBODIAN LEAGUE FOR THE PROMOTION AND DEFENSE OF HUMAN RIGHTS (Mar. 2016), https://www.licadho-cambodia.org/reports/files/214LICADHOTELECOMSLAWLEGALANALYSIS_March2016ENG.pdf.

³²⁹ *Cambodia's Law on Telecommunications: A Legal Analysis*, CAMBODIAN LEAGUE FOR THE PROMOTION AND DEFENSE OF HUMAN RIGHTS (Mar. 2016), https://www.licadho-cambodia.org/reports/files/214LICADHOTELECOMSLAWLEGALANALYSIS_March2016ENG.pdf.

³³⁰ Law on Telecommunications, NS/RKM/1215/017 (2015) (Cambodia), https://data.opendevlopmentmekong.net/dataset/84f4a7c4-7613-4140-a4ed-4e43c3c61ece/resource/6716c7ab-7ae0-4a7c-91c5-6cb02035054c/download/20150127_telecommunicaitondraftlaw_en-edited-2.pdf.

³³¹ *Cambodia's Law on Telecommunications: A Legal Analysis*, CAMBODIAN LEAGUE FOR THE PROMOTION AND DEFENSE OF HUMAN RIGHTS (Mar. 2016), https://www.licadho-cambodia.org/reports/files/214LICADHOTELECOMSLAWLEGALANALYSIS_March2016ENG.pdf.

³³² Law on Telecommunications, NS/RKM/1215/017 (2015) (Cambodia), https://data.opendevlopmentmekong.net/dataset/84f4a7c4-7613-4140-a4ed-4e43c3c61ece/resource/6716c7ab-7ae0-4a7c-91c5-6cb02035054c/download/20150127_telecommunicaitondraftlaw_en-edited-2.pdf.

³³³ Brad Adams, *Cambodia: Scrap Draft Cybercrime Law*, HUMAN RIGHTS WATCH (Nov. 13, 2020), <https://www.hrw.org/news/2020/11/13/cambodia-scrap-draft-cybercrime-law>.

³³⁴ *Rights Groups Warn of Tough Telecoms Law*, CAMBODIA DAILY (Feb. 18, 2016), <https://www.cambodiadaily.com/news/rights-groups-warn-of-tough-telecoms-law-109837/>.

³³⁵ *Freedom in the World 2016: Cambodia*, REFWORLD, <https://www.refworld.org/reference/annualreport/freehou/2016/en/113825>.

criticized for undermining privacy rights and failing to align with Cambodia's obligations under international human rights law.³³⁶

Consumer Protection Law

Cambodia's Consumer Protection Law, enacted on November 2, 2019, includes several provisions that intersect with privacy and cybersecurity considerations.³³⁷ The law establishes rules to protect consumer rights and ensure fair business practices, which inherently involve handling consumer data. Notably, the law mandates that businesses must meet minimum information standards, including labeling requirements and the provision of information in the Khmer language, to ensure transparency and consumer awareness.³³⁸ Additionally, the law empowers the NCCP to receive complaints, conduct investigations, and issue decisions on matters related to consumer rights violations, which could involve breaches of data privacy.³³⁹ While the law primarily focuses on consumer rights and fair competition, its requirements for clear and accurate information disclosure and the NCCP's investigative powers indirectly support data protection and cybersecurity by holding businesses accountable for the proper handling and protection of consumer data.

E-Commerce Law of 2019

Cambodia passed an E-Commerce law in 2019 that “includes certain provisions for the protection of consumer data that has been collected electronically.”³⁴⁰ A Mekong Business Initiative report from 2017 laid the groundwork for the law to be put into effect by explaining that the law could be a significant driver of e-commerce activity in the country.³⁴¹ This demonstrates the Cambodian government’s willingness to propel legislative initiatives towards the finish line when economic growth is at stake.

The scope of the E-Commerce Law includes “all activities, documents, and electronic commerce and civil transactions undertaken via electronic systems (Article 3, E-Commerce Law), regardless of whether the e-commerce activity is within Cambodia or is cross-border between foreign countries and Cambodia (Article 2, Sub Decree No. 134).”³⁴² This means that any business conducting digital commerce with a Cambodian consumer would be subject to the law regardless of the physical location of the business.

Although the law potentially grants the rights to correct and access an individual’s personal data, it does not “does not provide comprehensive data protection rights.”³⁴³ The law also “imposes basic disclosure and data protection requirements for commercial activities” in the normal course of e-commerce.³⁴⁴

³³⁶ *Ministry Hits Back at Rebuke of Contentious Telecoms Law*, CAMBODIA DAILY (Mar. 4, 2016), <https://www.cambodiadaily.com/news/ministry-hits-back-at-rebuke-of-contentious-telecoms-law-110921/>.

³³⁷ Law on Consumer Protection, NS/RKM/1119/016 (2019) (Cambodia), available at https://data.opendevdevelopmentcambodia.net/laws_record/law-on-consumer-protection/resource/1ad116e5-3097-4375-8101-9a1fe49bed19

³³⁸ Law on Consumer Protection, NS/RKM/1119/016 (2019) (Cambodia), available at https://aseanconsumer.org/file/pdf_file/Law-on-Consumer-Protection.pdf.

³³⁹ *Cambodia Enacts New E-Commerce Law and Consumer Protection Law*, TILLEKE & GIBBINS (Nov. 1, 2019), <https://www.tilleke.com/insights/cambodia-enacts-new-e-commerce-law-and-consumer-protection-law/>.

³⁴⁰ Law on E-Commerce, NS/RKM/1119/018 (2019) (Cambodia).

³⁴¹ MANGO TANGO ASIA, *eCommerce: Readiness and Opportunities in Cambodia, Overview of Cambodia’s eCommerce Market Landscape* (Jan. 2017), https://unctad.org/system/files/official-document/dtlstict2017d2_en.pdf.

³⁴² *Doing Business in Cambodia: Overview*, Practical Law Country Q&A 3-524-4317 (Thomson Reuters 2023).

³⁴³ Law on E-Commerce, NS/RKM/1119/018 (2019) (Cambodia),

³⁴⁴ *Doing Business in Cambodia: Overview*, Practical Law Country Q&A 3-524-4317 (Thomson Reuters 2023).

The law includes definitions for some terms that are essential to data policies. The law defines data as “a group of numbers, characters, symbols, messages, images, sounds, videos, information, or electronic programs that are prepared in a form suitable for use in a database or an electronic system.”³⁴⁵ Online data collected during e-commerce transactions such as names and addresses may fall under the “personal data” category in the law.³⁴⁶

Additionally, the law also contains a “blanket prohibition on certain forms of cybercrime, including interference with any electronic system for the purpose of accessing, downloading, copying, extracting, leaking, deleting, or otherwise modifying any stored data in bad faith or without authorized permission.”³⁴⁷ The Draft Cybercrime Law expands on this list of offenses.

Other rules related to the law include Sub Decree No. 134, formally titled “The Determination of Types, Formalities and Procedures for Issuing Approvals or Licenses to Intermediaries and E-Commerce Service Providers and Exemptions” from August 2020 and Prakas No. 290 on Granting of E-Commerce Permits or Licenses from October 2020.³⁴⁸ One business-friendly aspect of the E-Commerce Law is Article 7, which legally recognizes e-signatures, provided that the identity of the signatory can be verified, and the signature is collected through reliable means.³⁴⁹

Sub-Decree No. 252 on the Management, Use, and Protection of Personal Identification Data

Sub-Decree No. 252 on the Management, Use, and Protection of Personal Identification Data was issued on December 22, 2021, but is only available in Khmer.³⁵⁰ Although the sub-decree defines “personal identification data” and “personal private information”, it only applies to data owned by the MOI and does not apply to data used by other entities.³⁵¹

Like many of the data laws that are currently being proposed, this sub-decree contains broad policy objectives such as ensuring “the protection of peace and order[,]” furthering the public interest, and promote national development by improving the provision of services.”³⁵² The first two objectives are concerning from a human rights perspective due to potentially arbitrary enforcement mechanisms.

The sub-decree allows the MOI to “collect, compile, keep, manage, and protect the security of personal identification data that is under the authority of the MOI, including the registration of birth certificates, ID cards, statistics, and management of residency, passports,

³⁴⁵ Cambodia - Data Protection Overview, DATAGUIDANCE, <https://www.dataguidance.com/notes/cambodia-data-protection-overview>.

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ Sub-Decree No. 252 on the Management, Usage, and Security Protection of Personal Data, NS/RKM/0721/252 (2021) (Cambodia), available at https://data.opendevelopmentcambodia.net/en/laws_record/sub-decree-no-252-on-the-management-usage-and-security-protection-of-personal-data; *Data Protection Laws of the World: Cambodia*, DLA PIPER, <https://www.dlapiperdataprotection.com/index.html?t=law&c=KH>.

³⁵¹ *Data Protection Laws of the World: Cambodia*, DLA PIPER, <https://www.dlapiperdataprotection.com/index.html?t=law&c=KH>.

³⁵² Sub-Decree No. 252 on the Management, Usage, and Security Protection of Personal Data, NS/RKM/0721/252 (2021) (Cambodia), available at https://data.opendevelopmentcambodia.net/en/laws_record/sub-decree-no-252-on-the-management-usage-and-security-protection-of-personal-data

nationality, and other registrations.”³⁵³ While these actions appear to be standard for an agency responsible for maintaining a National ID system, providing additional details on the measures that the MOI takes to ensure the confidentiality and security of individuals' data would be beneficial.

Civil Code of the Kingdom of Cambodia 2007

Cambodia's Civil Code identifies the “personal right to identity, dignity, privacy, and other personal interests of an individual.”³⁵⁴ Several of the relevant articles are detailed below.

Article 10 grants individuals their personal rights including the “right to privacy and other personal benefits and interests, along with other rights, such as the rights to life, personal safety, health, freedom, identity, and dignity.”³⁵⁵ The key question is whether personal data is protected as part of an individual's personal rights. If so, “accessing, obtaining, processing, or otherwise commercializing personal data must be contractual, and thus require the data owner's consent in a valid agreement.”³⁵⁶ This article could be a key source of an individual's privacy rights against corporate data possessors.

Article 11 presents the possibility that an individual may be able to secure a court-ordered injunction if there is “a danger that an infringement of that person's personal rights may occur.”³⁵⁷ The scope and applicability of this article once again depends on whether personal data falls under personal rights.

Article 12 compliments Article 11 by allowing an individual to seek a remedy if the infringement of a personal right continues. This means that, “[i]n the data privacy context, ... a person can seek an order to remove, for example, any storage of their personal data collected unlawfully.”³⁵⁸

Article 13 enables an individual “to seek compensation for any damage suffered from an infringement of their personal rights.”³⁵⁹ This article allows individuals to pursue civil cases if individuals have privacy rights over their personal data as part of their personal rights.

Article 336 dictates the requirement for a proper offer and acceptance to consummate a fully formed contract.³⁶⁰ It potentially relates to privacy policies in that “express consent must be obtained from the data owner for the purposes of the data usage” and the requirement for “proper disclosure obligations for obtaining the data owner's consent.”³⁶¹

Article 345 gives an individual the option to retract their consent if the consent was granted as a result of a mistake, misunderstanding, misrepresentation, exploitative intent, or fraud.³⁶² This article may allow an individual to seek remedy if the terms and conditions regarding the collection of personal data are misleading or insufficiently detailed.

³⁵³ *Cambodia - Data Protection Overview*, DATAGUIDANCE, <https://www.dataguidance.com/notes/cambodia-data-protection-overview>.

³⁵⁴ *Doing Business in Cambodia: Overview*, Practical Law Country Q&A 3-524-4317 (Thomson Reuters 2023).

³⁵⁵ *Cambodia - Data Protection Overview*, DATAGUIDANCE, <https://www.dataguidance.com/notes/cambodia-data-protection-overview>.

³⁵⁶ *Id.*

³⁵⁷ *Id.*

³⁵⁸ *Id.*

³⁵⁹ *Id.*

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² *Id.*

Criminal Code of the Kingdom of Cambodia

The Criminal Code of the Kingdom of Cambodia, also referred to as the Penal Code, was last amended in 2018, but a majority of the articles were added in 2009.³⁶³ The Penal Code criminalizes the “disclosure of secrets and the interception of private communications” with punishments ranging from fines to imprisonment.³⁶⁴

Articles 301 and 302 “prohibit people from intercepting or recording private conversations, or recording a person's image in a private location, without their consent[,]” but allows “the interception or recording of private conversations and images authorized by law.”³⁶⁵ These articles in combination with the Law on Telecommunications may enable surveillance by the authorities.

Article 314 “prohibits unauthorized breaches of professional secrecy by any person who holds, by reason of their position, profession, function, or mission, information of a confidential nature.”³⁶⁶ This Article can be interpreted as an anti-whistleblower clause depending on the scope of the disclosure authorization allowance.

Articles 317 to 320 and 427 to 432 are directly applicable to cybercrimes. Articles 317 to 320 concern the “Breach Of Privacy Of Correspondence And Telecommunication”³⁶⁷ while Articles 427 to 432 focus on “Offences Related To Information Technology” in Cambodia.³⁶⁸ Article 317 makes it an offense to “[m]aliciously open, destroy, delay or divert correspondence sent to a third party.”³⁶⁹ Article 318 focuses on breaches of privacy of telephone conversation by criminalizing the “[u]nauthorized interception, recording, or disclosure of telecommunications.”³⁷⁰ Articles 317 and 318 work in tandem to prohibit the “malicious opening, destroying, delaying, diverting, jamming, or intercepting of correspondence sent to a third party, including telephone messages.”³⁷¹

The “Offences Related To Information Technology” start with Article 427, which criminalizes the “unauthorized access to or remaining in automated data processing system.”³⁷² Article 427 makes it a crime for anybody that “fraudulently accesses or maintains access to an automated data processing system that causes destruction or alteration to data in that system.”³⁷³ The article also punishes the obstruction of the “the functioning of an automated data processing system[,] ... fraudulently introducing data into, deleting, or modifying data[,]” and participating in a group conducting or planning to conduct any of these IT crimes.³⁷⁴ Considering these provisions, the Draft Cybercrime Law appears

³⁶³ *Cambodia: Reject Draft Amendments to the Constitution and Criminal Code*, HUMAN RIGHTS WATCH (Feb. 21, 2018), <https://www.hrw.org/news/2018/02/21/cambodia-reject-draft-amendments-constitution-and-criminal-code>.

³⁶⁴ *Doing Business in Cambodia: Overview*, Practical Law Country Q&A 3-524-4317 (Thomson Reuters 2023).

³⁶⁵ *Cambodia - Data Protection Overview*, DATAGUIDANCE, <https://www.dataguidance.com/notes/cambodia-data-protection-overview>.

³⁶⁶ *Id.*

³⁶⁷ Criminal Code of the Kingdom of Cambodia (2009), available at <https://www.ajne.org/sites/default/files/resource/laws/7195/criminal-code-cambodia-en-kh.pdf>.

³⁶⁸ *Id.*

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ *Cambodia - Data Protection Overview*, DATAGUIDANCE, <https://www.dataguidance.com/notes/cambodia-data-protection-overview>.

³⁷² Criminal Code of the Kingdom of Cambodia (2009), available at <https://www.ajne.org/sites/default/files/resource/laws/7195/criminal-code-cambodia-en-kh.pdf>.

³⁷³ *Cambodia - Data Protection Overview*, DATAGUIDANCE, <https://www.dataguidance.com/notes/cambodia-data-protection-overview>.

³⁷⁴ *Id.*

redundant at times, but also expands off of this list of offenses by incorporating additional offenses and specific definitions.

Article 428 focuses on “[o]bstructing the functioning of automated data processing system”³⁷⁵ by punishing those that intercept data without authorization. Similarly, Article 429 targets the “[f]raudulent introduction, deletion or modification of data.”³⁷⁶

The specified sections of Cambodia's Penal Code address various cyber or computer-related offenses, including unauthorized access, data and system interference, and misuse of devices.³⁷⁷ These provisions aim to protect the integrity and security of information systems and data, imposing penalties that include imprisonment and fines for violations. The quantity and variety of these articles raises the possibility that it may be simpler and more human rights compliant to simply amending the articles in the Penal Code rather than totally reconstructing these cybercrime issues in the draft Cybercrime Law.

Code of Criminal Procedure of the Kingdom of Cambodia

Two articles are relevant to data policies in the 2010 Code of Criminal Procedure of the Kingdom of Cambodia. Article 83 supports the due process of all individuals under investigation by requiring the confidentiality of “all information gathered over the course of an investigation, including technical data gathered on the individual(s) being investigated.”³⁷⁸

Similarly, Article 91 proscribes due process requirements for searches such as prior authorization and restrictions on time and place.³⁷⁹ If the term “searches is interpreted broadly, it may include private digital data, thereby granting digital due process rights to individuals under investigation.”³⁸⁰

Sub-decree on Digital Signatures

Cambodia's 2018 Sub-Decree on Digital Signatures is only moderately related to privacy and cybersecurity due to its establishment of requirements for the secure creation, verification, and use of digital signatures.³⁸¹ The Sub-Decree mandates technical standards for digital signatures and prohibits the storage of another person’s private key without written authorization.³⁸² Private digital keys are key for encryption standards.

Intellectual Property / Digital Property Laws

Cambodia has established a comprehensive legal framework for intellectual property (IP) protection, encompassing a variety of laws and regulations aimed at safeguarding creators' and innovators' rights. The Trademark and Unfair Competition Law, enacted in 2002, laid the groundwork for trademark protection, while the 2003 Law on Patents, Utility Model Certificates, and Industrial Designs established a system for patent applications, which are processed by MISTI.³⁸³ Despite these efforts, the patent office reported that only 17

³⁷⁵ Criminal Code of the Kingdom of Cambodia (2009), available at <https://www.ajne.org/sites/default/files/resource/laws/7195/criminal-code-cambodia-en-kh.pdf>.

³⁷⁶ *Id.*

³⁷⁷ *Cambodia*, COUNCIL OF EUROPE, <https://www.coe.int/en/web/octopus/-/cambodia>.

³⁷⁸ *Cambodia - Data Protection Overview*, DATAGUIDANCE, <https://www.dataguidance.com/notes/cambodia-data-protection-overview>.

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ *Electronic Signature Laws & Regulations - Cambodia*, ADOBE, <https://helpx.adobe.com/legal/esignatures/regulations/cambodia.html>.

³⁸² *Electronic Signature Legality Guide in Cambodia*, EMSIGNER, <https://www.emsigner.com/Areas/Legality/Cambodia>.

³⁸³ *Guide to Trademark Law in Cambodia*, ABACUS IP, <https://www.abacus-ip.com/guide-to-trademark-law-in-cambodia>.

patents had been granted as of June 2017, highlighting challenges in the system's effectiveness.³⁸⁴ Additionally, the Law on Copyright and Related Rights, also passed in 2003, provides automatic protection for works, with authors or rights holders having the option to register their works with the Ministry of Culture and Fine Arts.³⁸⁵ Cambodia's accession to the World Trade Organization in 2004 further necessitated the adoption of various IP laws to meet international standards, although challenges in enforcement and protection persist.³⁸⁶

The Ministry of Commerce's Department of Intellectual Property Rights is responsible for registering trademarks in Cambodia, providing a structured process for both domestic and foreign applicants to secure trademark protection.³⁸⁷ Similarly, industrial designs must be registered with the Department of Industrial Property under MISTI, ensuring that designs meet the necessary criteria for protection.³⁸⁸ A notable example of international cooperation in IP is the Memorandum of Understanding on Cooperation in Industrial Property between Cambodia's MISTI and the Intellectual Property Office of Singapore, established in 2015.³⁸⁹ This agreement facilitates mutual assistance and technical collaboration, allowing for the recognition and processing of patent applications between the two countries, thereby enhancing the effectiveness and efficiency of IP protection in Cambodia.³⁹⁰

Cambodia became a signatory to the Paris Convention for the Protection of Intellectual Property in 2016 and joined the Patent Cooperation Treaty as its 151st contracting state, allowing for streamlined patent applications through international cooperation.³⁹¹ Beyond these multinational agreements, Cambodia has established bilateral IP agreements with countries such as Singapore, Japan, the EU, the PRC, South Korea, and the US, enhancing its IP framework and fostering international collaboration.³⁹² Notably, Cambodia signed an Agreement on the Validation of European Patents with the European Patent Office in 2017, becoming the first Asian country to grant validation to European patents, which allows EU and PRC patent holders to follow a validation process to gain protection of their patents in Cambodia without reapplying for a Cambodian patent.³⁹³ Cambodia's IP policies

³⁸⁴ David Haskel, *20 Years of Patent Law in Cambodia: Milestones and Future Outlook*, INTELLECTUAL PROPERTY HELPDESK (Mar. 25, 2023), https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/guest-article-abacus-ip-20-years-patent-law-cambodia-milestones-and-future-outlook-2023-03-25_en.

³⁸⁵ National Information Society Agency, *Technical Assistance Report for Open Government Data in Cambodia: APT Expert Mission 2022* (prepared for the Cambodian Ministry of Posts and Telecommunications).

³⁸⁶ David Haskel, *Intellectual Property in Cambodia*, HG (2010), <https://www.hg.org/legal-articles/intellectual-property-in-cambodia-18263>.

³⁸⁷ *Guide to Trademark Law in Cambodia*, ABACUS IP, <https://www.abacus-ip.com/guide-to-trademark-law-in-cambodia>.

³⁸⁸ *IP Protection in Cambodia*, BNG LEGAL (Mar. 2024), <https://www.bnglegal.com/index.php/ip-protection-in-cambodia-mar-2024>.

³⁸⁹ *Singapore Collaboration with Cambodia Under Way*, SPRUSON & FERGUSON, <https://www.spruson.com/patents/singapore-collaboration-with-cambodia-under-way/>.

³⁹⁰ *Guide to Patent Law in Cambodia*, ABACUS IP, <https://www.abacus-ip.com/guide-to-patent-law-in-cambodia>.

³⁹¹ *Id.*

³⁹² *History of Intellectual Property Rights in Cambodia*, CAMBODIA IP, <https://www.cambodiaip.gov.kh/en/history-of-d-ipr>.

³⁹³ *Cambodia Begins Validation of European Patents*, TILLEKE & GIBBINS, <https://www.tilleke.com/insights/cambodia-begins-validation-european-patents>.

are guided by the National Intellectual Property Policy 2023-2028, which aims to align the country's IP system with international standards and support economic development.³⁹⁴

International Law

Article 31 of the Constitution of the Kingdom of Cambodia binds the country to international human rights law. The article stipulates that the Constitution “recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights and the covenants and conventions related to human rights, women’s rights and children’s rights.”³⁹⁵ The explicit reference to these foundational documents underscores the gravity with which Cambodia is expected to fulfill its human rights obligations.

Universal Declaration of Human Rights

Several articles from the Universal Declaration of Human Rights are directly applicable to digital rights. Article 12 plainly states that “[n]o one shall be subjected to arbitrary interference with his privacy[,]” and that “[e]veryone has the right to the protection of the law against such interference or attacks.”³⁹⁶ This establishes the right to privacy with only narrow, clearly defined grounds for a government to trespass on that right.

Article 19 holds that “[e]veryone has the right to freedom of opinion and expression ... without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”³⁹⁷ Freedom of expression is subject to even fewer restrictions than the right to privacy under the three-part test in international human rights law.³⁹⁸

International Covenant on Civil and Political Rights

Although not explicitly mentioned in the Constitution of the Kingdom of Cambodia, the country is a signatory to and has ratified the ICCPR. Article 19 requires State parties to “guarantee the right to freedom of expression, including the right to receive and impart information and ideas of all kinds regardless of frontiers.”³⁹⁹ This reinforces the right to freedom of expression as detailed in the Universal Declaration of Human Rights.

Restrictions to the freedom of expression “are lawful only when such restrictions pass a three-part, cumulative test.”⁴⁰⁰ First, the restriction must be provided by law in a manner that is clear and accessible to everyone.⁴⁰¹ Second, the restriction must serve one of the legitimate purposes set out in Article 19(3) of the ICCPR, “namely: (i) to protect the rights or reputations of others; (ii) to protect national security or public order, or public health or

³⁹⁴ National Intellectual Property Policy 2023-2028, https://data.opendevdevelopmentcambodia.net/laws_record/national-intellectual-property-policy-2023-2028-already-change.

³⁹⁵ Constitution of the Kingdom of Cambodia (1993, rev. 2008), available at <https://data.opendevdevelopmentcambodia.net/en/dataset/0caf2613-1047-4b05-ac2b-9db914c715f0/resource/a39cfa99-c241-4668-bfcd-9c0c739ee241/download/f2c8e563-8102-45de-ba8c-648dbfb20a6f.pdf>.

³⁹⁶ *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

³⁹⁷ National Information Society Agency, *Technical Assistance Report for Open Government Data in Cambodia: APT Expert Mission 2022* (prepared for the Cambodian Ministry of Posts and Telecommunications).

³⁹⁸ Agnes Callamard, *Freedom of Expression and the Internet*, U.N. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (2008), <https://www.ohchr.org/Documents/Issues/Expression/ICCPR/Seminar2008/PaperCallamard.doc>.

³⁹⁹ *Legal Analysis: Cambodia Draft Law on Cybercrime*, INTERNATIONAL CENTER FOR NOT-FOR-PROFIT LAW (Dec. 2022), https://data.opendevdevelopmentcambodia.net/dataset/0224f751-51b2-4660-877a-e2082977b972/resource/d5cd7a30-4359-48b5-8ba2-7190965d300f/download/cambodia-cybercrime-analysis_final.pdf

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

morals.”⁴⁰² Thirdly, the principle of necessity and proportionality must require the least restrictive method be utilized only when necessary to achieve one of the aims listed above.⁴⁰³

Lastly, the right to privacy is enshrined in Article 17 of the ICCPR, which states that no one shall be "subjected to arbitrary or unlawful interference with his privacy"⁴⁰⁴ This right is further elaborated in Human Rights Committee General Comment No. 27, paragraph 15, which specifies that any restrictions on this right must be necessary, legitimate, and proportionate.⁴⁰⁵

UN General Assembly Resolution 75/176. The right to privacy in the digital age⁴⁰⁶

UN General Assembly Resolution 75/176, titled "The right to privacy in the digital age," was adopted on December 16, 2020.⁴⁰⁷ The document builds off the 2013 and 2014 versions of the document with the same name.⁴⁰⁸ The resolution noted the benefits and harms associated with the rapid development of the digital world. It noted “the capacity of Governments, business enterprises and individuals to undertake surveillance, interception and data collection, which may violate or abuse human rights, in particular the right to privacy.”⁴⁰⁹ A nation that adheres to the values documented in the resolution will foster trust among consumers and businesses, reduce data market failures, and enhance the reputation of its digital economy. The resolution’s recommendation to establish robust data protection frameworks minimizes the risks associated with data misuse, creating a more predictable business environment that supports data-driven innovation and cross-border trade. Although initial compliance costs may be incurred, the overall impact can lead to greater economic resilience, a competitive advantage in the global market, and potential growth in sectors reliant on data confidentiality and integrity.

The resolution begins by “reaffirming the human right to privacy” and then calls upon all States to respect and protect the right in the digital realm.⁴¹⁰ It also stresses the “importance of full respect for the freedom to seek, receive and impart information, including the fundamental importance of access to information and democratic participation.”⁴¹¹ The various content moderation articles in the Draft Cybercrime Law appears to run counter to the resolution’s ideal version of freedom of information.

The resolution stresses the importance of maintaining “independent, effective, adequately resourced and impartial judicial, administrative and/or parliamentary domestic oversight mechanisms capable of ensuring transparency, as appropriate, and accountability for State surveillance of communications, their interception and the collection of personal

⁴⁰² *Id.*

⁴⁰³ *Id.*

⁴⁰⁴ *Id.*

⁴⁰⁵ Martin Scheinin, *International Covenant on Civil and Political Rights: Key Elements in the Context of the LIBE Committee Inquiry*, EUROPEAN PARLIAMENT (Oct. 14, 2013), available at https://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/statement_professor_scheinin/statement_professor_scheininen.pdf.

⁴⁰⁶ G.A. Res. 75/176, U.N. Doc. A/RES/75/176, *The Right to Privacy in the Digital Age* (Dec. 16, 2020), available at <https://documents.un.org/doc/undoc/gen/n20/371/75/pdf/n2037175.pdf>.

⁴⁰⁷ *Id.*

⁴⁰⁸ G.A. Res. 68/167, U.N. Doc. A/RES/68/167, *The Right to Privacy in the Digital Age* (Dec. 18, 2013), available at <https://documents.un.org/doc/undoc/gen/n13/449/47/pdf/n1344947.pdf>; G.A. Res. 69/166, U.N. Doc. A/RES/69/166, *The Right to Privacy in the Digital Age* (Dec. 18, 2014), available at <https://documents.un.org/doc/undoc/gen/n14/707/03/pdf/n1470703.pdf>.

⁴⁰⁹ G.A. Res. 75/176, U.N. Doc. A/RES/75/176, *The Right to Privacy in the Digital Age* (Dec. 16, 2020), available at <https://documents.un.org/doc/undoc/gen/n20/371/75/pdf/n2037175.pdf>.

⁴¹⁰ *Id.*

⁴¹¹ *Id.*

data.”⁴¹² The lack of a sufficiently independent oversight organization(s) is a critical weakness in Cambodia’s current and future data laws. Independent organizations are needed to “provide individuals whose right to privacy has been violated by unlawful or arbitrary surveillance with access to an effective remedy.”⁴¹³

Furthermore, the resolution then dives into the role that States play in crafting effective data policies. It implores States to develop and implement “legislation, regulations and policies to ensure that all business enterprises, including social media enterprises and other online platforms, fully respect the right to privacy and other relevant human rights in the design, development, deployment and evaluation of technologies, including artificial intelligence, and to provide individuals whose rights may have been violated or abused with access to an effective remedy, including compensation and guarantees of non-repetition.”⁴¹⁴ This is essentially asking States to develop a remedy mechanism for individuals to use if private business violate their rights. The resolution asks states to adopt these remedy mechanisms as part of larger “data protection legislation, regulation and policies, including on digital communication data, that comply with their international human rights obligations, which could include the establishment of national independent authorities with powers and resources to monitor data privacy practices, investigate violations and abuses and receive communications from individuals and organizations.”⁴¹⁵ Cambodia’s various draft data laws indicate that the country is moving in this direction, but there remains a lack of an independent authority to adjudicate privacy disputes.

In a nod to the specific privacy rights included in most data protection laws, the resolution urges States to “consider developing or to maintain legislation, preventive measures and remedies addressing harm from the processing, use, sale or multiple resale or other corporate sharing of personal data without the individual’s free, explicit, meaningful and informed consent.”⁴¹⁶ The notion of informed consent and the rights to “amend, correct, update, delete, and withdraw consent for the data” is a consistent theme of most privacy laws, including Cambodia’s draft Data Protection Law.⁴¹⁷ The resolution also identifies the importance of States implementing “effective measures to prevent the unlawful retention, processing and use of personal data stored by public authorities and business enterprises.”⁴¹⁸

The resolution also spends a significant amount of text highlighting the impact that “unlawful or arbitrary surveillance and/or interception of communications” has on the lives of individuals across the globe. Many of Cambodia’s current and draft laws identify public or national security to “justify the gathering and protection of certain sensitive information[,]” but the resolution asks States to “ensure full compliance with their obligations under international human rights law.”⁴¹⁹

Any legal framework that enables surveillance, such as Cambodia’s Law on Telecommunications, should be “publicly accessible, clear, precise, comprehensive and non-discriminatory” while ensuring that any State violation of the right to privacy “must not be arbitrary or unlawful.”⁴²⁰ The lack of transparency in many Cambodian government institutions undermines the nation’s ability to abide by these principles when conducting

⁴¹² *Id.*

⁴¹³ *Id.*

⁴¹⁴ *Id.*

⁴¹⁵ *Id.*

⁴¹⁶ *Id.*

⁴¹⁷ *Id.*

⁴¹⁸ *Id.*

⁴¹⁹ *Id.*

⁴²⁰ *Id.*

surveillance. The resolution specifically mentions upholding the right to privacy when States wish to “intercept digital communications of individuals and/or collect personal data,” especially in the context of “information- and intelligence-sharing agreements” with other nations.⁴²¹ This rings especially true given the Articles permitting intentional cooperation in the Draft Cybercrime Law.

Lastly, the resolution identifies the importance of encryption in securing “the confidentiality of digital communications” and emphasizes that “States should refrain from employing unlawful or arbitrary surveillance techniques, which may include forms of hacking.”⁴²²

UN HRC 47/16. The promotion, protection and enjoyment of human rights on the Internet

The UN Human Rights Council's Resolution 47/16, adopted on July 13, 2021, emphasizes the importance of promoting, protecting, and enjoying human rights on the Internet.⁴²³ It recognizes the Internet as a critical tool for realizing a range of human rights, including freedom of expression, and urges States to ensure that these rights are upheld online.⁴²⁴ The resolution calls on governments to bridge digital divides and encourages the sharing of best practices to enhance Internet access and use, particularly for disadvantaged groups.⁴²⁵ It also highlights concerns about Internet shutdowns and their adverse impacts on human rights, urging states to refrain from such practices.⁴²⁶ This resolution should be pivotal in guiding Cambodian efforts to ensure that the digital space remains open, free, and secure for all users.

UN HRC 50/15. Freedom of opinion and expression

More recently, UN Human Rights Council Resolution 50/15 was adopted on July 8, 2022, in order to reaffirm the fundamental right to freedom of opinion and expression.⁴²⁷ The resolution emphasizes the importance of protecting these rights in all forms of media and communication. Even though the UN Human Rights Council has very diverse interests and perspectives, it was still able to “reaffirm that the right to freedom of opinion and expression, including the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media, is a human right guaranteed to all.”⁴²⁸ Any restrictions to freedom of speech or the freedom of information must be “in full compliance with international human rights obligations, including the principles of lawfulness, legitimacy, necessity and proportionality.”⁴²⁹ Widespread agreement on this issue is just one reason why the content moderation articles in the Draft Cybercrime Law are unlikely to foster up much international cooperation.

The resolution notes the dangers associated with the proliferation of technical surveillance programs and tools by “[e]xpress[ing] its continuing concern that violations and

⁴²¹ *Id.*

⁴²² *Id.*

⁴²³ Human Rights Council Res. 47/16, U.N. Doc. A/HRC/RES/47/16, *The Promotion, Protection and Enjoyment of Human Rights on the Internet* (July 13, 2021), available at <https://documents.un.org/doc/undoc/gen/g21/198/31/pdf/g2119831.pdf>.

⁴²⁴ *Id.*

⁴²⁵ *Id.*

⁴²⁶ *Id.*

⁴²⁷ Human Rights Council Res. 50/15, U.N. Doc. A/HRC/RES/50/15, *The Right to Privacy in the Digital Age* (July 8, 2022), available at <https://undocs.org/Home/Mobile?FinalSymbol=A%2Fhrc%2Fres%2F50%2F15&Language=E>.

⁴²⁸ Human Rights Council Res. 50/15, U.N. Doc. A/HRC/RES/50/15, *The Right to Privacy in the Digital Age* (July 8, 2022), available at https://digitallibrary.un.org/record/3985686/files/A_HRC_RES_50_15-EN.pdf.

⁴²⁹ Human Rights Council Res. 50/15, U.N. Doc. A/HRC/RES/50/15, *Freedom of Opinion and Expression* (July 8, 2022), available at <https://documents.un.org/doc/undoc/gen/g22/407/29/pdf/g2240729.pdf>.

abuses of the right to freedom of opinion and expression continue, often with impunity, and are facilitated and aggravated by the abuse of states of emergency, as well as unlawful or arbitrary surveillance and/or interception of communications, including through digital surveillance technologies.”⁴³⁰ Although surveillance technologies are not explicitly detailed in Cambodia’s draft data laws, numerous Articles require data to be stored in a manner that enables authorities access without adequate privacy safeguards or independent oversight. The Law on Telecommunications also lacks sufficient safeguards surrounding arbitrary surveillance.

The resolution emphasizes “technical solutions to secure and protect the confidentiality of digital communications, including measures for encryption, pseudonymization and anonymity.”⁴³¹ This includes not “interfer[ing] with the use of such technical solutions.”⁴³² Article 12 of the Draft Cybercrime Law may be in conflict with this provision due to the required storage of content data for 180 days, an impossibility for many end-to-end encryption apps.

The resolution identifies “laws, regulations, policies and other measures concerning personal data and privacy protection online” as critical to upholding freedom of speech by preventing “the arbitrary or unlawful collection, retention, processing, use or disclosure of personal data on the Internet.”⁴³³ Here Cambodia has started developing its privacy law, but many of the proposed law’s provisions undermine freedom of expression rather than bolstering it. Other restrictions that suppress speech or information availability such as internet shutdowns, online censorship, or states of emergency are strongly condemned.⁴³⁴

In terms of the private sector, the resolution “[e]ncourages business enterprises, including communications service providers, to work towards enabling solutions to secure and protect the confidentiality of digital communications and transactions, including measures for encryption, pseudonymization and anonymity.” Since ensuring the confidentiality of communications is critical to both personal and commercial purposes, States should not “interfere with the use of such technical solutions.”⁴³⁵

Proposed laws & Policies

Personal Data Protection Law

The MPTC has been drafting a Personal Data Protection Law since at least 2021. The 2024 version has 55 sections.⁴³⁶ The draft law is part of a broader overhaul of the nation’s data policies and online activity regulation.⁴³⁷ The numerous articles will have a significant impact on the handling and transfer of Cambodian’s personal data.”⁴³⁸

⁴³⁰ Human Rights Council Res. 50/15, U.N. Doc. A/HRC/RES/50/15, *The Right to Privacy in the Digital Age* (July 8, 2022), available at https://digitallibrary.un.org/record/3985686/files/A_HRC_RES_50_15-EN.pdf.

⁴³¹ *Id.*

⁴³² Human Rights Council Res. 50/15, U.N. Doc. A/HRC/RES/50/15, *Freedom of Opinion and Expression* (July 8, 2022), available at <https://documents.un.org/doc/undoc/gen/g22/407/29/pdf/g2240729.pdf>.

⁴³³ *Id.*

⁴³⁴ *Id.*

⁴³⁵ *Id.*

⁴³⁶ Fiona Kelliher, *Experts Fear Cambodian Cybercrime Law Could Aid Crackdown*, VOA NEWS (Apr. 08, 2024 1:22 PM), <https://www.voanews.com/a/experts-fear-cambodian-cybercrime-law-could-aid-crackdown-/7561462.html>.

⁴³⁷ *International Agencies Raise a Red Flag Over Cambodia's Draft Cybersecurity Law*, FOCUS CAMBODIA (Oct. 2023), <https://focus-cambodia.com/article/cambodia-cybersecurity-draft-law/>.

⁴³⁸ *Cambodia's Draft Data Protection Law Fans Fears of Government Abuse*, NIKKEI ASIA (Oct. 2023), <https://asia.nikkei.com/Politics/Cambodia-s-draft-data-protection-law-fans-fears-of-government-abuse>.

The law first surfaced in February 2021 when the MPTC announced its intention to prepare a comprehensive personal data protection law after finalizing the draft cybersecurity law.⁴³⁹ In September 2023, the draft law was made available to select private organizations and companies by the MPTC for their comments.⁴⁴⁰ One such organization, the GDA, published their comment in Oct 2023.⁴⁴¹ A spokesperson for the MPTC responded to critiques of the draft law on October 5, 2023 by stating that the draft law was designed to safeguard vital information infrastructure and essential public services while aligning itself to the Cambodia Digital Economy and Society Policy Framework 2021 – 2035.⁴⁴² In March 2024, authorities hosted a select group of civil society organizations to discuss the draft law.⁴⁴³ One month later, in April 2024, a version was leaked to VOA Cambodia.⁴⁴⁴

The draft law includes numerous articles that are deeply troubling from both a human rights and foreign investment perspectives. Starting with Article 2, the draft law has an extraterritorial scope. The law applies to any entity operating inside of Cambodia, and it also applies to the personal data of Cambodians regardless of whether the data controller operates from inside the physical borders of the country. This is a common feature in many privacy laws such as the EU’s GDPR and Thailand’s Personal Data Protection Act, but it imposes heavy compliance costs on data possessors.

Separately, the AIC wants the age of a child in Article 7 to be set at 13 years old instead of 15 years old as it currently stands in the draft law.⁴⁴⁵ The age difference is significant for internet companies because children have enhanced privacy protections, and the consent of a parent or guardian is required before the collection, use, or disclosure of a child’s personal data. This is purely a corporate request and is likely at odds with human rights campaigners’ goal of protecting children. One area where both business groups and privacy advocates are likely to have concerns is with the required age verification mechanisms that threaten to de-anonymize parts of the internet.⁴⁴⁶

Article 16 defines the special categories of personal data that data controllers and data processors must provide special protection to. This category of data “includes, but is not limited to, biometric data, genetic data, health data, and data related to ethnicity and religion.”⁴⁴⁷ The AIC wants the government to “clearly and exhaustively define[] the types of data that are covered by this requirement.”⁴⁴⁸ This request serves the interests of commercial entities that are seeking reduced compliance risk by asking for certainty regarding the types of data utilized in their operations. Additionally, the term “special protections” is undefined with promises to provide additional interpretation in future unpublished prakas.⁴⁴⁹

⁴³⁹ *Data Protection Laws of the World: Cambodia*, DLA PIPER, <https://www.dlapiperdataprotection.com/index.html?t=law&c=KH>.

⁴⁴⁰ *Id.*

⁴⁴¹ *Cambodia Data Protection and Privacy Framework*, GLOBAL DATA ALLIANCE (Oct. 5, 2023), <https://globaldataalliance.org/wp-content/uploads/2023/10/10052023gdacambodiadatapro.pdf>.

⁴⁴² Niem Chheng, *Concerns Over Draft Cyber Law Allayed by Official Explanation*, PHNOM PENH POST (Oct. 2023), <https://www.phnompenhpost.com/national/concerns-over-draft-cyber-law-allayed-official-explanation>.

⁴⁴³ Fiona Kelliher, *Experts Fear Cambodian Cybercrime Law Could Aid Crackdown*, VOA NEWS (Apr. 08, 2024 1:22 PM), <https://www.voanews.com/a/experts-fear-cambodian-cybercrime-law-could-aid-crackdown-/7561462.html>.

⁴⁴⁴ *Id.*

⁴⁴⁵ *AIC Submission on the Personal Data Protection Bill 2023*, ASIA INTERNET COALITION (2023), <https://aicasia.org/download/830/>.

⁴⁴⁶ *Id.*

⁴⁴⁷ *Id.*

⁴⁴⁸ *Id.*

⁴⁴⁹ *Id.*

Article 17 prevents data controllers from “charg[ing] an extra fee or raise the price for a good, service, or feature when a data subject exercises any right under this law” or “terminat[ing], refus[ing] to provide, or degrad[ing] goods or services to, or otherwise retaliat[ing] against a data subject that exercises any right under this law.”⁴⁵⁰ This is another area where the business groups and privacy advocates are likely to disagree. The AIC wants to be able to charge a “reasonable” fee to cover its compliance costs, whereas individuals and privacy groups will want business to provide these services free of charge.⁴⁵¹ The best resolution is to adopt standard language and rules from multinational data privacy laws so that corporate compliance costs are minimized while providing the critical data privacy rights of individuals. As an example, the EU’s GDPR does not allow organizations to charge a fee when individuals exercise their data rights.

Articles 22 and 24 lay out Cambodia’s data localization requirements. Article 22 is titled “Transfer of Personal Data Outside the Kingdom of Cambodia” and Article 24 is titled “Location of Personal Data Storage.”⁴⁵² Article 22 prevents a data controller from transferring personal data to any country outside Cambodia unless authorized by a specific exemption to be determined by prakas issued by the Minister of the MPTC.⁴⁵³ Article 24 requires data controls to store personal data in Cambodia. Technical specifications for the requirements of personal data are to be issued at a later date by prakas from the MPTC.⁴⁵⁴ It should be noted that “[e]conomies including Indonesia, Malaysia, the Philippines, Singapore, Thailand, Bangladesh, India, Pakistan, and Sri Lanka have all decided in recent years NOT to adopt the types of strict localization mandates and transfer restrictions set forth in Articles 22 and 24.”⁴⁵⁵

The GDA and AIC have requested that these articles be eliminated because it would prevent the “free movement of data across borders”⁴⁵⁶ Alternatively, if this article is not able to be eliminated, the GDA proposes that transfers of data should only be prevented if it is in the public interest, or it is in the interests of the data subject. As detailed earlier in this paper, data localization requirements are likely to hamper economic growth and deter foreign technological investment. These articles are likely to counterproductive to Cambodia’s digital economy goals because they are likely to decrease the variety of technical services available in the country and decrease the willingness of foreign investors to make technological investments in the country due to the difficulty of moving data across global operations. The impact of data residency to GDP, productivity, and foreign investment predicted in previous research is likely to apply to Cambodia as well. Data localization requirements will also likely hamper the country’s ability to fully participate in ASEAN’s DEFA since one of the key pillars is cross-border data flows. There are also cybersecurity implications to limiting outside data sharing if outside technical expertise is required to investigate a cyber breach.

In summary, this law provides significant protections of individual privacy rights, but also includes concerning articles that could restrict cross-border data transfers, decrease the free flow of information, and support state surveillance.⁴⁵⁷ Both the ICJ and Access Now

⁴⁵⁰ *Id.*

⁴⁵¹ *Id.*

⁴⁵² *Id.*

⁴⁵³ *Cambodia Data Protection and Privacy Framework*, GLOBAL DATA ALLIANCE (Oct. 5, 2023), <https://globaldataalliance.org/wp-content/uploads/2023/10/10052023gdacambodiadatapro.pdf>.

⁴⁵⁴ *Id.*

⁴⁵⁵ *Id.*

⁴⁵⁶ *AIC Submission on the Personal Data Protection Bill 2023*, ASIA INTERNET COALITION (2023), <https://aicasia.org/download/830/>.

⁴⁵⁷ *Cambodia's Proposed Data Laws Spur Privacy, Safety Concerns*, IAPP (Oct. 2023), <https://iapp.org/news/a/cambodias-proposed-data-laws-spurs-privacy-safety-concerns/>.

have argued that the draft law would could undermine privacy rights and freedom of expression, and expose individuals to increased cyber threats.⁴⁵⁸ Businesses and foreign investors may be particularly concerned with the compliance costs even with slight variation outside of the standard terminology and articles utilized in regional or multinational privacy laws. Lastly, the lack of an independent oversight organization and effective remedial mechanisms could lead to abuse since the penalties in Article 49 include possible fines and license revocation.⁴⁵⁹

Draft Cybersecurity Law

The stated objective of the Draft Cybersecurity law is to “protect network, software, or hardware.”⁴⁶⁰ The law has been drafted by the MPTC. It was last leaked publicly in September 2022.⁴⁶¹ The law comes in response to cybersecurity breaches suffered by the government and the proliferation of cyber scam centers that have been reported on by news outlets.⁴⁶² Cambodia ranked 132nd out of 160 countries in the Global Cybersecurity Index 2020.⁴⁶³ Significant fines and potential imprisonment are potential punishments for violations. The law applies to public and private organizations across various sectors, including telecommunications, banking, healthcare, and media.⁴⁶⁴

The impetus for the draft laws is the series of significant cyber breaches and attacks in the country, some of which have been attributed to Chinese state-sponsored hacking groups. These cyber espionage activities have targeted various sectors, including government, defense, commerce, and human rights organizations, often aligning with the PRC’s geopolitical objectives in the region. Notably, in the lead-up to Cambodia's 2018 general elections, the hacking group TEMP.Periscope, linked to the PRC, breached multiple Cambodian political and governmental organizations, underscoring the use of cyber capabilities to influence political processes.⁴⁶⁵ More recently, reports indicate that Chinese hackers have continued to penetrate Cambodian government networks, with at least 24 organizations compromised as part of a long-term espionage campaign.⁴⁶⁶ These incidents

⁴⁵⁸ *Cambodia: Ministries Should Withdraw Draft Cybersecurity Law Which Would Threaten Human Rights and Expose People to Increased Cyber Threats*, INT’L COMM’N OF JURISTS (Oct. 2023),

<https://www.icj.org/cambodia-ministries-should-withdraw-draft-cybersecurity-law-which-would-threaten-human-rights-and-expose-people-to-increased-cyber-threats/>; *Cambodia: Ministries Should Withdraw Draft Cybersecurity Law Which Would Threaten Human Rights and Expose People to Increased Cyber Threats*, ACCESS NOW (Oct. 2, 2023), <https://www.accessnow.org/press-release/cambodia-cybersecurity-law-2023/>.

⁴⁵⁹ *AIC Submission on the Personal Data Protection Bill 2023*, ASIA INTERNET COALITION (2023), <https://aicasia.org/download/830/>.

⁴⁶⁰ *Cambodia - Data Protection Overview*, DATAGUIDANCE, <https://www.dataguidance.com/notes/cambodia-data-protection-overview>.

⁴⁶¹ *Cambodia Cybersecurity Law Draft Surfaces Ahead of Election*, REST OF WORLD (Mar. 10, 2023), <https://restofworld.org/2023/cybersecurity-law-draft-cambodia-elections/>.

⁴⁶² *Cyber Scams and Human Trafficking in Cambodia and Vietnam*, U.S. INST. OF PEACE (2023), <https://www.usip.org/events/cyber-scams-and-human-trafficking-cambodia-and-vietnam>.

⁴⁶³ National Information Society Agency, *Technical Assistance Report for Open Government Data in Cambodia: APT Expert Mission 2022* (prepared for the Cambodian Ministry of Posts and Telecommunications).

⁴⁶⁴ *Cambodia: Ministries Should Withdraw Draft Cybersecurity Law Which Would Threaten Human Rights and Expose People to Increased Cyber Threats*, ACCESS NOW (Oct. 2, 2023), <https://www.accessnow.org/press-release/cambodia-cybersecurity-law-2023/>.

⁴⁶⁵ Jeff Stone, *Chinese Hackers Breach Cambodian Government Ahead of Country's General Election*, CYBERSCOOP (July 10, 2018), <https://cyberscoop.com/temp-periscope-china-cambodia-government-hack-fire-eye>.

⁴⁶⁶ Ravie Lakshmanan, *Chinese Hackers Launch Covert Espionage Attacks on 24 Cambodian Organizations*, HACKER NEWS (Nov. 13, 2023), <https://thehackernews.com/2023/11/chinese-hackers-launch-covert-espionage.html>.

highlight the persistent vulnerabilities in Cambodia's cybersecurity infrastructure and the ongoing challenges the country faces in safeguarding its digital sovereignty.⁴⁶⁷

The law grants the government extensive powers to manage cybersecurity threats and incidents. It enables the government to seize computer systems from entities that it deems unable to mitigate critical cybersecurity threats on their own.⁴⁶⁸ This is one of the more controversial provisions because it grants the government the ability to intervene and take control of IT systems during a cyber-attack but lacks several key safeguards against abuse. It does not contain a minimum business size threshold or limit the provision only to essential service or critical infrastructure. Additionally, the government has the authority to investigate any broadly defined incident with significant disruptive effects. There are also due process concerns stemming from situations when a court order may or may not be required. Lastly, deference to the principle of necessity is lacking. The cyber-attack intervention provision grants the government excessive control over private data, raising significant privacy issues and potential for abuse.

The law includes numerous broad definitions that could enable an expansion of the surveillance state. Cybersecurity threats are broadly defined as events causing "significant harm" to national security, defense, foreign relations, the economy, public health, safety, or public order.⁴⁶⁹ The vague language can be exploited to suppress dissent and undermining freedom of expression and privacy. These unclear definitions also increase the risk for foreign investors who would prefer clearly defined rules.

The law also enables prosecution for those that obstruct or oppose the MPTC's duties.⁴⁷⁰ Lastly, the law introduces a licensing requirement for cybersecurity services that would likely decrease the options available to private enterprises seeking to enhance the security of their IT systems.⁴⁷¹ This imposes an unreasonable administrative burden on businesses and civil society, potentially stifling innovation and security efforts. It will also make it more difficult for foreign defensive cybersecurity companies to offer their services and products in the country.

Cambodia's draft Cybersecurity Law poses significant threats to human rights, particularly regarding privacy and freedom of expression. The law's broad and vague provisions grant the government excessive powers, such as the ability to seize computer systems and monitor data without independent oversight, potentially violating international treaties and standards.⁴⁷² Human rights organizations, including the International Commission of Jurists and Access Now, have urged Cambodia to withdraw or substantially amend the draft law to align with international human rights obligations and ensure a secure

⁴⁶⁷ *Chinese Hackers Targeted Southeast Asia's Government, Military Offices*, NIKKEI ASIA (Dec. 9, 2021), <https://asia.nikkei.com/Politics/International-relations/Chinese-hackers-targeted-Southeast-Asia-s-government-military-offices>.

⁴⁶⁸ *Cambodia Cybersecurity Law Draft Surfaces Ahead of Election*, REST OF WORLD (Mar. 10, 2023), <https://restofworld.org/2023/cybersecurity-law-draft-cambodia-elections/>.

⁴⁶⁹ *Id.*

⁴⁷⁰ Fiona Kelliher, *Experts Fear Cambodian Cybercrime Law Could Aid Crackdown*, VOA NEWS (Apr. 08, 2024 1:22 PM), <https://www.voanews.com/a/experts-fear-cambodian-cybercrime-law-could-aid-crackdown-7561462.html>.

⁴⁷¹ *Cambodia: Ministries Should Withdraw Draft Cybersecurity Law Which Would Threaten Human Rights and Expose People to Increased Cyber Threats*, ACCESS NOW (Oct. 2, 2023), <https://www.accessnow.org/press-release/cambodia-cybersecurity-law-2023/>.

⁴⁷² *Cambodia Cybersecurity Law Draft Surfaces Ahead of Election*, REST OF WORLD (Mar. 10, 2023), <https://restofworld.org/2023/cybersecurity-law-draft-cambodia-elections/>.

yet open digital environment.⁴⁷³ The draft law's excessive government control and lack of independent oversight create a landscape ripe for abuse, undermining trust and security, and raising concerns about further restrictions on media outlets and digital service companies.⁴⁷⁴

Draft Law on Cybercrime

The MOI has been drafting the Law on Cybercrime since at least 2014. That was when an unofficial first draft of the cybercrime law was released in English.⁴⁷⁵ In 2020, Human Rights Watch posted what was thought to be the third known draft of the law.⁴⁷⁶ The fourth version of the law was dated June 2021. The draft law is still being reviewed and revised by the MOI.⁴⁷⁷ Authorities hope to complete the drafting process and send the law to Parliament for passage before the end of 2024.

The law contains numerous articles that are typical of laws that seek to criminalize cyber activity, but it also contains articles that are not standard in international model cybercrime laws. Some of the offenses include accessing a computer system without a legal right, illegal interception of non-public computer transmissions, and data interference.⁴⁷⁸ The law also enables authorities to search and seize computer data for evidence while requiring the preservation of data for investigations. Punishment ranges from fines to terms of imprisonment.

Numerous organizations have raised potential human rights issues with the law and noted inconsistencies with other model cybercrime laws. There are several model cybercrime laws that have been published since the proliferation of the internet. The Council of Europe Budapest Convention on Cybercrime was opened to signatories in 2001 and became effective in 2004.⁴⁷⁹ A total of 75 nations are party to the convention that had the goal of ensuring “the confidentiality, integrity and availability of computer systems, networks and computer data as well as the misuse of such systems, networks and data by providing for the criminali[z]ation of such conduct, as described in this Convention, and the adoption of powers sufficient for effectively combating such criminal offences, by facilitating their detection, investigation and prosecution at both the domestic and international levels and by providing arrangements for fast and reliable international co-operation.”⁴⁸⁰

Another model law frequently used as a basis for a country’s domestic cybercrime law is the Commonwealth Model Law on Computer and Computer Related Crime. First approved in 2002 and then later revised in 2016, the model law has been used by 22

⁴⁷³ *Cambodia: Ministries Should Withdraw Draft Cybersecurity Law Which Would Threaten Human Rights and Expose People to Increased Cyber Threats*, INT’L COMM’N OF JURISTS (Oct. 2023),

<https://www.icj.org/cambodia-ministries-should-withdraw-draft-cybersecurity-law-which-would-threaten-human-rights-and-expose-people-to-increased-cyber-threats/>

⁴⁷⁴ *Cambodia Cybersecurity Law Draft Surfaces Ahead of Election*, REST OF WORLD (Mar. 10, 2023), <https://restofworld.org/2023/cybersecurity-law-draft-cambodia-elections>.

⁴⁷⁵ Joseph A. Pidala, *Cybergovernance in Cambodia: A Risk-Based Approach to Cybersecurity*, CDRI Special Report No. 18, CAMBODIA DEV. RES. INST. (Jan. 2020), https://cdri.org.kh/storage/pdf/SP18_cybersecurity_1620204216.pdf.

⁴⁷⁶ Brad Adams, *Cambodia: Scrap Draft Cybercrime Law*, HUMAN RIGHTS WATCH (Nov. 13, 2020), <https://www.hrw.org/news/2020/11/13/cambodia-scrap-draft-cybercrime-law>.

⁴⁷⁷ *Cambodia - Data Protection Overview*, DATAGUIDANCE, <https://www.dataguidance.com/notes/cambodia-data-protection-overview>.

⁴⁷⁸ *Id.*

⁴⁷⁹ *Budapest Convention: What Is It and How Is It Being Updated?*, CROSS-BORDER DATA FORUM (July 2, 2020), <https://www.crossborderdataforum.org/budapest-convention-what-is-it-and-how-is-it-being-updated/>.

⁴⁸⁰ *Parties/Observers to the Budapest Convention and Observer Organisations to the T-CY*, COUNCIL OF EUROPE, <https://www.coe.int/en/web/cybercrime/parties-observers>; *Convention on Cybercrime*, COUNCIL OF EUROPE, CETS No. 185 (Nov. 23, 2001), available at <https://rm.coe.int/1680081561>.

Commonwealth members as the basis of their national cybercrime laws.⁴⁸¹ The model law aims to “support Commonwealth countries in putting a place a legal framework for criminali[z]ation and investigation of computer and computer-related crimes.”⁴⁸²

The ITU has also developed a few regional model cybercrime laws including the Harmonization of ICT Policies, Legislation and Regulatory Procedures in the Caribbean - Cybercrime/e-crime: Model Policy Guidelines & Legislative Texts (HIPCAR), the ITU-EC project on Capacity Building and ICT policies, Regulations and Legislative Frameworks” for Pacific Islands Countries - Pacific Island Regional Model Cybercrime Legislation (ICB4PAC), and the Harmonization of ICT Policies in Sub-Saharan Africa - Computer Crime and Cybercrime: Southern African Development Community Model Law (HIPSSA).⁴⁸³

The most significant development in cybercrime law has been recent UN negotiations on a worldwide cybercrime treaty. The official title for the group developing the draft is the “Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes.”⁴⁸⁴ Although negotiations have been ongoing since May 2021, most of the definitions and articles in the draft law have been settled in the most recent revisions.⁴⁸⁵ The treaty aims to create a global legal framework for international cooperation in preventing and investigating cybercrime and prosecuting cybercriminals. Some critics argue that the current draft contains overly broad criminal provisions and weak human rights safeguards, which could facilitate intrusive surveillance and the misuse of the treaty to target activists, journalists, and other vulnerable groups.⁴⁸⁶

Returning to Cambodia’s draft Law on Cybercrime, specific articles that may be troubling to business groups and civil society organizations alike include the extraterritorial jurisdiction included in Article 2. Some potential issues with enforcing this provision include difficulty coordinating with international and multinational law enforcement agencies due to the non-standard definitions and Articles. It may also create a strain on current and future extradition treaties that Cambodia has with other countries.

Article 3 contains definitions for over a dozen terms utilized throughout the draft law. While including a list of definitions is a good practice, many of the definitions do not adhere to the multinational standards included in the model laws mentioned prior. Additionally, the terms “security,” “public order,” and “interests of the Kingdom of Cambodia” are not defined.

Articles 7 and 18 enable a competent Ministry to revoke the license of a business for a violation. Article 18 includes an appeals process through the relevant Ministry and a subsequent appeal to a court, but a business would still be shut down in the meantime. This

⁴⁸¹ *Commonwealth Model Law Promises Co-ordinated Cybercrime Response*, COMMONWEALTH SECRETARIAT (2023), <https://thecommonwealth.org/news/commonwealth-model-law-promises-co-ordinated-cybercrime-response>.

⁴⁸² *Model Law on Computer and Computer Related Crime*, COMMONWEALTH SECRETARIAT (2017), available at https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/migrated/key_reform_pdfs/P15370_11_ROL_Model_Law_Computer_Related_Crime.pdf.

⁴⁸³ Zahid Jamil, *Cybercrime Model Laws: Discussion Paper Prepared for the Cybercrime Convention Committee (T-CY)*, COUNCIL OF EUROPE (Dec. 9, 2014) (provisional), available at <https://rm.coe.int/090000168048c351>.

⁴⁸⁴ *Cybercrime Ad Hoc Committee*, UNITED NATIONS OFFICE ON DRUGS AND CRIME, https://www.unodc.org/unodc/en/cybercrime/ad_hoc_committee/home.

⁴⁸⁵ *Id.*

⁴⁸⁶ Deborah Brown, *UN: Draft Cybercrime Treaty Threatens Rights*, HUMAN RIGHTS WATCH (Jan. 23, 2024), <https://www.hrw.org/news/2024/01/23/un-draft-cybercrime-treaty-threatens-rights>; *United Nations Cybercrime Treaty*, ELECTRONIC FRONTIER FOUNDATION, <https://www EFF.org/issues/un-cybercrime-treaty>.

creates a substantial amount of risk for businesses since inadvertent noncompliance could result in a total loss of the ability to operate in Cambodia. These articles are likely to deter foreign business entry into the country if due process concerns are not addressed.

Article 12 requires the preservation of computer data and traffic data for a period of 180 days by service providers if a request is made by a ministry. This article also has due process concerns and is likely to increase data storage and compliance costs for all businesses. This provision may impose the highest costs on SMEs that lack the resources and technical capability to efficiently comply. Many popular services and apps like encrypted messaging apps potentially violate this article in their current state.

Articles 14 and 15 introduce privacy and surveillance concerns into the law due to the procedures for seizing computer data and the real-time collection of traffic data. Article 14 enables judicial police officers to request a court to search and seize a computer system as part of an investigation. Article 15 allows authorities to conduct real-time collection of traffic data for “serious offenses” with the possibility of extensions beyond 180 days. In response to these articles, civil society organizations are seeking independent oversight, a reasonableness standard, and limits to the scope and duration of these authorities. These articles also have client confidentiality implications for businesses that deal with customer data.

Article 32 is effectively a cryptocurrency ban. Authorization or license from a competent authority is needed to exchange cryptocurrencies, but no processes are included in the draft law for obtaining such a license. Although cryptocurrencies are involved in many ransomware attacks, provisions promoting international cooperation and support financial institutions implementation of KYC rules may be more effective than a total ban. Additionally, fintech businesses operating in ASEAN are likely to find these regulations troubling.

Articles 42, 43, 44, and 49 contain content moderation clauses. Article 42 makes it a crime to cause intimidation, threat, or abuse to another person by IT related means. Article 43 makes defamation a crime. Article 44 criminalizes insults. Article 49 criminalizes “false information” without an explicit definition of what that entails. All of these articles suppress freedom of speech and freedom of information in online spheres. Daron Tan, associate international legal adviser at ICJ, has stated that these articles do not comply with the ICCPR.⁴⁸⁷ Investors should be concerned about these articles due to the extraterritorial nature of the draft law and the possibility for an individual’s actions to transfer liability onto the corporation via Article 24.

Article 45 punishes any IP violations with a jail sentence and fines. There is no Mens Rea or intent standard included in the article’s language. This creates significant risks for technology companies that accidentally use external works or allow external content to be uploaded and shared. As seen previously, Cambodia does have a relatively comprehensive collection of IP laws but decided to criminalize violations in the draft Cybercrime Law.

Critics argue that Cambodia's draft Cybersecurity Law poses significant threats to human rights, particularly in terms of privacy and freedom of expression. The law's broad and vague provisions, combined with excessive government powers, likely violate international treaties and standards.⁴⁸⁸ Human rights organizations have urged Cambodia to withdraw or

⁴⁸⁷ Fiona Kelliher, *Experts Fear Cambodian Cybercrime Law Could Aid Crackdown*, VOA NEWS (Apr. 08, 2024 1:22 PM), <https://www.voanews.com/a/experts-fear-cambodian-cybercrime-law-could-aid-crackdown-/7561462.html>.

⁴⁸⁸ *Cambodia: Ministries Should Withdraw Draft Cybersecurity Law Which Would Threaten Human Rights and Expose People to Increased Cyber Threats*, INT’L COMM’N OF JURISTS (2024),

substantially amend the draft law to align with international human rights obligations and ensure a secure yet open digital environment.⁴⁸⁹ The draft law's excessive government control and lack of independent oversight create a landscape ripe for abuse, undermining trust and security.⁴⁹⁰ Additionally, the law fails to address one of the primary cyber-related issues facing the country: cyber scam centers operating out of Cambodia, which the USIP has estimated that “the annual value of funds stolen worldwide by these syndicates could be as high as US\$64 billion.”⁴⁹¹ The draft law is not tailored to the intricacies of dealing with organized crime and human trafficking, and experts suggest that providing additional training and resources to police forces and prosecutors may have a greater impact on these issues than simply reformulating the cybercrime law.⁴⁹²

National Security Laws

National Internet Gateway

Another important privacy related policy that has been bandied about in Cambodia is a national internet gateway that would “funnel all web traffic through a state-controlled entry point.”⁴⁹³ The policy emerged in 2021 when a decree was published “that required all Internet traffic in Cambodia to be rerouted through the National Internet Gateway by February 2022.”⁴⁹⁴ When February 2022 rolled around, “a sub-decree was signed ordering Cambodia to power up a new National Internet Gateway.”⁴⁹⁵ The current operational status of the national internet gateway is unclear. Agence France-Presse reported that the gateway was set to become operational on February 16, 2022.⁴⁹⁶ VOA later reported that the gateway was delayed by the MPTC that same month due to the COVID-19 pandemic.⁴⁹⁷ Several sources have indicated that the gateway is still not operational as of Dec 2023.⁴⁹⁸

The gateway would make it easier for the government to order telecommunication companies and internet service providers “to block websites and connections that adversely

<https://www.icj.org/resource/cambodia-ministries-should-withdraw-draft-cybersecurity-law-which-would-threaten-human-rights-and-expose-people-to-increased-cyber-threats>.

⁴⁸⁹ Brad Adams, *Cambodia: Scrap Draft Cybercrime Law*, HUMAN RIGHTS WATCH (Nov. 13, 2020), <https://www.hrw.org/news/2020/11/13/cambodia-scrap-draft-cybercrime-law>.

⁴⁹⁰ Fiona Kelliher, *Experts Fear Cambodian Cybercrime Law Could Aid Crackdown*, VOA NEWS (Apr. 08, 2024 1:22 PM), <https://www.voanews.com/a/experts-fear-cambodian-cybercrime-law-could-aid-crackdown-/7561462.html>.

⁴⁹¹ *Cambodia's Hun Sen Holds Rare Meeting with CIA Chief*, RADIO FREE ASIA (June 14, 2024), <https://www.rfa.org/english/news/cambodia/cambodia-cia-meeting-06142024042909.html>.

⁴⁹² *Cambodian National Police Officers Receive Training on Open-Source Data Investigation for Human Trafficking Cases*, INT'L JUSTICE MISSION (Sept. 25, 2023), <https://www.ijm.org/news/cambodian-national-police-officers-receive-training-on-open-source-data-investigation-for-human-trafficking-cases>.

⁴⁹³ *Cambodia Steps Up Surveillance with New Internet Gateway*, SECURITYWEEK (2023), <https://www.securityweek.com/cambodia-steps-surveillance-new-internet-gateway/>.

⁴⁹⁴ *Cambodia's National Internet Gateway*, INTERNET SOCIETY (2023), <https://www.internetsociety.org/resources/internet-fragmentation/cambodias-national-internet-gateway/>.

⁴⁹⁵ *ByteDC Launches Cambodia Data Center*, DATA CENTER DYNAMICS (2023), <https://www.datacenterdynamics.com/en/news/bytedc-launches-cambodia-data-center/>.

⁴⁹⁶ *Cambodia Steps Up Surveillance with New Internet Gateway*, SECURITYWEEK (2023), <https://www.securityweek.com/cambodia-steps-surveillance-new-internet-gateway/>.

⁴⁹⁷ Fiona Kelliher, *Experts Fear Cambodian Cybercrime Law Could Aid Crackdown*, VOA NEWS (Apr. 08, 2024 1:22 PM), <https://www.voanews.com/a/experts-fear-cambodian-cybercrime-law-could-aid-crackdown-/7561462.html>; MORDOR INTELLIGENCE, *Cambodia Telecom Market - Size, Share & Industry Analysis*, <https://www.mordorintelligence.com/industry-reports/cambodia-telecom-market>.

⁴⁹⁸ *Cambodia's National Internet Gateway*, INTERNET SOCIETY (2023), <https://www.internetsociety.org/resources/internet-fragmentation/cambodias-national-internet-gateway/>; U.S. Department of State, *2023 Investment Climate Statements: Cambodia*, U.S. Department of State, <https://www.state.gov/reports/2023-investment-climate-statements/cambodia/>.

affect ‘national revenue, safety, social order, morality, culture, traditions and customs.’⁴⁹⁹ Those companies would also be required to “report activity to the government in a way that’s traceable to specific individuals.”⁵⁰⁰ Information that must be provided to the authorities could include an individual's IP address, website visits, and location. It was also reported that the initial decree required service providers “retain all traffic data for 12 months.”⁵⁰¹

The gateway has been heavily criticized for the surveillance and privacy issues it creates.⁵⁰² The AIC “urge[d] the Ministry of Post and Telecommunications to take the time to hear the concerns of industry experts and stakeholders” because the gateway “will restrict Cambodians’ ability to access a free and open Internet and greatly harm the country’s nascent digital economy.”⁵⁰³ In addition to concerns involving freedom of speech and freedom of information concerns, network operators also “face degradation of network performance and increase in costs.”⁵⁰⁴ This would reduce the speed and bandwidth of the internet in the country, impeding the ability of businesses and individuals to operate normally. The gateway is just on aspect of the “increasing ... technical and financial barriers that network operators face in becoming part of the global [i]nternet.”⁵⁰⁵

Draft Law on Access to Information

The Ministry of Information has also been drafting a Law on Access to Information. The draft law is currently being reviewed by the Ministry of Justice before being submitted to the Council of Ministers.⁵⁰⁶ The Ministry of Information is finalizing the draft law as part of its 2024 work direction, with a commitment to complete it by 2025.⁵⁰⁷ The stated purpose of the law is to promote good journalism and establish audiovisual standards.⁵⁰⁸

Although the draft law is not directly related to data policies such as privacy laws or cybersecurity standards, many of its provisions would significantly impact society's access to information. Furthermore, the lack of transparency and broadly defined terms in the draft the law could make Cambodia less attractive to FDI as investors seek environments with clear and predictable regulatory frameworks. Civil society organizations have raised concerns about certain provisions of the draft law, such as broad exceptions to disclosure and the lack

⁴⁹⁹ *Cambodia Steps Up Surveillance with New Internet Gateway*, SECURITYWEEK (2023), <https://www.securityweek.com/cambodia-steps-surveillance-new-internet-gateway/>.

⁵⁰⁰ *Cambodia’s National Internet Gateway*, INTERNET SOCIETY (2023), <https://www.internetsociety.org/resources/internet-fragmentation/cambodias-national-internet-gateway/>.

⁵⁰¹ *Id.*

⁵⁰² *Cambodia: Government Should Scrap Rights-Abusing National Internet Gateway*, ARTICLE 19 (2023), <https://www.article19.org/resources/cambodia-government-should-scrap-rights-abusing-national-internet-gateway/>.

⁵⁰³ *Submission on the Draft Personal Data Protection Law*, ASIA INTERNET COALITION (2023), available at <https://aicasia.org/download/390/>.

⁵⁰⁴ *Cambodia’s National Internet Gateway*, INTERNET SOCIETY (2023), <https://www.internetsociety.org/resources/internet-fragmentation/cambodias-national-internet-gateway/>.

⁵⁰⁵ *Id.*

⁵⁰⁶ *Ministry of Information Finalizing Protracted Access to Information Draft Law*, CAMBOJA NEWS (2024), <https://cambojanews.com/ministry-of-information-finalizing-protracted-access-to-information-draft-law/>; National Information Society Agency, *Technical Assistance Report for Open Government Data in Cambodia: APT Expert Mission 2022* (prepared for the Cambodian Ministry of Posts and Telecommunications).

⁵⁰⁷ *Ministry of Information Finalizing Protracted Access to Information Draft Law*, CAMBOJA NEWS (2024), <https://cambojanews.com/ministry-of-information-finalizing-protracted-access-to-information-draft-law/>

⁵⁰⁸ *Id.*

of an independent oversight body.⁵⁰⁹ These groups have urged the government to amend the draft to align with international standards.⁵¹⁰

This is not the first time that Cambodia has implemented content moderation policies. In 2018, an Inter-Ministerial Prakas on Website and Social Media Control was issued to require internet service providers to install surveillance software to monitor online content.⁵¹¹ The prakas ordered the “Ministry of Information and Ministry of Posts and Telecommunications to ‘take action and shutdown websites and social media page that ... [cause] discrimination and [undermine] national culture and tradition.’”⁵¹²

Cambodia has previously forced service providers to block independent media outlets. A directive issued in July 2023 “require[d] blocking media web sites that the Department of Information and Audiovisual considers to ‘disseminate misleading news affecting the honor and reputation of the Royal Government and that fail to comply with the requirements ... [of] the Ministry of Information.’”⁵¹³ The result has been independent media in Cambodia being targeted by the aforementioned laws and prakas.

As currently drafted, the draft Law on Access to Information falls short of international standards due to its narrow definitions and overbroad exemptions, which could undermine its effectiveness in promoting open governance.⁵¹⁴ Critics have pointed out that the law does not adequately cover all public bodies, lacks a presumption of full disclosure, and fails to establish an independent oversight body to enforce compliance.⁵¹⁵ The inclusion of civil society input and amendments to address these gaps will be crucial for the law to truly empower citizens and foster a culture of transparency in Cambodia.⁵¹⁶

Spyware

There has been very little public reporting on spyware in the Cambodian context. Spyware represents a critical global issue at the intersection of privacy and cybersecurity in the modern world, with governments frequently funding and developing the technical capabilities to intrude into personal data. Kiripost warned about the Israeli spyware Pegasus being detected in neighboring Thailand, but there is little information on whether the Cambodian government has access to or has purchased any spyware capabilities.⁵¹⁷ The Cambodian government has been tangentially linked to the use of surveillance tools, such as

⁵⁰⁹ *Cambodia: Access to Information Bill Falls Short*, HUMAN RIGHTS WATCH (Dec. 11, 2019), <https://www.hrw.org/news/2019/12/11/cambodia-access-information-bill-falls-short>.

⁵¹⁰ *Cambodia: Draft Law on Access to Information Criticized*, RADIO FREE ASIA (Dec. 12, 2019), <https://www.rfa.org/english/news/cambodia/draftlaw-12122019150823.html>.

⁵¹¹ Brad Adams, *Cambodia: Scrap Draft Cybercrime Law*, HUMAN RIGHTS WATCH (Nov. 13, 2020), <https://www.hrw.org/news/2020/11/13/cambodia-scrap-draft-cybercrime-law>.

⁵¹² Inter-Ministerial Prakas No. 170 on Publication Controls of Website and Social Media Processing via Internet in the Kingdom of Cambodia (May 28, 2018), available at https://data.opendevelopmentmekong.net/laws_record/inter-ministerial-prakas-no-170-on-publication-controls-of-website-and-social-media-processing-via-/resource/112a2521-dde1-4079-9294-5786d3ffdaf9.

⁵¹³ *Cambodia: Access to Independent Media Blocked*, HUMAN RIGHTS WATCH (Aug. 2, 2023), <https://www.hrw.org/news/2023/08/02/cambodia-access-independent-media-blocked>.

⁵¹⁴ *Cambodia: Access to Information Bill Falls Short*, HUMAN RIGHTS WATCH (Dec. 11, 2019), <https://www.hrw.org/news/2019/12/11/cambodia-access-information-bill-falls-short>.

⁵¹⁵ *Cambodia: Analysis of the Draft Law on Access to Information*, ARTICLE 19 (2023), <https://www.article19.org/resources/cambodia-analysis-of-the-draft-law-on-access-to-information>.

⁵¹⁶ *Ministry of Information Finalizing Protracted Access to Information Draft Law*, CAMBOJA NEWS (2024), <https://cambojanews.com/ministry-of-information-finalizing-protracted-access-to-information-draft-law/>

⁵¹⁷ *Cambodians Cautioned to Shield Against Pegasus Cyber-Attacks*, KIRIPOST (2024), <https://kiripost.com/stories/cambodians-cautioned-to-shield-against-pegasus-cyber-attacks>.

the locally developed messaging app CoolApp, which critics argue is designed to monitor and control political discourse.⁵¹⁸

In terms of the cyber defense, reports indicate that PRC hackers have penetrated some Cambodian government networks, likely as part of an espionage campaign.⁵¹⁹ These activities have serious implications for privacy, as they may allow foreign entities to obtain access to confidential data on Cambodian citizens. The potential implications of offensive cyber activities in Cambodia are unclear due to the lack of public reporting on the issue.

ASEAN

ASEAN digital policy is currently a patchwork of mostly voluntary initiatives and committees that cover a wide range of technologies and regulatory issues, including data governance, cybersecurity, and digital trade. ERIA researchers have stated that “ASEAN’s digital economy faces regulatory gaps and inconsistencies in areas such as data protection, e-commerce, privacy laws, and cybersecurity.”⁵²⁰ The researchers worry that “policies in these areas were not designed to keep pace with the rapid advancements in the digital landscape.”⁵²¹ ASEAN has proposed DEFA as its solution, but the agreement is still at least a year and a half away and will face its own challenges with standardization and compliance. In the meantime, the “varying levels of digital maturity and diverse regulatory frameworks across ASEAN Member States” has created “complexities in standardi[z]ing regulations within the region” with “noticeable regulatory gaps and inconsistencies, encompassing areas such as competition, data privacy, cybersecurity.”⁵²² Specifically regarding individual privacy, the researchers identify the “widespread sharing of private information with service providers [as] rais[ing] concerns about data usage and potential misuse.”⁵²³

The need for regulations that adhere to multi-lateral standards is clear. That is why ERIA proposed the “ASEAN Digital Community 2045” to support economic growth and individual rights with standardized rules and regulations.⁵²⁴ The proposal has four fundamental elements. The first element is labeled “Data Governance” and seeks to encourage a “regulatory transformation to moderni[z]e its outdated policies and frameworks to keep pace with the rapidly evolving digital era.”⁵²⁵ ERIA would like to see the development of “data protection regulations, prioritiz[ing] digital governance, and establishing unified and standardi[z]ed regulations across all ASEAN Member States are crucial steps to increase legal clarity, promote interoperability, foster innovation, and encourage investment.”⁵²⁶ Cambodia is individually trying to tackle all of these issues through the various draft laws detailed in the previous section, but those initiatives run the risk of becoming non-compliant with ASEAN initiatives. Cambodia’s frequent deviations from standardized definitions, articles, and international human rights norms only adds to the

⁵¹⁸ Rhea Mogul, *Cambodia’s CoolApp Messaging App Sparks Surveillance Fears*, CNN (June 27, 2024), <https://www.cnn.com/2024/06/27/tech/cambodia-coolapp-messaging-surveillance-fears-intl-hnk/index.html>.

⁵¹⁹ *Cambodia Has a Chinese Hacker Problem*, WASH. POST (Nov. 8, 2023), <https://www.washingtonpost.com/politics/2023/11/08/cambodia-has-chinese-hacker-problem/>.

⁵²⁰ *ASEAN Digital Community 2045*, ECONOMIC RESEARCH INSTITUTE FOR ASEAN AND EAST ASIA (ERIA), https://www.eria.org/uploads/ASEAN-Digital-Community-2045-rev_.pdf.

⁵²¹ *Id.*

⁵²² ECONOMIC RESEARCH INSTITUTE FOR ASEAN AND EAST ASIA, *ASEAN Digital Community 2045*, <https://www.eria.org/uploads/ASEAN-Digital-Community-2045-DP.pdf>.

⁵²³ *ASEAN Digital Community 2045*, ECONOMIC RESEARCH INSTITUTE FOR ASEAN AND EAST ASIA (ERIA), https://www.eria.org/uploads/ASEAN-Digital-Community-2045-rev_.pdf.

⁵²⁴ *Id.*

⁵²⁵ *Id.*

⁵²⁶ *Id.*

worry that Cambodia will fall out of compliance with ASEAN data policies that have the potential to deliver significant economic growth to the region. ERIA initiative seeks to establish “unified and standardi[z]ed regulations pertaining to competition, data privacy, cybersecurity, patents, and copyrights across all [ASEAN Member States.]”⁵²⁷ The adoption of these unified regulations would stand to benefit Cambodia immensely in terms of human rights and economic efficiency.

Currently, several ASEAN member states are party to some free trade agreements such as the RCEP and the CPTPP that contain a limited number of data policy provisions. Cambodia's involvement in the RCEP and potential participation in the CPTPP offer significant opportunities in terms of data policies and digital trade. RCEP includes commitments to avoid imposing customs duties on electronic transmissions, which can facilitate digital trade and reduce costs for businesses operating in Cambodia. The agreement also addresses data localization requirements and cross-border data transfers, although these obligations come with broad exceptions for national security and public policy reasons.⁵²⁸ While Cambodia is not yet a member of CPTPP, joining could further enhance its digital economy by providing stronger frameworks for digital trade, including more robust protections for cross-border data flows and e-commerce. An alternative method adopted by Malaysia and Thailand is a conditions-based approach to cross-border data flows.⁵²⁹ These agreements collectively help Cambodia integrate into the global digital economy, fostering an environment that supports technological growth and innovation.

ASEAN has a robust history of developing data policies and frameworks, marked by significant milestones and less significant non-binding agreements. Each has laid the groundwork for member states to harmonize their data governance practices, thereby facilitating secure and seamless data flows across the region. The first major data policy was the ASEAN Framework on Personal Data Protection.⁵³⁰ This non-binding framework from 2016 established a “common set of principles and standards for data protection” and included key provisions such as “consent, notification and purpose, accuracy of personal data, security safeguards, access and correction, transfers to another country or territory, retention, and accountability.”⁵³¹ Unfortunately, the framework did not publish detailed regulations that member states could adopt verbatim.⁵³² The framework also sought to encourage the development of domestic privacy laws that would facilitate cross-border data transfers.⁵³³

The ASEAN Cybersecurity Cooperation Strategy (2017-2020) sought to “enhance Information and Communications Technology security within ASEAN and align priorities

⁵²⁷ ECONOMIC RESEARCH INSTITUTE FOR ASEAN AND EAST ASIA, *ASEAN Digital Community 2045*, <https://www.eria.org/uploads/ASEAN-Digital-Community-2045-DP.pdf>.

⁵²⁸ Cathleen D. Cimino-Isaacs et al., *Regional Comprehensive Economic Partnership (RCEP)*, Cong. Rsch. Serv., IF11891 (Oct. 17, 2022), available at <https://crsreports.congress.gov/product/pdf/IF/IF11891>.

⁵²⁹ *ASEAN Digital Economy Framework Agreement: Unlocking Southeast Asia's Potential*, TECH FOR GOOD INSTITUTE (Dec. 2023), https://techforgoodinstitute.org/wp-content/uploads/2023/12/TFGI_DEFA-Report.pdf.

⁵³⁰ ECONOMIC RESEARCH INSTITUTE FOR ASEAN AND EAST ASIA, *ASEAN Digital Community 2045*, <https://www.eria.org/uploads/ASEAN-Digital-Community-2045-DP.pdf>.

⁵³¹ *Id.*

⁵³² *ASEAN Framework on Personal Data Protection*, DATAGUIDANCE, <https://www.dataguidance.com/legal-research/asean-framework-personal-data-protection>.

⁵³³ ECONOMIC RESEARCH INSTITUTE FOR ASEAN AND EAST ASIA, *ASEAN Digital Community 2045*, <https://www.eria.org/uploads/ASEAN-Digital-Community-2045-DP.pdf>.

based on the ASEAN ICT Masterplan 2020.”⁵³⁴ This strategy was subsequently updated with the ASEAN Cybersecurity Cooperation Strategy (2021-2025).⁵³⁵

In 2018, the non-binding ASEAN Digital Data Governance Framework was released to support the development of digital government initiatives.⁵³⁶ The framework also contained a strategic priority centered on “cross-border data flows, which consists of principles to ensure free data movement while upholding trust.”⁵³⁷

In 2019, the ASEAN Digital Integration Framework Action Plan, 2019–2025 was published to ensure the “protection of data while supporting digital trade and innovation.”⁵³⁸ Focus was also placed on the cross-border digital trade enabled by digital payments, all of which requires unrestricted data transfers.⁵³⁹ ERIA noted that “some initiatives within the DIFAP have not yet been implemented and there are no updated versions of the original DIFAP document.”⁵⁴⁰

In response to the COVID-19 pandemic, the non-binding 2020 ASEAN Comprehensive Recovery Framework addressed “the need for investment in digital infrastructure that focuses on data governance, cybersecurity, the legal framework, and institutional capacity.”⁵⁴¹ ERIA was dismayed at the lack of transparency and accountability regarding the implementation of the plan and noted that there is “no single, readily available, and easily traceable document permits monitoring of the progress of the ACRF’s implementation.”⁵⁴²

In 2021, the Work Plan on the Implementation of ASEAN Agreement on Electronic Commerce sought to facilitate cross-border e-commerce transactions.⁵⁴³ Once again though, ERIA identified “the lack of accessible information about the up-to-date status of the work plan overall” as a limitation.⁵⁴⁴

Also in 2021, the ASEAN Digital Masterplan 2025 was launched with the vision of “ASEAN as a leading and digital community and economic bloc, powered by secure and transformative digital services.”⁵⁴⁵ This masterplan aimed to enhance digital connectivity, promote digital innovation, and build a trusted digital ecosystem across the region, thereby supporting economic growth and social development.

The non-binding ASEAN Data Management Framework from 2021 also tried to “assist all businesses operating in ASEAN to participate in the digital economy and practi[c] data governance across all data types within an organi[z]ation throughout the data life cycle and to consider adequate protection for different types of data.”⁵⁴⁶ This voluntary framework

⁵³⁴ *ASEAN Digital Economy Framework Agreement: Unlocking Southeast Asia's Potential*, TECH FOR GOOD INSTITUTE (Dec. 2023), https://techforgoodinstitute.org/wp-content/uploads/2023/12/TFGI_DEFA-Report.pdf.

⁵³⁵ *ASEAN Cybersecurity Cooperation Strategy 2021-2025*, ASSOCIATION OF SOUTHEAST ASIAN NATIONS (Feb. 2022), available at https://asean.org/wp-content/uploads/2022/02/01-ASEAN-Cybersecurity-Cooperation-Paper-2021-2025_final-23-0122.pdf.

⁵³⁶ ECONOMIC RESEARCH INSTITUTE FOR ASEAN AND EAST ASIA, *ASEAN Digital Community 2045*, <https://www.eria.org/uploads/ASEAN-Digital-Community-2045-DP.pdf>.

⁵³⁷ *Id.*

⁵³⁸ *Id.*

⁵³⁹ *Id.*

⁵⁴⁰ *Id.*

⁵⁴¹ *Id.*

⁵⁴² *Id.*

⁵⁴³ *Id.*

⁵⁴⁴ *Id.*

⁵⁴⁵ *Id.*

⁵⁴⁶ *Id.*

included Model Contractual Clauses for Cross Border Data Flows, but Cambodia’s draft data protection law nor digital trade agreements appear to utilize the model clauses.⁵⁴⁷

The Bandar Seri Begawan Roadmap from 2021 envisioned technology as a key economic driving force and therefore sought to advance trade facilitation and digitalization through cross-border digital payments.”⁵⁴⁸

Two years later, the 2023 Boracay Digital Declaration was a “non-binding agreement that focuses on digital transformation and the digital economy.”⁵⁴⁹ The text focused on creating a “trusted, secure, and safe digital market by adopting digital data governance, including data management, cybersecurity, and artificial intelligence.”⁵⁵⁰ As part of its overall focus on facilitating digital trade among the ASEAN member states, the text identified a “need to create an enabling environment for digital trade, including e-commerce, by developing frameworks and regulations that facilitate cross-border digital transactions and reduce barriers to trade; and [enable] cybersecurity and data protection.” The reduction in barriers to trade and e-commerce boost is certainly appealing to the business communities in the region, but the lack of specific developments to reduce technical trade barriers is disconcerting.

The 2023 Framework for Promoting the Growth of Digital Startups is a “voluntary and non-binding” framework that sought to promote “a vibrant digital startup ecosystem” in the region.⁵⁵¹

ASEAN has also conducted preliminary discussions on AI policy. The 2024 ASEAN Guide on AI Governance and Ethics established voluntary guidelines for generative AI and created a working group for the topic.⁵⁵² Several policy and regulatory gaps are acknowledged. This includes a lack of binding protections for free data flows, IP, and cross-border digital services. Within ASEAN, Singapore’s authorities are leading regulator with programs such as AI Verify, the SEA-LION LLM, and interoperability with NIST.⁵⁵³

Remarks from current and former Cambodian authorities during the session titled “Cross-border Digital Synergy: Enhancing Asia-Pacific Cooperation” at the Future of Asia Forum hosted by Nikkei highlighted the need for improved cooperation among ASEAN member states on digital policies in order to stimulate economic growth. The Cambodian Deputy Prime Minister, Sun Chanthol, expressed interest in growing Japanese investment to help curb its economic dependence on the PRC.⁵⁵⁴ The current ASEAN Secretary-General, Kao Kim Hourn, previously served as Minister Delegate for the Prime Minister of the Kingdom of Cambodia.⁵⁵⁵ He emphasized the need for ASEAN to increase cooperation with external partners to accelerate digital transformation in the region. He identified three key

⁵⁴⁷ *Id.*

⁵⁴⁸ *Id.*

⁵⁴⁹ *Id.*

⁵⁵⁰ *Id.*

⁵⁵¹ *ASEAN Digital Economy Framework Agreement: Unlocking Southeast Asia's Potential*, TECH FOR GOOD INSTITUTE (Dec. 2023), https://techforgoodinstitute.org/wp-content/uploads/2023/12/TFGI_DEFA-Report.pdf.

⁵⁵² *ASEAN Guide on AI Governance and Ethics*, ASSOCIATION OF SOUTHEAST ASIAN NATIONS (Feb. 2024), https://asean.org/wp-content/uploads/2024/02/ASEAN-Guide-on-AI-Governance-and-Ethics_beautified_201223_v2.pdf.

⁵⁵³ *AI Watch: Global Regulatory Tracker - Singapore*, WHITE & CASE LLP (2024), <https://www.whitecase.com/insight-our-thinking/ai-watch-global-regulatory-tracker-singapore>.

⁵⁵⁴ Sun Chanthol, *Cambodia Deputy PM Says Japanese Investment to Help Curb Its China Dependence*, NIKKEI ASIA (May 22, 2024), <https://asia.nikkei.com/Editor-s-Picks/Interview/Cambodia-deputy-PM-says-Japanese-investment-to-help-curb-its-China-dependence2>.

⁵⁵⁵ Secretary-General of ASEAN, ASSOCIATION OF SOUTHEAST ASIAN NATIONS, <https://asean.org/what-we-do/secretary-general-of-asean/>.

challenges: accessibility, affordability, and reliability of internet access. Tackling these challenges will require engagement at the political, the policy, and the technical level.

There was also a brief mention on the level of trust that must be earned by corporations and governments with so much personal data being digitally stored. Other challenges faced by the region include making sufficient investments in digital skills development, building up the digital infrastructure, and minimizing the impacts of cyber threats. The ASEAN Secretary-General wanted to ensure the “peace of mind” of the public in the face of growing cybercrime threats.⁵⁵⁶ The promise to “minimize threats associated with [the] digital dimension” is slightly concerning given the censorship laws common in several ASEAN states.

Before delving into the ASEAN DEFA, it is important to highlight ASEAN's historical trend of launching various data frameworks and policies, only to seemingly abandon them shortly thereafter due to their voluntary nature. This pattern raises questions about the potential effectiveness and longevity of DEFA. In his speech, the ASEAN Secretary-General stressed the importance of DEFA as a way to “harmonize regulations across entire region” on key topics such as privacy, data transfers, and cybersecurity.⁵⁵⁷ The key consideration will be the political will to adhere to the regional policies.

Digital Economy Framework Agreement

ASEAN’s Digital Economy Framework Agreement is an ambitious plan by the bloc to invigorate its digital development and capacity. It seeks a “rules-based approach to ASEAN’s cooperation in the digital ecosystem to establish an open, secure, interoperable, competitive, and inclusive regional digital economy.”⁵⁵⁸

The central issue is whether DEFA will become binding on the member states rather than a voluntary initiative like so many of the previous ASEAN initiatives mentioned above. A mandatory framework will be far more likely to ensure national compliance with the individual policies in the agreement.

Discussions regarding DEFA started in 2022.⁵⁵⁹ The nine elements of DEFA were officially endorsed without prejudice at the 55th ASEAN Economic Ministers meeting on August 19, 2023.^{560,561} The following month, the framework was endorsed by the “ASEAN Economic Community Council at their 23rd Meeting during Indonesia’s ASEAN Chairmanship.”⁵⁶² In November 2023, “panel discussions about key provisions” were held at the 10th ASEAN Economic Community dialogue.⁵⁶³ In December 2023, formal negotiations

⁵⁵⁶ *29th Nikkei Forum: Future of Asia*, Tokyo, Japan (May 23-24, 2024), available at <https://futureofasia.net/asia2024/eng/>.

⁵⁵⁷ *Id.*

⁵⁵⁸ *Framework for Negotiating the Digital Economy Framework Agreement*, ASSOCIATION OF SOUTHEAST ASIAN NATIONS (Sept. 2023), https://asean.org/wp-content/uploads/2023/09/Framework-for-Negotiating-DEFA_ENDORSED_23rd-AECC-for-uploading.pdf.

⁵⁵⁹ ECONOMIC RESEARCH INSTITUTE FOR ASEAN AND EAST ASIA, *ASEAN Digital Community 2045*, <https://www.eria.org/uploads/ASEAN-Digital-Community-2045-DP.pdf>.

⁵⁶⁰ *The ASEAN Digital Economy Framework Agreement*, THE ASEAN MAGAZINE, <https://theaseanmagazine.asean.org/article/the-asean-digital-economy-framework-agreement/>.

⁵⁶¹ *ASEAN DEFA Study Projects Digital Economy Leap to US\$2tn by 2030*, ASEAN, <https://asean.org/asean-defa-study-projects-digital-economy-leap-to-us2tn-by-2030/>.

⁵⁶² *The ASEAN Digital Economy Framework Agreement*, THE ASEAN MAGAZINE, <https://theaseanmagazine.asean.org/article/the-asean-digital-economy-framework-agreement/>.

⁵⁶³ *Id.*

started on DEFA among the ASEAN member states.⁵⁶⁴ ASEAN's stated goal is to "conclude negotiations by the end of 2025."⁵⁶⁵

There are several core elements of DEFA. One such core element is to facilitate cross-border data flows and establish a regional framework to protect data privacy.⁵⁶⁶ Core elements include the "ASEAN data transfer mechanisms and the recently launched Global Privacy Rules Forum."⁵⁶⁷ A significant obstacle to progress on these core elements will be the data localization rules that presently exist in member states such as Indonesia and Vietnam.⁵⁶⁸ Cambodia's data localization requirement in its draft Data Protection Law will only compound the issue in DEFA negotiations.

Another core element is online safety and cybersecurity. The agreement wants to spearhead "cooperation in cybersecurity and create an open and secure online environment, with comprehensive protection to parties in a digital transaction."⁵⁶⁹

Digital trade priorities such as cross-border e-commerce, digital payments, and e-invoicing are other core elements alongside digital identification and authentication.⁵⁷⁰ DEFA contains a proposal that would enable mutual recognition of digital identities between member states.⁵⁷¹ While this would certainly make cross-border travel and commerce easier, concerns surrounding digital surveillance and tracking remain. AI regulation and talent mobility are also included as core elements of DEFA.

Outside opinions on DEFA from industry groups and multilateral organizations have generally been positive and cautiously optimistic. The Asian Development Bank and Amazon Web Services are encouraged by specific proposals included in DEFA.⁵⁷² Those two organizations are especially attracted to the prospect of standardized "digital trade rules that promote cross-border data flows and discourage data localization."⁵⁷³ The promise to establish "non-discriminatory and risk-based approaches to cybersecurity" is also a step in the right direction from a national security, human rights, and economic development perspective.⁵⁷⁴ DEFA will enable "MSMEs and startups in ASEAN to embrace digital transformation via cloud, tap into customers across borders, expand overseas, and access digital tools that may not be available locally."⁵⁷⁵ The multilateral nature of DEFA may help to ensure that SMEs are not overburdened with regulatory paperwork since "MSMEs and

⁵⁶⁴ *Id.*

⁵⁶⁵ *Framework for Negotiating the Digital Economy Framework Agreement*, ASSOCIATION OF SOUTHEAST ASIAN NATIONS (Sept. 2023), https://asean.org/wp-content/uploads/2023/09/Framework-for-Negotiating-DEFA_ENDORSED_23rd-AECC-for-uploading.pdf.

⁵⁶⁶ *Id.*

⁵⁶⁷ *Cambodia Data Protection and Privacy Framework*, GLOBAL DATA ALLIANCE (Oct. 5, 2023), <https://globaldataalliance.org/wp-content/uploads/2023/10/10052023gdacambodiadatapro.pdf>.

⁵⁶⁸ *ASEAN Digital Community 2045*, ECONOMIC RESEARCH INSTITUTE FOR ASEAN AND EAST ASIA, <https://www.eria.org/uploads/ASEAN-Digital-Community-2045-DP.pdf>.

⁵⁶⁹ *Framework for Negotiating the Digital Economy Framework Agreement*, ASSOCIATION OF SOUTHEAST ASIAN NATIONS (Sept. 2023), https://asean.org/wp-content/uploads/2023/09/Framework-for-Negotiating-DEFA_ENDORSED_23rd-AECC-for-uploading.pdf.

⁵⁷⁰ *Id.*

⁵⁷¹ *ASEAN Digital Economy Framework Agreement: Unlocking Southeast Asia's Potential*, TECH FOR GOOD INSTITUTE (Dec. 2023), https://techforgoodinstitute.org/wp-content/uploads/2023/12/TFGI_DEFA-Report.pdf.

⁵⁷² Annabel Lee, *Why ASEAN's Digital Economy Framework Agreement Could Make the Region the New Digital Powerhouse*, ASIAN DEVELOPMENT BANK (Nov. 24, 2023), <https://seads.adb.org/solutions/why-aseans-digital-economy-framework-agreement-could-make-region-new-digital-powerhouse>.

⁵⁷³ *Id.*

⁵⁷⁴ *Id.*

⁵⁷⁵ *Id.*

startups are particularly vulnerable to regulatory obligations, such as data localization, as they increase the compliance and cost burden.”⁵⁷⁶

The Diplomat also called attention to the benefits of DEFA in allowing “consumers [to] utilize digital services across various platforms, mitigating the negative impact of being constrained within national markets and enhancing the user experience[,]” but was worried that “interoperability among Southeast Asian economies is still potentially hampered by three factors: namely, a lack of clarity on interoperability categorization, the region’s uneven cyber resilience, and ASEAN’s insufficient attention to intellectual property rights.”⁵⁷⁷ ASEAN varying degrees of technical infrastructure and know-how will likely restrain the ability to create standardized policies. There is also a need for “more administrative capacity to enforce privacy and data protection measures in order to safeguard sensitive information.”⁵⁷⁸ A law or policy is only as good as the consistency of the enforcement power behind it.

The final organization to comment on DEFA was Grab’s Tech for Good Institute who stressed that, if the agreement is finalized, it would be the “world’s first region-wide and legally-binding digital economy agreement.”⁵⁷⁹ This advocacy group also warned against data localization laws as “[d]ata flows are critical to reali[z]ing complete digital integration and digital economy growth, making the region more attractive to global investors.”⁵⁸⁰ The free flow of information opens up market access to a wider base of customers and suppliers and encourages a higher level of digital economic integration.⁵⁸¹

Grab’s Tech for Good Institute goes on to state that “[d]ata is the backbone of the digital economy” while making the case that “disparities in data regulations would dampen the potential for free flow of data.”⁵⁸² This is the scenario that is currently playing out, with each ASEAN member state adopting its own unique data policies. One possible solution is to “pursue digital integration in a phased and progressive manner” by gradually unify fragmented data policies to attract global investors.⁵⁸³

The organization also recommended that “proper baseline cybersecurity measures are in place in order to preserve the trust of various stakeholders of digital technologies.”⁵⁸⁴ The struggles of various ASEAN members states, including Cambodia, in the field of cybersecurity are well documented. Grab’s Tech for Good Institute proposed using “[s]andboxes as a tool ... to promote regulatory learning and to encourage innovation to drive growth and serve the needs of the region.”⁵⁸⁵

The organization also had the innovative idea of beginning “progressive alignment through a modular approach.”⁵⁸⁶ A gradual implementation of the relevant rules and policies will allow member states, regardless of their technical readiness, to adapt to DEFA seamlessly over time. In the end, ASEAN member states should embrace DEFA as an

⁵⁷⁶ *Id.*

⁵⁷⁷ *The Importance of Interoperability for ASEAN’s Digital Framework Agreement*, THE DIPLOMAT (Jan. 2024), <https://thediplomat.com/2024/01/the-importance-of-interoperability-for-aseans-digital-framework-agreement/>.

⁵⁷⁸ *Id.*

⁵⁷⁹ *ASEAN Digital Economy Framework Agreement: Unlocking Southeast Asia’s Potential*, TECH FOR GOOD INSTITUTE (Dec. 2023), https://techforgoodinstitute.org/wp-content/uploads/2023/12/TFGI_DEFA-Report.pdf.

⁵⁸⁰ *Id.*

⁵⁸¹ *Id.*

⁵⁸² *Id.*

⁵⁸³ *Id.*

⁵⁸⁴ *The Importance of Interoperability for ASEAN’s Digital Framework Agreement*, THE DIPLOMAT (Jan. 2024), <https://thediplomat.com/2024/01/the-importance-of-interoperability-for-aseans-digital-framework-agreement/>.

⁵⁸⁵ *Id.*

⁵⁸⁶ *Id.*

“opportunity for ASEAN to leverage technology to create an interoperable market for goods and services that are digital.”⁵⁸⁷

The ASEAN Digital Governance Forum was held in Cambodia on May 5, 2024, several months after DEFA was announced.⁵⁸⁸ The forum focused on “enhancing ASEAN collaboration and innovation” in privacy and cybersecurity initiatives “to ensure secure digital transactions and foster trust among ASEAN member states.”⁵⁸⁹ Discussions included “the implementation of advanced encryption technologies, the establishment of regional cybersecurity standards, and the promotion of cross-border data flow agreements.”⁵⁹⁰ The prominence of these three measures in a public forum at ASEAN contrast with Articles in Cambodia’s draft data laws that are likely to hamper cross-border data flows and impede the development cybersecurity and encryption technologies.

ASEAN’s history of over-promising and under-delivering with regards to digital policies does not necessarily inspire the utmost confidence in widespread adoption of DEFA. Most of ASEAN’s prior initiatives have been voluntary and resulted in limited adoption of the most economically significant (and therefore challenging) provisions by its member states. ERIA has pointed out that “the absence of a clear enforcement mechanism given the nature of the non-binding agreements and non-established legal obligations” hinders their overall effectiveness.⁵⁹¹ The problem is compounded by the “limited access to data on the progress of the frameworks’ desired outcomes and objective.”⁵⁹² DEFA’s ultimate success or failure will depend on the political will to adopt binding measures on data policies and interoperability standards across ASEAN member states’ digital systems.

Singapore

The Deputy Prime Minister of Singapore, Gan Kim Yong, spoke at the Future of Asia Forum hosted by Nikkei during the “Cross-Border Digital Synergy: Enhancing Asia-Pacific Cooperation” panel. He emphasized the benefits that come with a common set of rules for cross-border data transfers and flows such as increased digital trade. Singapore has signed several bilateral DEAs, namely agreements with Australia, the United Kingdom, and the Republic of Korea.⁵⁹³ It has also agreed to a multilateral DEA with New Zealand and Chile called the “Digital Economy Partnership Agreement.”⁵⁹⁴ Singapore and Malaysia also have a “framework for cooperation on personal data protection and cybersecurity.”⁵⁹⁵ Another

⁵⁸⁷ *Id.*

⁵⁸⁸ Jocelle Batapa-Sigue, *Digital Governance Forum 2024: Strengthening ASEAN Collaboration and Innovation*, JOCELLE BATAPA-SIGUE (May 5, 2024), <https://jocellebatapasigue.com/2024/05/05/digital-governance-forum-2024-strengthening-asean-collaboration-and-innovation/>.

⁵⁸⁹ *Id.*

⁵⁹⁰ *Id.*

⁵⁹¹ ECONOMIC RESEARCH INSTITUTE FOR ASEAN AND EAST ASIA, *ASEAN Digital Community 2045*, <https://www.eria.org/uploads/ASEAN-Digital-Community-2045-DP.pdf>.

⁵⁹² *Id.*

⁵⁹³ Annabel Lee, *Why ASEAN's Digital Economy Framework Agreement Could Make the Region the New Digital Powerhouse*, ASIAN DEVELOPMENT BANK (Nov. 24, 2023), <https://seads.adb.org/solutions/why-aseans-digital-economy-framework-agreement-could-make-region-new-digital-powerhouse>.

⁵⁹⁴ *Id.*

⁵⁹⁵ *Singapore and Malaysia Conclude Frameworks on Cooperation in the Digital Economy and Green Economy*, ALLEN & GLEDHILL (Feb. 27, 2023), available at <https://www.allenandgledhill.com/sg/publication/articles/23264/and-conclude-frameworks-on-cooperation-in-the-digital-econoand-green-economy>.

bilateral agreement between the Philippines and Singapore allows for all types of data to flow freely between the two nations.⁵⁹⁶

Singapore was also a first mover in the field of data privacy and cybersecurity with its PDPA and the Cybersecurity Act. These legislative measures aim to protect personal data and enhance cybersecurity resilience, thereby fostering a secure and trustworthy environment for businesses and individuals.

The PDPA was enacted in 2012 and amended in 2020.⁵⁹⁷ The law serves as the cornerstone of Singapore's data protection regime by balancing the need for data protection with the interests of businesses.⁵⁹⁸ It provides a baseline standard for the collection, use, and disclosure of personal data, ensuring that organizations manage personal data responsibly and transparently. Organizations must comply with several obligations such as obtaining consent, providing access to data, and ensuring data accuracy and security.⁵⁹⁹ Additionally, organizations are required to notify the Singapore Personal Data Protection Commission and affected individuals if a data breach poses significant harm.⁶⁰⁰ Unlike the EU's GDPR, the financial penalties for PDPA breaches only amount to a percentage of the organization's financial turnover inside the country rather than its global turnover.⁶⁰¹

The Cybersecurity Act, enacted in 2018 and amended in 2024, provides a legal framework for the oversight and maintenance of national cybersecurity.⁶⁰² It focuses on protecting CII, which includes sectors such as energy, water, banking, healthcare, and transportation.⁶⁰³ The Act requires organizations classified as CII to implement robust cybersecurity measures and report incidents to the CSA.⁶⁰⁴ There is a flavor of extraterritorial jurisdiction in the law because the CSA is able to regulate CIIs supporting essential services from overseas, provided that the owner is based in Singapore.⁶⁰⁵ Recent amendments have expanded CSA's oversight to include Systems of Temporary Cybersecurity Concern and new classes of regulated entities, such as Entities of Special Cybersecurity Interest and Foundational Digital Infrastructure.⁶⁰⁶

The transparency and stability of Singapore's data laws enhances trust among consumers and businesses, attracts FDI, and fosters a vibrant digital economy.⁶⁰⁷ While the policies impose compliance costs on businesses, particularly in sectors designated as CII,

⁵⁹⁶ *ASEAN Digital Economy Framework Agreement: Unlocking Southeast Asia's Potential*, TECH FOR GOOD INSTITUTE (Dec. 2023), https://techforgoodinstitute.org/wp-content/uploads/2023/12/TFGI_DEFA-Report.pdf.

⁵⁹⁷ Personal Data Protection Act 2012, No. 26 of 2012 (Sing.), available at <https://www.pdpc.gov.sg/overview-of-pdpa/the-legislation/personal-data-protection-act>

⁵⁹⁸ *Id.*

⁵⁹⁹ *Id.*

⁶⁰⁰ *Singapore Personal Data Protection Act Changes Have Implications for Healthcare Sector*, MORGAN LEWIS (Aug. 2022), <https://www.morganlewis.com/pubs/2022/08/singapore-personal-data-protection-act-changes-have-implications-for-healthcare-sector>.

⁶⁰¹ *Id.*

⁶⁰² Cybersecurity Act 2018, No. 9 of 2018 (Sing.), available at <https://www.csa.gov.sg/legislation/Cybersecurity-Act>.

⁶⁰³ *Id.*; *5 Key Takeaways from the Singapore Cybersecurity Act Amendment*, FTI CYBERSECURITY (May 2024), <https://fticybersecurity.com/2024-05/5-key-takeaways-from-the-singapore-cybersecurity-act-amendment/>.

⁶⁰⁴ Cybersecurity Act 2018, No. 9 of 2018 (Sing.), available at <https://www.csa.gov.sg/legislation/Cybersecurity-Act>.

⁶⁰⁵ *5 Key Takeaways from the Singapore Cybersecurity Act Amendment*, FTI CYBERSECURITY (May 2024), <https://fticybersecurity.com/2024-05/5-key-takeaways-from-the-singapore-cybersecurity-act-amendment/>.

⁶⁰⁶ *Id.*

⁶⁰⁷ Personal Data Protection Act 2012, No. 26 of 2012 (Sing.), available at <https://www.pdpc.gov.sg/overview-of-pdpa/the-legislation/personal-data-protection-act>; Cybersecurity Act 2018, No. 9 of 2018 (Sing.), available at <https://www.csa.gov.sg/legislation/Cybersecurity-Act>.

these costs are often outweighed by enhanced trust among consumers and businesses.⁶⁰⁸ A comparative analysis of data laws from select countries is available in a separate spreadsheet. Cambodia would likely benefit immensely from coordination and standardization with Singapore's various data laws.

Vietnam

Vietnam has enacted numerous data laws. The 2006 Law on Information Technology (No. 67/2006/QH11) regulates IT use, development, and management in Vietnam, covering various aspects such as digital information production, transmission, collection, processing, storage, and exchange.⁶⁰⁹ Additionally, the Civil Code 2015, the Law on Cyber Information Security No. 86/2015/QH13, and the Law on Personal Data Protection introduced in July 2023 also play significant roles in shaping the data protection landscape in Vietnam.⁶¹⁰ In 2010, Vietnam passed the Law on Protection of Consumers' Rights.⁶¹¹ The Law on Cyber Information Security No. 86/2015/QH13, also referred to as the 2015 law on network information security, prescribes activities related to cyberinformation security, including the protection of information systems in cyberspace, civil cryptography, standards and technical regulations, trading in cyberinformation security products and services, development of human resources, and state management of cyberinformation security.⁶¹²

The GDA graded Vietnam as “level 3: highly restrictive” due to the number of legal restrictions that substantially impede cross-border data transactions.”⁶¹³ The laws mentioned above also establish data localization requirements, which are particularly unappealing to businesses.⁶¹⁴

Vietnam's Cybersecurity Law is worrying from a human rights perspective due to the limitations on freedom of expression and privacy granted in the law in the form of the

⁶⁰⁸ Personal Data Protection Act 2012, No. 26 of 2012 (Sing.), available at <https://www.pdpc.gov.sg/overview-of-pdpa/the-legislation/personal-data-protection-act>; Cybersecurity Act 2018, No. 9 of 2018 (Sing.), available at <https://www.csa.gov.sg/legislation/Cybersecurity-Act>; *5 Key Takeaways from the Singapore Cybersecurity Act Amendment*, FTI CYBERSECURITY (May 2024), <https://fticybersecurity.com/2024-05/5-key-takeaways-from-the-singapore-cybersecurity-act-amendment/>.

⁶⁰⁹ *Vietnam's Law on Information Technology*, SECURITI (2024), <https://securiti.ai/solutions/vietnam-law-on-information-technology/>; Law No. 67/2006/QH11 of June 29, 2006, on Information Technology (Viet.), available at <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/vn/vn134en.html>; Law on Information Technology, No. 67/2006/QH11 (Viet.), available at <http://vbpl.vn/tw/Pages/vbpqen-toanvan.aspx?ItemID=4773>.

⁶¹⁰ *Vietnam Data Protection Overview*, DATAGUIDANCE, <https://www.dataguidance.com/notes/vietnam-data-protection-overview.>; *Vietnam Law on Personal Data Protection: Latest Developments and Insights*, VIETNAM BRIEFING (2023), <https://www.vietnam-briefing.com/news/vietnam-law-on-personal-data-protection-latest-developments-and-insights.html>; *Data Protected: Vietnam*, LINKLATERS, <https://www.linklaters.com/en/insights/data-protected/data-protected---vietnam>.

⁶¹¹ *Cyberlaw Tracker: Vietnam*, UNCTAD, <https://unctad.org/page/cyberlaw-tracker-country-detail?country=vn>.

⁶¹² Law on Network Information Security, No. 86/2015/QH13 (Viet.), available at <http://english.mic.gov.vn/Upload/VanBan/Law-on-Network-Information-Security-16-05-30.pdf>; Law on Cyberinformation Security, No. 86/2015/QH13 (Viet.), available at https://www.economica.vn/Content/files/LAW%20%26%20REG/86_2015_QH13%20Law%20on%20Cyberinformation%20Security.pdf; *Vietnam Law on Cyberinformation Security*, SECURITI, <https://securiti.ai/solutions/vietnam-law-on-cyberinformation-security/>; Law on Cyberinformation Security, No. 86/2015/QH13 (Viet.), available at <https://thuvienphapluat.vn/van-ban/EN/Cong-nghe-thong-tin/Law-No-86-2015-QH13-on-Cyberinformation-Security-2015/303120/tieng-anh.aspx>; Law on Cybersecurity, No. 24/2018/QH14 (Viet.), available at <http://vbpl.vn/tw/Pages/vbpqen-toanvan.aspx?ItemID=11048>.

⁶¹³ *Cross-Border Data Policy Index*, GLOBAL DATA ALLIANCE, <https://globaldataalliance.org/resource/cross-border-data-policy-index/>.

⁶¹⁴ Justin Sherman, *Vietnam's Internet Control: Following in China's Footsteps?*, THE DIPLOMAT (Dec. 2019), <https://thediplomat.com/2019/12/vietnams-internet-control-following-in-chinas-footsteps/>.

government's broad powers to censor online content, monitor internet activity, and access personal data without judicial oversight.⁶¹⁵ The law grants "the government relatively unchecked authorities to delete or block access to data infringing upon cybersecurity."⁶¹⁶ Rather than the technical standards often thought of in the West, cybersecurity in Vietnam's law is defined as "national security, social order and safety, or the lawful rights and interests of agencies, organizations and individuals."⁶¹⁷

The law also gives the government the ability to "inspect computer systems on the basis of working to improve cybersecurity" regardless of the actual cybersecurity threat.⁶¹⁸ Critics have argued that the law is "quite blatantly about spying on citizens and controlling information flows and is less about minimizing vulnerability to cybersecurity threats."⁶¹⁹ Freedom of speech is directly curtailed due to the "criminaliz[ation of] propaganda against the Socialist Republic of Vietnam."⁶²⁰ Most concerning for Cambodian CSO's are the many similarities between Vietnam's laws and various Articles in Cambodia's draft data laws. For more detailed analysis of Vietnam's data laws, a comparative analysis of selected countries is available in an accompanying spreadsheet.

Indonesia

Indonesia has developed a comprehensive framework for data protection and cybersecurity, primarily through the enactment of Law No. 27 of 2022 concerning Personal Data Protection.⁶²¹ This law, effective from October 17, 2022, is modeled largely on the EU's GDPR and aims to align Indonesia's data protection standards with international norms.⁶²² The Personal Data Protection Law applies to all data controllers and processors handling personal data within Indonesia, as well as those processing the personal data of Indonesian citizens outside the country, thus asserting its extraterritorial reach.⁶²³ It mandates explicit consent for data processing, comprehensive privacy notices, and the appointment of data protection officers.⁶²⁴ Additionally, the Personal Data Protection Law introduces stringent requirements for cross-border data transfers, allowing such transfers only if the receiving country has adequate data protection standards.⁶²⁵

Complementing the Personal Data Protection Law, Indonesia's cybersecurity provisions are primarily embedded in the Electronic Information and Transactions Law and Government Regulation No. 71 of 2019 regarding Operation of Electronic Systems and

⁶¹⁵ Law on Cybersecurity, No. 24/2018/QH14 (Viet.), available at <http://tulieuvankien.dangcongsan.vn/he-thong-van-ban/van-ban-quy-pham-phap-luat/luat-an-ninh-mang-so-242018qh14-ngay-1262018-hieu-luc-thi-hanh-tu-ngay-01012019-4474>.

⁶¹⁶ Justin Sherman, *Vietnam's Internet Control: Following in China's Footsteps?*, THE DIPLOMAT (Dec. 2019), <https://thediplomat.com/2019/12/vietnams-internet-control-following-in-chinas-footsteps/>.

⁶¹⁷ *Id.*

⁶¹⁸ *Id.*

⁶¹⁹ *Id.*

⁶²⁰ *Id.*

⁶²¹ *Data Protection Laws of the World: Indonesia*, DLA PIPER, available at <https://www.dlapiperdataprotection.com/index.html?t=law&c=ID>.

⁶²² *Id.*

⁶²³ *Data Protection & Privacy 2024: Indonesia - Trends and Developments*, CHAMBERS, <https://practiceguides.chambers.com/practice-guides/data-protection-privacy-2024/indonesia/trends-and-developments>.

⁶²⁴ *Data Protection Laws of the World: Indonesia*, DLA PIPER, available at <https://www.dlapiperdataprotection.com/index.html?t=law&c=ID>.

⁶²⁵ *International Data Transfer: Indonesia*, BAKER MCKENZIE, <https://resourcehub.bakermckenzie.com/en/resources/global-data-privacy-and-cybersecurity-handbook/asia-pacific/indonesia/topics/international-data-transfer>.

Transactions (GR 71).⁶²⁶ These regulations, along with various ministerial decrees, outline the responsibilities of electronic system providers and mandate measures to ensure the security and integrity of electronic data.⁶²⁷ The National Cyber and Crypto Agency also plays a pivotal role in coordinating national cybersecurity efforts, as highlighted by Presidential Regulation No. 47 of 2023, which provides strategic guidelines for enhancing national cybersecurity and managing cyber crises.⁶²⁸

In conclusion, Indonesia's approach to data protection is evolving through a combination of regulatory frameworks and collaborative efforts among governmental bodies. The Ministry of Communication and Information has taken proactive steps to address data security concerns by engaging with BRI Life to enhance system and data management security, while also coordinating with the National Cyber and Crypto Agency and the National Police to investigate potential data breaches.⁶²⁹ This reflects a broader commitment to safeguarding personal data in the country. Additionally, the Financial Services Authority has implemented risk management regulations under OJK Regulation Number 4/POJK.05/2021, which aims to protect non-bank consumer data within various financial sectors, including insurance and pension funds.⁶³⁰ These measures indicate a comprehensive strategy to strengthen data protection and cybersecurity in Indonesia, ensuring that both regulatory oversight and inter-agency collaboration are prioritized to mitigate risks associated with information technology use.⁶³¹ The GDA graded Indonesia as “level 3: highly restrictive” given the numerous and varied restrictions that substantially impede cross-border digital transactions.”⁶³² Like Vietnam, Indonesia has “varying requirements for data locali[z]ation, citing public and national security concerns.”⁶³³ A comparative analysis of data laws from the selected countries is available in an accompanying spreadsheet.

High Income Countries in East Asia

Japan

The primary data privacy law in Japan is the APPI, which establishes comprehensive guidelines for the collection, use, and protection of personal data by both public and private entities.⁶³⁴ Additionally, Japan's cybercrime law, known as the “Unauthorized Computer

⁶²⁶ *Indonesia GR71 Compliance*, GOOGLE CLOUD, <https://cloud.google.com/security/compliance/indonesia-gr71>.

⁶²⁷ *Key Data Privacy and Cybersecurity Laws: Indonesia*, BAKER MCKENZIE, <https://resourcehub.bakermckenzie.com/en/resources/global-data-privacy-and-cybersecurity-handbook/asia-pacific/indonesia/topics/key-data-privacy-and-cybersecurity-laws>.

⁶²⁸ *Fortifying Indonesia's Cyber Defenses: New Regulations for National Security and Crisis Management*, SSEK LEGAL CONSULTANTS, <https://ssek.com/blog/fortifying-indonesias-cyber-defenses-new-regulations-for-national-security-and-crisis-management/>.

⁶²⁹ Kebocoran Data Nasabah, *Bukti Lemahnya Proteksi dan Regulasi*, TEMPO (July 28, 2023), https://fokus.tempo.co/read/1488710/kebocoran-data-nasabah-bri-life-bukti-lemahnya-proteksi-dan-regulasi?page_num=2.

⁶³⁰ *Id.*

⁶³¹ *ISEAS Perspective 2023/75: Indonesia's Cybersecurity Landscape*, ISEAS – YUSOF ISHAK INSTITUTE (Aug. 2023), https://www.iseas.edu.sg/wp-content/uploads/2023/08/ISEAS_Perspective_2023_75.pdf.

⁶³² *Cross-Border Data Policy Index*, GLOBAL DATA ALLIANCE, <https://globaldataalliance.org/resource/cross-border-data-policy-index/>.

⁶³³ *ASEAN Digital Economy Framework Agreement: Unlocking Southeast Asia's Potential*, TECH FOR GOOD INSTITUTE (Dec. 2023), https://techforgoodinstitute.org/wp-content/uploads/2023/12/TFGI_DEFA-Report.pdf.

⁶³⁴ *Act on the Protection of Personal Information*, Cabinet Office (Japan), <http://www.cas.go.jp/jp/seisaku/hourei/data/APPI.pdf>.

Access Law, 2013”, aims to prevent unauthorized access to computer systems.⁶³⁵ As a member of the CPTPP, Japan is obliged to adhere to stringent data protection standards and facilitate cross-border data flows while ensuring the security and privacy of personal information.⁶³⁶ Furthermore, Japan launched its Data Free Flow with Trust initiative which seeks to ensure that the “free flow of data can drive innovation, inclusivity, economic growth, and the adoption of digital technologies” while balancing the need for “measures that safeguard data protection, privacy, and security.”⁶³⁷ It may be prudent for Cambodia to seek such an agreement with Japan due to the country’s relatively high level of FDI in Cambodia and Cambodia’s desire to absorb technical know-how from the country. A comparative analysis of data laws from the selected countries is available in an accompanying spreadsheet.

South Korea

South Korea has established a robust legal framework to regulate data protection and cybersecurity, primarily through the PIPA. The law was enacted in 2011 and subsequently amended to address evolving privacy concerns.⁶³⁸ PIPA is the cornerstone of South Korea's data protection regime, applying to all organizations and individuals who process personal information within the country.⁶³⁹ It mandates stringent requirements for the collection, use, and storage of personal data, ensuring that data subjects are informed about how their information is handled and granting them rights to access, correct, and delete their data.⁶⁴⁰

In addition to PIPA, South Korea has implemented the Act on the Protection of Information and Communications Infrastructure, which aims to secure critical information and communications infrastructure by formulating and implementing protective measures.⁶⁴¹ This act is crucial for maintaining the stability and security of essential services such as national security, public administration, defense, finance, and energy, by preventing and responding to electronic intrusions and cyber threats.⁶⁴²

The Act on Promotion of Information and Communications Network Utilization and Information Protection complements the two aforementioned laws by promoting the safe and efficient use of information and communications networks.⁶⁴³ It includes provisions for protecting personal information, preventing misuse of network services, and fostering a

⁶³⁵ *Unauthorized Computer Access Act*, National Police Agency (Japan), https://www.npa.go.jp/cyber/english/legislation/uca_Tentative.pdf.

⁶³⁶ *China’s Economic and Trade Policies: Issues for the 118th Congress*, CONG. RSCH. SERV., IF12078 (Sept. 15, 2023), <https://crsreports.congress.gov/product/pdf/IF/IF12078>.

⁶³⁷ Annabel Lee, *Why ASEAN’s Digital Economy Framework Agreement Could Make the Region the New Digital Powerhouse*, ASIAN DEVELOPMENT BANK (Nov. 24, 2023), <https://seads.adb.org/solutions/why-aseans-digital-economy-framework-agreement-could-make-region-new-digital-powerhouse>.

⁶³⁸ *Cyberlaw Tracker: South Korea*, UNCTAD, <https://unctad.org/page/cyberlaw-tracker-country-detail?country=kr>.

⁶³⁹ *Personal Information Protection Act*, KOREA LEGISLATION RESEARCH INSTITUTE, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=53044&lang=ENG.

⁶⁴⁰ *Personal Information Protection Commission: Guidelines on Personal Information Protection*, KOREA INTERNET & SECURITY AGENCY, https://www.privacy.go.kr/cmm/fms/FileDown.do?atchFileId=FILE_00000000830762&fileSn=0.

⁶⁴¹ Act on the Protection of Information and Communications Infrastructure, art. 2 (S. Kor.), available at https://sherloc.unodc.org/cld/legislation/kor/act_on_the_protection_of_information_and_communications_infrastructure/chapter_1/article_2/article_2.html?lng=en.

⁶⁴² Act on Promotion of Information and Communications Network Utilization and Information Protection, No. 6360, Jan. 16, 2001, amended by Act No. 13343, Jun. 22, 2015 (S. Kor.), https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=28812&key=43&type=part.

⁶⁴³ Act on Promotion of Information and Communications Network Utilization and Information Protection, No. 6360, Jan. 16, 2001, amended by Act No. 17344, Jun. 9, 2020 (S. Kor.), https://elaw.klri.re.kr/eng_service/lawView.do?hseq=38422&lang=ENG.

secure digital environment with a focus on identifying the responsibilities of service providers.⁶⁴⁴

The GDA has graded South Korea as "level 2" in terms of cross-border digital openness, indicating that certain regulatory measures impede the potential of cross-border data to support economic objectives.⁶⁴⁵ A comparative analysis of data laws from the selected countries is available in an accompanying spreadsheet.

People's Republic of China

The PRC has implemented a comprehensive framework of data protection laws and directives, with the central piece of legislation being the Personal Information Protection Law. Enacted to safeguard personal data, the PIPL applies to all "organizations and individuals who process PII in China or who process data of China citizens' PII outside of China.", thereby asserting an extraterritorial reach similar to that of the EU's GDPR.⁶⁴⁶ The PIPL uses a very broad definition of personal data to include any "information that may lead to discrimination or harm if leaked or used illegally, such as personal identifying information, individual biometric features, medical health, financial accounts, location tracking, and other sensitive information."⁶⁴⁷

Under the PIPL, data processors are required to obtain explicit consent from individuals for the collection, processing, and transfer of their personal data.⁶⁴⁸ Additionally, they must provide a clear and appropriate privacy notice and appoint a local representative within the PRC to ensure compliance with the law.⁶⁴⁹

Another significant regulation is the "Decision of the Standing Committee of the National People's Congress on Strengthening the Network Information Protection," enacted in 2012.⁶⁵⁰ This decision laid the groundwork for subsequent data protection measures by emphasizing the need for robust network information security and the protection of personal information in the digital age.⁶⁵¹ A comparative analysis of data laws from the selected countries is available in an accompanying spreadsheet.

The PRC has numerous restrictions on cross-border data transfers and appears to be "attempting to relax some of its existing restrictions" due to complaints from business

⁶⁴⁴ Act on Promotion of Information and Communications Network Utilization and Information Protection, No. 6360, Jan. 16, 2001, amended by Act No. 19351, Apr. 18, 2023 (S. Kor.), https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=62657&key=43&type=part.

⁶⁴⁵ *Cross-Border Data Policy Index*, GLOBAL DATA ALLIANCE, <https://globaldataalliance.org/resource/cross-border-data-policy-index/>.

⁶⁴⁶ International Privacy Laws, Berkeley Center for Law & Technology, <https://ethics.berkeley.edu/privacy/international-privacy-laws>.

⁶⁴⁷ *Id.*

⁶⁴⁸ *Cooley Privacy Talks: Key Things to Know About Data Protection Laws in China*, COOLEY LLP, <https://cdp.cooley.com/cooley-privacy-talks-key-things-to-know-about-data-protection-laws-in-china/>.

⁶⁴⁹ *Id.*

⁶⁵⁰ *National People's Congress Standing Committee Decision Concerning Strengthening Network Information Protection*, China Copyright and Media (Dec. 28, 2012), <https://chinacopyrightandmedia.wordpress.com/2012/12/28/national-peoples-congress-standing-committee-decision-concerning-strengthening-network-information-protection/>.

⁶⁵¹ 全国人民代表大会常务委员会关于加强网络信息保护的決定 [Decision of the Standing Committee of the National People's Congress on Strengthening the Protection of Network Information] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 28, 2012, effective Dec. 28, 2012) (China), http://www.gov.cn/jrzq/2012-12/28/content_2301231.htm.

groups.⁶⁵² Cambodia's restrictions on cross-border data transfers in Articles 22-24 of the Draft Data Protection Law appear to be even more restrictive than the PRC's articles. The GDA grades the PRC as a "level 4: extremely restrictive" country with comprehensive and systemic cross-border data restrictions in both the economic and societal spheres.⁶⁵³

Even more concerning are the PRC's various cybersecurity laws which have raised significant human rights concerns due to their broad and often ambiguous provisions that grant extensive powers to the government for surveillance and control over both domestic and international entities. The Cybersecurity Law of 2016 is a cornerstone of this framework, mandating that companies operating in the PRC store user data locally and provide technical support to security agencies, effectively facilitating state surveillance and censorship.⁶⁵⁴ This law also requires real-name registration for internet users and imposes stringent requirements on network operators to monitor and report security incidents, thereby restricting online anonymity and freedom of expression.⁶⁵⁵

In addition to the Cybersecurity Law, the National Intelligence Law of 2017 further exacerbates these concerns. Article 7 of this law explicitly requires all organizations and citizens to support, assist, and cooperate with national intelligence efforts, effectively compelling businesses and individuals to participate in state surveillance activities.⁶⁵⁶ This provision applies not only within the PRC but also extraterritorially, meaning that Chinese companies operating abroad, as well as foreign companies with operations in the PRC, may be obligated to comply with these demands.⁶⁵⁷ The law's broad and undefined terms, such as "national security" and "intelligence work," grant the government wide latitude to interpret and enforce these requirements, posing significant risks to privacy and human rights.⁶⁵⁸

Furthermore, the Counter-Espionage Law and the Data Security Law complement these measures by imposing additional obligations on businesses and individuals to provide access to data and cooperate with security investigations.⁶⁵⁹ These laws collectively create an environment where the Chinese government can exert extensive control over the ICT domain, both domestically and internationally, undermining privacy, freedom of expression, and other fundamental human rights.⁶⁶⁰

While in-depth economic studies on the correlation between the PRC's cybersecurity and national security laws and the country's economic growth are lacking, numerous commentators have highlighted the potential economic spillover effects of these laws. Freedom House researchers make the claim that countries with higher internet freedom scores

⁶⁵² *Cambodia Data Protection and Privacy Framework*, GLOBAL DATA ALLIANCE (Oct. 5, 2023), <https://globaldataalliance.org/wp-content/uploads/2023/10/10052023gdacambodiadatapro.pdf>.

⁶⁵³ *Cross-Border Data Policy Index*, GLOBAL DATA ALLIANCE, <https://globaldataalliance.org/resource/cross-border-data-policy-index/>.

⁶⁵⁴ *China: Abusive Cybersecurity Law Set to Be Passed*, HUMAN RIGHTS WATCH (Nov. 6, 2016), <https://www.hrw.org/news/2016/11/06/china-abusive-cybersecurity-law-set-be-passed>.

⁶⁵⁵ *Translation: Cybersecurity Law of the People's Republic of China (Effective June 1, 2017)*, DIGICHINA, STANFORD UNIVERSITY, <https://digichina.stanford.edu/work/translation-cybersecurity-law-of-the-peoples-republic-of-china-effective-june-1-2017/>.

⁶⁵⁶ *National Intelligence Law of the P.R.C.* (2017), CHINA LAW TRANSLATE, <https://www.chinalawtranslate.com/en/national-intelligence-law-of-the-p-r-c-2017/>.

⁶⁵⁷ Murray Scot Tanner, *Beijing's New National Intelligence Law: From Defense to Offense*, LAWFARE (July 20, 2017), <https://www.lawfaremedia.org/article/beijings-new-national-intelligence-law-defense-offense>.

⁶⁵⁸ *Data Security Business Advisory*, U.S. DEP'T OF HOMELAND SEC. (Dec. 22, 2020), https://www.dhs.gov/sites/default/files/publications/20_1222_data-security-business-advisory.pdf.

⁶⁵⁹ *China: Counterespionage Law Revised*, GLOBAL LEGAL MONITOR, Library of Congress (Sept. 21, 2023), <https://www.loc.gov/item/global-legal-monitor/2023-09-21/china-counterespionage-law-revised/>.

⁶⁶⁰ *Data Security Business Advisory*, U.S. DEP'T OF HOMELAND SEC. (Dec. 22, 2020), https://www.dhs.gov/sites/default/files/publications/20_1222_data-security-business-advisory.pdf.

tend to have fewer barriers to information flow and communication, which can enhance business operations and economic activities.⁶⁶¹ One of the primary concerns for business is that these laws increase the compliance and regulatory burden. The cybersecurity law imposes stringent requirements, such as data localization and mandatory cooperation with public security forces, on foreign companies operating in the PRC.⁶⁶² The laws may inherently disadvantage foreign firms which could have the effect of reducing competition with domestic firms.⁶⁶³ The laws also create IP risks for companies if they are forced to divulge sensitive proprietary information, which may then be passed on to domestic competitors.⁶⁶⁴ This risk of IP leakage may deter foreign companies from entering or expanding in the Chinese market.⁶⁶⁵ All of these requirements stifle economic dynamism by creating additional overhead costs for businesses and discouraging foreign investment.⁶⁶⁶

The comments from the president of the U.S.-China Business Council, Craig Allen, at the Stanford center on China's Economy and Institutions in May 2024 are particularly relevant to the situation in Cambodia.⁶⁶⁷ A summarization of the key points of Mr. Allen's speech follows. He mentioned the PRC leadership's current techno-utopian vision where technology is hoisted to overcome perceived historical restrictions imposed by Western colonialism and imperialism.⁶⁶⁸ This is part of Xi Jinping's goal of achieving the "great rejuvenation of the Chinese nation" (中华民族伟大复兴).⁶⁶⁹ The PRC seeks to utilize "new productive forces" (新质生产力) to move up the value chain with advanced technology and robotics, which will allow the nation to overcome its impending labor shortage.⁶⁷⁰ The party is working towards these goals by heavily subsidizing (Allen claimed 10-11% of GDP) select industries in a manner that may not be WTO compliant.⁶⁷¹ Additionally, the PRC seeks to conduct import substitution and become self-reliant in key technologies.⁶⁷²

⁶⁶¹ *Global Drive to Control Big Tech*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-net/2023/global-drive-control-big-tech>.

⁶⁶² *New Chinese Cybersecurity and Data Privacy Requirements*, JONES DAY (Dec. 2020), <https://www.jonesday.com/en/insights/2020/12/new-chinese-cybersecurity-and-data-privacy-requirements>.

⁶⁶³ Paul Mozur, *China's Cybersecurity Law Raises Concerns*, N.Y. TIMES (May 31, 2017), <https://www.nytimes.com/2017/05/31/business/china-cybersecurity-law.html>.

⁶⁶⁴ *Why China's New Cybersecurity Law Is a Threat to International Businesses and Innovation*, IMD (2023), <https://www.imd.org/research-knowledge/technology-management/articles/why-chinas-new-cybersecurity-law-is-a-threat-to-international-businesses-and-innovation/>.

⁶⁶⁵ *How Chinese Cybersecurity Standards Impact Doing Business in China*, Center for Strategic and International Studies, <https://www.csis.org/analysis/how-chinese-cybersecurity-standards-impact-doing-business-china>.

⁶⁶⁶ Lauren Maranto, *Who Benefits from China's Cybersecurity Laws?*, CSIS (June 25, 2020), <https://www.csis.org/blogs/new-perspectives-asia/who-benefits-chinas-cybersecurity-laws>; *China's Cybersecurity Legislation: Paper Tiger or Institutionalized Theft?*, INSTITUTE FOR SECURITY & DEVELOPMENT POLICY, <https://www.isdp.eu/publication/chinas-cybersecurity-legislation-paper-tiger-institutionalized-theft/>.

⁶⁶⁷ *Shenzhen and Silicon Valley – The Competition for Technology Leadership*, STANFORD CENTER ON CHINA'S ECONOMY AND INSTITUTIONS (May 3, 2024), <https://www.youtube.com/watch?v=tnp9xCjrXeo>.

⁶⁶⁸ *Id.*

⁶⁶⁹ *Excerpt: The Third Revolution*, COUNCIL ON FOREIGN RELATIONS, <https://www.cfr.org/excerpt-third-revolution>.

⁶⁷⁰ *China's Xi Jinping Summons 'New Productive Forces', but Old Questions Linger*, REUTERS (Mar. 5, 2024), <https://www.reuters.com/world/china/chinas-xi-summons-new-productive-forces-old-questions-linger-economy-2024-03-05/>.

⁶⁷¹ *Shenzhen and Silicon Valley – The Competition for Technology Leadership*, STANFORD CENTER ON CHINA'S ECONOMY AND INSTITUTIONS (May 3, 2024), <https://www.youtube.com/watch?v=tnp9xCjrXeo>.

⁶⁷² *Id.*

The most analogous part of the PRC's plan is to utilize "data" as 5th factor of production.⁶⁷³ Leadership in Cambodia also views technology and data as a way to leapfrog stages of development without careful consideration of the specific policies that will best achieve sustainable growth. Cambodia also seeks a capability similar to the CAC's ability to control cross-border data flows of important information.

In the PRC, the negative implications of these technological plans are not widely discussed. The plan may boost high value-add exports but may not help the average citizen who is forced into underconsumption.⁶⁷⁴ This is especially true of rural citizens due to the "hukou" registration system.⁶⁷⁵ Provincial leaders that are forced to implement the central government's policies often focus on the selected industries rather than engendering organic growth in their regions.⁶⁷⁶ SOEs in the PRC, which often encounter diminishing returns to supply-side subsidies, are increasingly being favored over private companies.⁶⁷⁷ Lastly, the foreign intelligence law of 2019 has created some uncertainty regarding the boundaries for civil-military fusion.⁶⁷⁸

All of this does not undermine the fact that the PRC remains an innovation leader with extremely fast commercialization due to the very demanding requirements of technology consumers in the country.⁶⁷⁹ The country also has the ability to manufacturing at a scale not seen anywhere else in the world.⁶⁸⁰ Shenzhen's development and manufacturing prowess in the technology realm is nearly unparalleled.⁶⁸¹ The number of STEM graduates that the country produces alongside its rising R&D spending in the sciences bodes well for the country's future.⁶⁸²

The world has reacted with both envy and anger over the PRC's overproduction in key areas. Many countries, including the US, have attempted to duplicate some of the PRC's industrial policy with lavish subsidies.⁶⁸³ Allen indicated that overproduction and waste are the likely results of these policies if many countries start subsidizing the same industries.⁶⁸⁴ It raises the possibility of more "zombie" companies being kept alive in a manner similar to what happened in Japan in the 1990's.⁶⁸⁵ The chips act and the IRA are the best example of this in the United States.⁶⁸⁶ On the other hand, many countries have imposed WTO Article 25 tariffs on PRC exports and attempted export controls of key technologies.⁶⁸⁷

The war for technical talent is another issue that Cambodia can related to. Mr. Allen mentioned visa issues for Chinese scientists trying to work in the United States, whereas Cambodia faces the dilemma of brain drain to higher income Asian countries. This is an area

⁶⁷³ *Id.*

⁶⁷⁴ *Id.*

⁶⁷⁵ *Id.*

⁶⁷⁶ *Id.*

⁶⁷⁷ *Id.*

⁶⁷⁸ *Military and Security Developments Involving the People's Republic of China 2023*, U.S. DEP'T OF DEFENSE, <https://media.defense.gov/2023/Oct/19/2003323409/-1/-1/1/2023-MILITARY-AND-SECURITY-DEVELOPMENTS-INVOLVING-THE-PEOPLES-REPUBLIC-OF-CHINA.PDF>.

⁶⁷⁹ *Shenzhen and Silicon Valley – The Competition for Technology Leadership*, STANFORD CENTER ON CHINA'S ECONOMY AND INSTITUTIONS (May 3, 2024), <https://www.youtube.com/watch?v=tnp9xCjrXeo>.

⁶⁸⁰ *Id.*

⁶⁸¹ *Id.*

⁶⁸² *Id.*

⁶⁸³ *Id.*

⁶⁸⁴ *Id.*

⁶⁸⁵ *Id.*

⁶⁸⁶ *Id.*

⁶⁸⁷ *Id.*

where it may be beneficial for Cambodia to seek consensus in ASEAN through the DEFA negotiations.

European Union

The centerpiece of the EU's privacy regime is the General Data Protection Regulation enacted by the European Parliament in 2016 with enforcement starting in 2018.⁶⁸⁸ The law is often viewed as the standard-bearer for data privacy across the globe and is constantly being refined by the Data Protection Authority in each member country. GDA grades EU at “level 2” with a decreased level of cross-border digital openness distorting the flow of cross-border data in part due to the GDPR.⁶⁸⁹ A comparative analysis of data laws from the selected countries is available in an accompanying spreadsheet.

The EU has established robust cybersecurity laws to protect critical infrastructure, particularly through the NIS2 Directive.⁶⁹⁰ This directive, which entered into force on January 16, 2023, mandates that member states enhance their cybersecurity frameworks and ensure effective cooperation among national authorities.⁶⁹¹ The directive requires that operators of essential services and digital service providers implement stringent security measures and report significant cyber incidents promptly.⁶⁹² Additionally, the EU Cybersecurity Act empowers the European Union Agency for Cybersecurity to support member states in managing cybersecurity crises, further strengthening the EU's collective resilience against cyber threats.⁶⁹³

Lastly, the EU's groundbreaking AI act received approval in May 2024 with the objective of furthering the development of safe and trustworthy AI systems while protecting the fundamental rights of individuals living in the EU. The Law also provides definitions and some legal certainty to relevant organizations in the AI space. Like the GDPR, the law applies extraterritorially and contains potential penalties enforced by authorities in member states that can equate to a percentage of a firm's global revenue.⁶⁹⁴

The AI act takes a risk-based approach to regulating AI systems. Systems with an “unacceptable” level of risk, such as social credit scores and biometric identification in public, are banned outright.⁶⁹⁵ “High-risk” AI systems must be limited in scope and serve a legitimate purpose and intent.⁶⁹⁶ The “high-risk” systems must also include mitigations that preserve the integrity and transparency of data while also protecting fundamental rights.⁶⁹⁷

⁶⁸⁸ *History of the General Data Protection Regulation*, EUROPEAN DATA PROTECTION SUPERVISOR, https://www.edps.europa.eu/data-protection/data-protection/legislation/history-general-data-protection-regulation_en.

⁶⁸⁹ *G7 Data Free Flow with Trust: Industry Recommendations*, GLOBAL DATA ALLIANCE, <https://globaldataalliance.org/wp-content/uploads/2023/04/04182023g7dfftglindustry.pdf>.

⁶⁹⁰ *Directive on Measures for a High Common Level of Cybersecurity Across the Union (NIS2 Directive)*, EUROPEAN COMMISSION, <https://digital-strategy.ec.europa.eu/en/policies/nis2-directive>.

⁶⁹¹ *Cybersecurity Policies*, EUROPEAN COMMISSION, <https://digital-strategy.ec.europa.eu/en/policies/cybersecurity-policies>.

⁶⁹² *Directive on Measures for a High Common Level of Cybersecurity Across the Union (NIS2 Directive)*, EUROPEAN COMMISSION, <https://digital-strategy.ec.europa.eu/en/policies/nis2-directive>.

⁶⁹³ *Cybersecurity Policies*, EUROPEAN COMMISSION, <https://digital-strategy.ec.europa.eu/en/policies/cybersecurity-policies>.

⁶⁹⁴ *Corrigendum to the Position of the European Parliament Adopted at First Reading on 13 March 2024 with a View to the Adoption of the Regulation on Artificial Intelligence*, EUROPEAN PARLIAMENT (2024), https://www.europarl.europa.eu/doceo/document/TA-9-2024-0138-FNL-COR01_EN.pdf.

⁶⁹⁵ *Id.*

⁶⁹⁶ *Id.*

⁶⁹⁷ *Id.*

Conformity assessments are also required in this category.⁶⁹⁸ The next category down the risk ladder is “limited risk,” which includes AI systems like chatbots and spam filters.⁶⁹⁹ These systems are obliged to follow transparency requirements for end-users.⁷⁰⁰ The final category of AI systems, “minimal risk,” do not use personal data or offer predictions to the public.⁷⁰¹ The law has a carve-out for general-purpose AI systems that only need to adhere to the strict regulations if they pose a “systemic risk.” Future adjustments to the law may address concerns about copyright infringement in AI training datasets.

United States of America

The United States of America does not have a comprehensive privacy law at the federal level, although it does have sector specific laws that protect the privacy rights of select groups. The GDA graded the USA as “level 1: Relatively Open Digital Policies” with “Open to Cross-Border Digital Economic Opportunity and Digital Transformation.”⁷⁰² Examples of sector specific privacy laws include the Health Insurance Portability and Accountability Act, COPPA, and the Gramm-Leach-Bliley Act for financial information. COPPA sets the age of a child for the purposes of the data protection law at 13 years of age.⁷⁰³

Numerous states have individually passed various privacy laws. This has created a very fragmented compliance market regarding privacy in the United States. California was a leader of the ensuing wave of privacy laws that have since been proposed and implemented across the country. The California Consumer Privacy Act became effective on January 1, 2020, and granted Californians the right to access, delete, and opt out of the sale of personal information. The law was amended by the California Privacy Rights Act to expand consumer rights and establish the California Privacy Protection Agency for enforcement.⁷⁰⁴ The Colorado Privacy Act became effective on July 1, 2023, and provides the right to access, correct, delete, and opt out of data processing while mandating data protection assessments for high-risk processing activities.⁷⁰⁵ The Connecticut Data Privacy Act became effective on July 1, 2023, and includes strong protections for children's data.⁷⁰⁶ The Delaware Personal Data Privacy Act became effective on January 1, 2025, and it includes rules regarding data processing and specific protections for children's data.⁷⁰⁷ The Virginia Consumer Data Protection Act became effective on January 1, 2023, and grant the rights to access, delete, and correct personal data while requiring data protection assessments for certain processing activities.⁷⁰⁸ The Utah Consumer Privacy Act became effective on December 31, 2023, and provides a slightly lower level of consumer rights when compared to other state privacy

⁶⁹⁸ *Id.*

⁶⁹⁹ *Id.*

⁷⁰⁰ *Id.*

⁷⁰¹ *High-Level Summary of the AI Act*, ARTIFICIAL INTELLIGENCE ACT, <https://artificialintelligenceact.eu/high-level-summary/>.

⁷⁰² *Cross-Border Data Policy Index*, GLOBAL DATA ALLIANCE, <https://globaldataalliance.org/resource/cross-border-data-policy-index/>.

⁷⁰³ *AIC Submission on the Personal Data Protection Bill 2023*, ASIA INTERNET COALITION (2023), <https://aicasia.org/download/830/>.

⁷⁰⁴ *State Privacy Legislation Tracker*, BLOOMBERG LAW, <https://pro.bloomberglaw.com/insights/privacy/state-privacy-legislation-tracker/>; *U.S. State Privacy Laws 2023*, LOCKE LORD LLP (Dec. 2022),

<https://www.lockelord.com/newsandevents/publications/2022/12/us-state-privacy-laws-2023>.

⁷⁰⁵ *Id.*

⁷⁰⁶ *Id.*

⁷⁰⁷ *Id.*

⁷⁰⁸ *Id.*

laws.⁷⁰⁹ The Texas Data Privacy and Security Act became effective July 1, 2024, and it applies primarily to large companies.⁷¹⁰ The Oregon Consumer Privacy Act became effective on July 1, 2024, and focuses on biometric and sensitive data.⁷¹¹ The Tennessee Information Protection Act became effective on July 1, 2025, and enables consumers to confirm data collection, obtain copies, and correct inaccuracies.⁷¹² Indiana, Iowa, Kentucky, Montana, New Hampshire, and New Jersey also have data privacy laws set to come into force over the next couple of years.⁷¹³

There are several common attributes of the state privacy laws. Most of the laws include some form of consumer rights to access, correct, delete, and transfer data. Some laws also include opt-out rights. The laws frequently impose obligations on businesses to conduct data protection assessments and implement reasonable data security measures. Each state usually establishes an enforcement mechanism through the state Attorney General or via a dedicated agency.⁷¹⁴

At the federal level, the primary cybercrime law enacted in the United States is the Computer Fraud and Abuse Act of 1986.⁷¹⁵ Codified at Title 18, United States Code, Section 1030, the CFAA was initially introduced to address the growing threat of hacking and unauthorized access to computer systems.⁷¹⁶ The CFAA criminalizes various activities, including accessing a computer without authorization, exceeding authorized access, and transmitting code or commands that cause damage to protected computers.⁷¹⁷ Over the years, the CFAA has been amended multiple times to expand its scope and address new forms of cyber threats, including the distribution of malicious code and denial-of-service attacks.⁷¹⁸ The CFAA also allows for civil actions, enabling individuals and organizations to seek damages for violations.⁷¹⁹ Despite its comprehensive nature, the CFAA has faced criticism for its broad and sometimes ambiguous definitions, which have led to calls for reform to prevent misuse and overreach in its application.⁷²⁰

The United States has been comparatively more restrained regarding regulation of AI when compared to the EU's actions. The federal government has preferred voluntary safety agreements and executive orders directed towards the federal agencies rather than comprehensive, binding legislation. Some existing laws and rules at the Federal Trade

⁷⁰⁹ *Id.*

⁷¹⁰ State Privacy Legislation Tracker, BLOOMBERG LAW, <https://pro.bloomberglaw.com/insights/privacy/state-privacy-legislation-tracker/>

⁷¹¹ *Id.*

⁷¹² *Id.*

⁷¹³ *US State Privacy Legislation Tracker*, INT'L ASS'N OF PRIVACY PROF'LS (July 1, 2024), <https://iapp.org/resources/article/us-state-privacy-legislation-tracker/>; *New State Data Privacy Laws in 2024*, VENABLE LLP (Feb. 2024), <https://www.venable.com/insights/publications/2024/02/new-state-data-privacy-laws-in-2024>.

⁷¹⁴ *U.S. State Privacy Laws 2023*, LOCKE LORD LLP (Dec. 2022), <https://www.lockelord.com/newsandevents/publications/2022/12/us-state-privacy-laws-2023>; *New State Data Privacy Laws in 2024*, VENABLE LLP (Feb. 2024), <https://www.venable.com/insights/publications/2024/02/new-state-data-privacy-laws-in-2024>.

⁷¹⁵ U.S. Dep't of Justice, *Justice Manual*, Title 9: Criminal Resource Manual, § 9-48.000 - Computer Fraud and Abuse Act, <https://www.justice.gov/jm/jm-9-48000-computer-fraud>.

⁷¹⁶ 18 U.S.C. § 1030.

⁷¹⁷ *Id.*

⁷¹⁸ *Cybersecurity: Authoritative Reports and Resources*, CONG. RSCH. SERV., RL97-1025 (Sept. 15, 2023), <https://crsreports.congress.gov/product/pdf/RL/97-1025>.

⁷¹⁹ 18 U.S.C. § 1030.

⁷²⁰ *Computer Fraud and Abuse Act (CFAA)*, Electronic Frontier Foundation, <https://www EFF.org/issues/cfaa>.

Commission, Equal Employment Opportunity Commission, and Consumer Financial Protection Bureau touch on the privacy and discrimination concerns surrounding AI.^{721,722}

The president issued the Executive Order on Safe, Secure, and Trustworthy AI in October 2023 which sought to establish new standards for AI safety and security by mandating the sharing of safety test results by developers of powerful AI systems.⁷²³ The White House Office of Science and Technology also published the nonbinding Blueprint for an AI Bill of Rights in October 2022 which outlined five principles to guide the design, use, and deployment of automated systems to protect public rights, opportunities, and access to critical resources.⁷²⁴ Several other federal policy initiatives include the National AI R&D Strategic Plan, NIST's AI Risk Management Framework, and the Office of Management and Budget's Policy on Government Use of AI.⁷²⁵ Lastly, the Presidential administration sought voluntary commitments from AI companies regarding safe development of AI technologies in July 2023.⁷²⁶ The Senate has also released their own Roadmap for Artificial Intelligence Policy, which outlines a comprehensive strategy for fostering AI innovation while addressing ethical, legal, and societal implications.⁷²⁷

Recommendations

Summary

Proposed data policies in Cambodia that do not adhere to international standards, violate human rights, and impose restrictions on the free flow of data are likely to hamper the country's ambitious goals of reaching upper-middle-income status by 2030 and high-income status by 2050.⁷²⁸ The unilateral, privacy-reducing data policies that have been proposed by

⁷²¹ *AI Watch: Global Regulatory Tracker - United States*, WHITE & CASE LLP,

<https://www.whitecase.com/insight-our-thinking/ai-watch-global-regulatory-tracker-united-states>.

⁷²² *Existing and Proposed Federal AI Regulation in the United States*, MORGAN LEWIS (Apr. 2024),

<https://www.morganlewis.com/pubs/2024/04/existing-and-proposed-federal-ai-regulation-in-the-united-states>.

⁷²³ *Fact Sheet: President Biden Issues Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence*,

THE WHITE HOUSE (Oct. 30, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/30/fact-sheet-president-biden-issues-executive-order-on-safe-secure-and-trustworthy-artificial-intelligence/>; *Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*, THE WHITE HOUSE (Oct. 30, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/>; Nicol Turner Lee, *How the White House Executive Order on AI Ensures an Effective Governance Regime*, BROOKINGS (Mar. 28, 2024), <https://www.brookings.edu/articles/how-the-white-house-executive-order-on-ai-ensures-an-effective-governance-regime/>.

⁷²⁴ *Blueprint for an AI Bill of Rights*, OFFICE OF SCIENCE AND TECHNOLOGY POLICY,

<https://www.whitehouse.gov/ostp/ai-bill-of-rights/>; *AI Actions*, THE WHITE HOUSE, <https://ai.gov/actions>.

⁷²⁵ *AI Actions*, THE WHITE HOUSE, <https://ai.gov/actions>; *Recent U.S. Efforts on AI Policy*, CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY, <https://www.cisa.gov/ai/recent-efforts>.

⁷²⁶ *Fact Sheet: Biden-Harris Administration Secures Voluntary Commitments from Leading Artificial*

Intelligence Companies to Manage the Risks Posed by AI, THE WHITE HOUSE (July 21, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/21/fact-sheet-biden-harris-administration-secures-voluntary-commitments-from-leading-artificial-intelligence-companies-to-manage-the-risks-posed-by-ai/>.

⁷²⁷ *Senate AI Working Group Releases Long-Anticipated Roadmap for AI Policy*, AKIN GUMP STRAUSS HAUER & FELD LLP (May 15, 2024), <https://www.akingump.com/en/insights/alerts/senate-gang-of-four-releases-long-anticipated-ai-whitepaper>.

⁷²⁸ IMF, *Cambodia: 2023 Article IV Consultation*, IMF Country Report No. 23/123 (2023); Jayant Menon, *Cambodia: Policies to Increase the Inclusiveness, Resilience, and Sustainability of Economic Growth*, EURASIA REV. (June 2, 2024), <https://www.eurasiareview.com/02062024-cambodia-policies-to-increase-the-inclusiveness-resilience-and-sustainability-of-economic-growth-analysis/>.

Cambodian authorities are likely to hamper the achievement of the country's Sustainable Development Goals of “enhanc[ing] research and upgrad[ing] industrial technologies” and “support[ing] domestic technology development and industrial diversification.”⁷²⁹ UNCTAD refers to these types of restrictive data policies as “[d]ivergent data nationalism.”⁷³⁰ Cambodia is likely to graduate from the international trade benefits granted to it by its Least Developed Country status by the end of the decade.⁷³¹ This necessitates a rapid enhancement of its technological base, enabled by shrewd data policies that attract foreign technology transfers, to propel Cambodia's next phase of development.

The IMF has identified “[i]nvestments in key infrastructure, such as in transportation, energy, logistics and telecommunication” as important requirements as Cambodia's “comparative advantage in labor cost diminishes at a higher income level.”⁷³² Cambodia also needs to “promote export market and product diversification” while “strengthening regional economic ties.”⁷³³ The best way to attract these investments and technological diversification is to adopt data policies that adhere to international standards and reduce data transaction costs. Cambodia can “promote investment in high-value added manufacturing” by implementing coordinated data policies in key areas such as cybersecurity, privacy, cybercrime, and artificial intelligence.⁷³⁴ The necessity of this is heightened since “Cambodia[n] FDI vulnerability to geo-economic fragmentation is higher than other EMDEs and Asian economies.”⁷³⁵

Economic impact of privacy policies

Cambodia's Future Economic Growth

As Cambodia makes progress on its ambitious GDP goals, its current “labor cost advantage will gradually diminish” which will make economic growth harder, especially in the face of “strong international competition in the export industries.”⁷³⁶ This necessitates “policy incentives for domestic oriented FDI [to] be more targeted toward attracting companies that provide technology, skill or knowledge that allows the long-term growth potential of the economy to be enhanced.”⁷³⁷ The best way to attract the necessary investments is by adopting data policies that have been negotiated through regional bodies and global forums. Combined with prudent enforcement and responsive adaptation of the policies by relevant authorities, Cambodia will lay the groundwork for sustainable long term economic growth. The need to develop policies that enable Cambodia to move beyond “labo[r]-intensive and ‘footloose’ (low value-added) industries, such as the clothing and garment industries” and instead incentivize “higher-value-added activities amongst domestic

⁷²⁹ *SDG 9: Industry, Innovation, and Infrastructure*, OPEN DEVELOPMENT CAMBODIA, <https://opendevelopmentcambodia.net/topics/sdg-9-industry-innovation-and-infrastructure/>.

⁷³⁰ *Digital Economy Report 2021*, UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (2021), https://unctad.org/system/files/official-document/der2021_en.pdf.

⁷³¹ Jayant Menon, *Cambodia: Policies to Increase the Inclusiveness, Resilience, and Sustainability of Economic Growth*, EURASIA REV. (June 2, 2024), <https://www.eurasiareview.com/02062024-cambodia-policies-to-increase-the-inclusiveness-resilience-and-sustainability-of-economic-growth-analysis/>.

⁷³² IMF, *Cambodia: 2023 Article IV Consultation*, IMF Country Report No. 23/123 (2023).

⁷³³ *Id.*

⁷³⁴ *Id.*

⁷³⁵ *Id.*

⁷³⁶ *Id.*

⁷³⁷ ASEAN+3 Macroeconomic Research Office, *External Imbalance Casts Shadow on Cambodia's Resilient Economy*, AMRO ASIA (2023), <https://amro-asia.org/external-imbalance-casts-shadow-on-cambodias-resilient-economy/>.

firms” will only increase as the country makes progress on its economic goals.⁷³⁸ Research published by ERIA identified a need to establish transparency in regulations as one step towards “attracting more stable and higher-value-added foreign investment into the domestic economy.”⁷³⁹

Poorly designed data policies in Cambodia could have significant negative ramifications for SMEs. Cambodia’s proposed data laws, characterized by vague language and broad provisions, could lead to increased governmental surveillance and arbitrary enforcement, creating an environment of uncertainty and fear among the general public and business entities. For instance, the proposed cybercrime law includes provisions that could criminalize online speech and allow real-time monitoring of internet traffic, which may be used to suppress dissent and target specific groups.⁷⁴⁰ Additionally, the cybersecurity law could grant authorities the power to seize computer systems and lock businesses out of their digital operations, potentially leading to catastrophic business interruptions.⁷⁴¹ Other measures may impose unreasonable administrative burdens on SMEs, making it difficult for them to operate efficiently and securely.⁷⁴² The lack of clear protections and oversight mechanisms further exacerbates these risks, potentially stifling SME’s innovation and growth in Cambodia.

Data policies are likely to have a direct impact on exports. Research indicates that a “0.1-point reduction in a country’s level of digital services trade restrictiveness is associated with a 145% increase in overall exports” with the largest positive impact on digitally deliverable services.⁷⁴³ Digital services trade restrictions include items like data localization requirements and internet accessibility. Specifically with regards to SMEs in Asia, “digital tools reduce export costs by 82%, and transaction times by 29%.”⁷⁴⁴

The resulting regulatory fragmentation if the draft laws are enacted will create definitions and articles that diverge significantly from established ASEAN and multilateral standards, complicating cross-border data flows and cooperation, and ultimately hindering regional integration and economic collaboration. The United Nations Secretary-General appointed High-Level Advisory Board on Effective Multilateralism believes that regulatory fragmentation in the digital landscape is “most likely to adversely impact low-income countries, less well-off individuals, and marginalized communities the world over.”⁷⁴⁵ The heightened compliance costs will fall hardest on SMEs in Cambodia since they are least likely to be able to spread the fixed compliance costs over multiple business lines.

⁷³⁸ Jayant Menon & Sothea Oum, *Investment Facilitation and Promotion in Cambodia: Impact of Provincial-level Characteristics on Multinational Activities*, ERIA (2024), <https://www.eria.org/uploads/Investment-Facilitation-and-Promotion-in-Cambodia-Impact-of-Provincial-level-Characteristics-on-Multinational-Activities-.pdf>.

⁷³⁹ *Id.*

⁷⁴⁰ Fiona Kelliher, *Experts Fear Cambodian Cybercrime Law Could Aid Crackdown*, VOA NEWS (Apr. 08, 2024 1:22 PM), <https://www.voanews.com/a/experts-fear-cambodian-cybercrime-law-could-aid-crackdown-/7561462.html>.

⁷⁴¹ CK Mah, *Cambodia’s Cybersecurity Law Highlights the Need for Prevention*, LINKEDIN (2023), <https://www.linkedin.com/pulse/cambodias-cybersecurity-law-highlights-need-prevention-ck-mah>.

⁷⁴² Niem Chheng, *Concerns Over Draft Cyber Law Allayed by Official Explanation*, PHNOM PENH POST (Oct. 2023), <https://www.phnompenhpost.com/national/concerns-over-draft-cyber-law-allayed-official-explanation>.

⁷⁴³ *OECD Economic Outlook, Volume 2023 Issue 1*, ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, <https://read.oecd.org/10.1787/11889f2a-en?format=pdf>.

⁷⁴⁴ *New Stakeholders in Trade Across APAC*, ACCESS PARTNERSHIP, <https://accesspartnership.com/new-stakeholders-trade-apac/>.

⁷⁴⁵ *Breakthrough: The Promise of Frontier Technologies for Sustainable Development*, UNITED NATIONS UNIVERSITY HIGH-LEVEL ADVISORY BOARD, https://www.highleveladvisoryboard.org/breakthrough/pdf/56892_UNU_HLAB_report_Final_Shift4.pdf.

Cambodia's ability to latch on and integrate itself with the numerous data and technology proposals coming out of ASEAN is also at stake. Cambodia's isolated drafting of its data policies acts as an impediment to ASEAN's goal of "unlocking the full benefits of digital transformation to improve the productivity and the lives of the people and eventually boost the ASEAN economic growth as recogni[z]ed in the Boracay Digital Declaration adopted by the ASEAN Digital Ministers in 2023."⁷⁴⁶ A central goal of ASEAN's DEFA is to ensure the "seamless and secure flow of goods, services, and data."⁷⁴⁷ This goal will simply not be possible if Cambodia enacts the aforementioned draft laws without substantial adjustments.

Of note, Cambodia is not a member of the WTO's Joint Initiative on E-commerce even though the country passed its own E-commerce law in 2019.⁷⁴⁸ Cambodia's lack of concurrence on this matter may be due to the impending data localization requirements in the draft Data Protection Law. The WTO's initiative seeks to develop standards related to "online consumer protection, open government data, transparency, open internet access, cross-border data flows, data locali[z]ation, source code, electronic transactions, frameworks, cybersecurity."⁷⁴⁹ The various draft laws being developed by the Ministries in Cambodia will hurt the country's prospects of participating in this WTO initiative.

Comments from the CEO of ABACUS digital, Sutapa Amornvivat, during the "Cross-border Digital Synergy: Enhancing Asia-Pacific Cooperation" speaker panel at the Future of Asia Forum hosted by Nikkei, indicated that the fragmented and inconsistent regulations in the region discouraged investment and made it hard to expand cross-border. She worried that individual ASEAN members states would become small fragmented markets that each have bespoke privacy and cybersecurity regulations that reduce the individual nations' business friendliness. A unified regulatory framework would facilitate business activity, but such a framework requires political willpower under ASEAN's shared decision making. Ms. Amornvivat also expressed an interest in additional skilled worker visas as part of a broader request to increase the fluidity of labor across the region. She postured that one way to reverse the brain drain that had occurred in many less resourced nations would be to create sufficient opportunities for business growth and social impact.

Technology Innovation & Adoption

Cambodia's proposed data laws may also hamper technology innovation and adoption in the country. The World Bank's 2021 World Development Report found that domestic policies that restrict cross-border data flows "materially affect a country's competitive edge in the burgeoning trade of data-enabled services."⁷⁵⁰ UNCTAD emphasized that these policies reduce "market opportunities for domestic MSMEs to reach worldwide markets" and "opportunities for digital innovation, including various missed opportunities for inclusive development that can be facilitated by engaging in data-sharing through strong international

⁷⁴⁶ *Leaders' Statement on the Digital Economy Framework Agreement*, ASEAN (Sept. 2023), https://asean.org/wp-content/uploads/2023/09/Leaders-Statement-DIGITAL-ECONOMY-FRAMEWORK-AGREEMENT_rv.pdf.

⁷⁴⁷ *Id.*

⁷⁴⁸ *Joint Statement Initiative on E-commerce*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/ecom_e/joint_statement_e.htm.

⁷⁴⁹ *Statement by Ministers of Australia, Japan, and Singapore on the Joint Statement Initiative on E-commerce*, WORLD TRADE ORGANIZATION (Dec. 2021), https://www.wto.org/english/news_e/news21_e/ji_ecom_minister_statement_e.pdf.

⁷⁵⁰ *World Development Report 2021: Data for Better Lives (2021)*, WORLD BANK, <https://openknowledge.worldbank.org/bitstream/handle/10986/35218/9781464816000.pdf>.

cooperation.”⁷⁵¹ It follows that select Articles in Cambodia’s draft data laws are therefore likely to reduce the country’s digital competitiveness. This contravenes ASEAN’s Digital Master Plan 2025, “which envisions ASEAN as a leading digital community and economic bloc, powered by secure and transformative digital services, technologies and ecosystem.”⁷⁵² Cambodia will struggle to fully participate in this ASEAN initiative if it has bespoke data policies that are out of step with international norms. The World Bank has stated that “free and open cross-border data flows are key to the global trade in digital services.”⁷⁵³

The proposed policies may also impact domestic technical talent management and contribute to brain drain by creating an environment of surveillance and censorship, which discourages talented professionals from staying in the country. This runs counter to the goals of Cambodia's Digital Economy and Society Policy Framework 2021–2035, which aims to foster a vibrant digital economy and retain skilled technical talent.

One commonly cited reason for the rush to implement the various draft laws is the need for enhanced cybersecurity in the country. While it is true that Cambodia has traditionally ranked poorly on measures of data protection and cybersecurity (see 2021 ASEAN Digital Integration Index), the draft laws do little to address the underlying challenges in this area.⁷⁵⁴ Improving cybersecurity education and training while engaging with the private sector on coordinated network defense tactics would be more effective in delivering improved cybersecurity. The draft laws do little to hinder or prevent many of the most pressing cybersecurity challenges that the country faces such as ransomware and cyber scams. The NBC has specifically identified banks and financial institutions as needing to put more attention “into cybersecurity to ensure the smooth operation of digital financial services.”⁷⁵⁵

Lastly, Cambodia’s policies may hinder the use and development of artificial intelligence in the country. Sutapa Amornvivat specifically mentioned the data availability and computational power requirements of AI during the Future of Asia Forum. She requested ASEAN cooperation in this area so that it was not overregulated by the individual ASEAN member states.

Other Impacts

Restrictive and human rights-abusing data policies could severely hinder research and development, scholarship, and education in the country by fostering an environment of surveillance and censorship, thereby stifling academic freedom and discouraging open collaboration and innovation. One particular industry that will likely experience a significant impact from these policies is the financial industry due to the potentially higher data transfer costs imposed by the draft laws.

⁷⁵¹ *Digital Economy Report 2021*, UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (2021), https://unctad.org/system/files/official-document/der2021_en.pdf

⁷⁵² *Leaders' Statement on the Digital Economy Framework Agreement*, ASEAN (Sept. 2023), https://asean.org/wp-content/uploads/2023/09/Leaders-Statement-DIGITAL-ECONOMY-FRAMEWORK-AGREEMENT_rv.pdf.

⁷⁵³ *AIC Submission on the Personal Data Protection Bill 2023*, ASIA INTERNET COALITION (2023), <https://aicasia.org/download/830/>.

⁷⁵⁴ *ASEAN Digital Integration Index Report 2021*, ASEAN, <https://asean.org/book/asean-digital-integration-index-report-2021/>.

⁷⁵⁵ Annual Report 2023, NATIONAL BANK OF CAMBODIA, https://www.nbc.gov.kh/download_files/publication/annual_rep_eng/NBC%20Annual%20Report%202023%20Eng.pdf.

Additionally, these policies may significantly impede environmental scientists conducting climate research and weather modeling by imposing stringent restrictions on data sharing, thereby limiting collaboration, access to critical information, and the ability to produce accurate and comprehensive climate models essential for effective environmental management and policymaking. This will ultimately diminish the country's preparedness and resilience to natural disasters, increasing the likelihood that these weather events will harm the population.

Lastly, reciprocal punishment and retaliation could spiral into a vicious cycle as other nations may implement their own restrictive data policies in response, further fragmenting global data governance and undermining international cooperation. The World Economic Forum summarized this train of thought by emphasizing that countries that impose local data storage, processing, and retention requirements “to secure better [data] access for themselves can expect multinational businesses to stay away and other countries to retaliate.”⁷⁵⁶ This spiral may result in “reduced access to global data and technology, pressures for compromises in bilateral trade negotiations, and accumulating complexities.”⁷⁵⁷

Future Research

Future research should continue to track developments in the draft laws. It will be especially important to measure and track any changes in digital capability and readiness if the laws get enacted. If the individual laws are enacted, the various government Ministries will likely issue a large number of prakas that implement various Articles of the Law. Focus should be on ensuring that the prakas and enforcement of the law abides by international human rights law.

A separate topic for future research may be to make data on the most popular websites and apps in Cambodia publicly available. As it stands, Alexa last published its list of the most popular websites in Cambodia in May 2022. SimilarWeb continues to publish lists of the most popular Android and iOS applications, but the publication is not available through an API. It is also unclear where the company sources its data from. Future researchers should reach out to the telecom companies and mobile OS platforms to publicly release data on the most popular websites and applications in the country. An automated script can use that data to determine the I.P. address and geographic location of where the data is being stored and processed for those websites and applications. That dataset should be updated monthly and made publicly available so that researchers can track any changes that may be correlated with implementation of Cambodian data laws or prakas.

⁷⁵⁶ *A Roadmap for Cross-Border Data Flows*, WORLD ECONOMIC FORUM (2020), http://www3.weforum.org/docs/WEF_A_Roadmap_for_Cross_Border_Data_Flows_2020.pdf.

⁷⁵⁷ *Id.*



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