

The background of the cover is a complex composition. On the left, a large triangular area is filled with a vibrant, abstract digital pattern of glowing blue and green lines and nodes, resembling a network or data flow. This area is bordered by a series of overlapping triangles in shades of blue, yellow, and red. The right side of the cover is a solid white space, which provides a high-contrast background for the title and the year.

ENSURING SUCCESS FOR THE DIGITAL ECONOMY IN ASEAN

2018

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EXECUTIVE SUMMARY

There is no doubt that the “Digital Economy” has the power to add significantly to economic growth and development in South East Asia. The Masterplan on ASEAN Connectivity 2025 (MPAC2025) stated that it could unleash some US\$220 billion to US\$625 billion in annual economic impact in ASEAN by 2030¹. But how successful the region is at embracing the Digital Economy and encapsulating the benefits of it depends on how it approaches the matter as a collective, rather than as 10 separate actors. Adopting a piecemeal approach, with 10 different regulatory, oversight, tax, and customs regimes for the Digital Economy and e-Commerce would be both inefficient and create difficulties for MSMEs in particular to navigate around the system.

There are a number of areas that need to be looked at if ASEAN is to maximise the potential benefits that can be harnessed from the ‘Digital Economy’. Putting in place the right eco-system to encourage established businesses and start-ups to develop digital platforms to enable them to reach new markets and consumers, exchange and interrogate effectively big data, make and receive payments speedily and in a low-cost manner, and then meet the requirements of increasingly demanding end consumers, is of vital importance. It is not just a question of ensuring the right physical infrastructure, such as broadband networks and 4G or 5G data systems, are in place - important though that is. It also requires the right policies and regulations to be developed which will encourage, and not hinder, the exchange of data and the movement of goods and services that are sold via digital platforms.

Driving innovation, development and growth

The Digital Economy drives innovation, development and growth for stakeholders in different parties. Apart from the consequences mentioned above, data localisation laws and requirements will impact the rate of technological innovation in ASEAN. By avoiding such regulations as far as possible, data can be shared across borders with the explicit consent of the owners (e.g. for medical purposes, banking transactions, international insurance arrangements, etc.). This suggestion aims to support an environment conducive for innovation, incentivise companies to continue to invest and ensure the continuous supply and development of useful products and services that are advantageous to the region². These goods and services are also further improved by the presence of free flowing of data³.

The free flow of non-personal data is a pre-requisite for a competitive Digital Economy. Moves to restrict the free flow of data will, therefore, inhibit the development of the Digital Economy and the ability of businesses, both large and small, to take full advantage of it, to the detriment of customers.

This paper outlines several worrying aspects and impactful outcomes of data localisation laws in ASEAN. It also deals with other areas that need to be considered when looking at the Digital Economy, namely easing the movement of goods from e-Commerce, and easing cross-border payments so that companies selling goods and services via Digital platforms can get paid easier, faster, and more efficiently.

These areas have to be considered within the need to support ASEAN’s governments push for economic growth, higher levels of living, attractiveness for companies and investments, and also the increased well-being of the people. We strongly support the development of the Digital Economy, a major theme in Singapore’s Chairmanship of ASEAN, but that has to include the free flow of data across borders, also a key point in AEC’s Blueprint 2025, for sustainable growth in ASEAN and moves to support e-Commerce. Considering all these factors, the blueprint for ASEAN’s potential in the years to come is huge and ASEAN can arise as an economic leader in the Digital Economy.

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

² “Promoting Economic Growth through Smart Global Information Technology Policy: The Growing Threat of Local Data Server Requirements.” Business Roundtable; press release, June 2012. p. 4

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

Table of Recommendations

Issue	Recommendations
Data Localisation	<p>EU-ABC suggests that <i>the goal to encourage privacy and security may not be best achieved by data localisation, but instead by actively maintaining data and taking advantage of updated secured technologies. Such enhanced technologies in the world can be used synonymously with the free flow of data to protect citizens' and governments' data securely</i></p> <p><i>We recommend ASEAN's member states to permit the free flow of data across borders under explicit consent of the owners to avoid such productivity loss and to the detriment of the ASEAN economy</i></p>
Payment & Settlement Systems	<p>Fast-tracking regional payments integration; Reduce inefficiencies in cross-border payments and trade; and, Include mid-smaller size banks in payments innovation initiatives.</p> <p><i>Promote wide-scale adoption in ASEAN banks of community-based initiatives like SWIFT gpi that are not commercially driven, remain market & segment-neutral, remain fully inclusive and provide a ready platform for regional payments integration within ASEAN markets, and also with extra-ASEAN markets.</i></p> <p>Developing safe, reliable and efficient national payment schemes</p> <p><i>Central banks and financial services authorities must assess global best practices, expertise and proven solutions that provide required levels of performance, security and resiliency.</i></p>
E-Commerce & the movement of goods	<p><i>Introduce simplified clearances for low-value shipments in line with WTO and WCO Guidelines for e.g. minimal data elements, consolidated clearance, importer/exporter registration exemptions, common value threshold for such shipments etc.</i></p> <p><i>Introduce a requirement that new legislation is evaluated and assessed on its necessity, usefulness and impact before it is implemented. Governments also need to bear in mind that any unilateral regulation taken will also work against other governments as every country importing goods is also a country exporting goods;</i></p> <p><i>Exempt, as far as possible, licensing or permit requirements by other government agencies for low-value shipments, bearing in mind the need for some licences to apply regardless of shipment value (e.g. those relating to public health and safety);</i></p> <p><i>Consider an ASEAN-wide 'trusted trader accreditation program' for e-Commerce sites and shippers to address customs control concerns, without impairing legitimate e-Commerce trade facilitation</i></p> <p><i>Governments need to be open to work in partnership to implement risk mitigation mechanisms while ensuring expedited clearance.</i></p> <p><i>Governments need to be open to work in partnership to implement risk mitigation mechanisms while ensuring expedited clearance.</i></p> <p><i>Establish and promote a 'Digital Service Hub' that will enhance trade supply chain and also improve the competitiveness of ASEAN SMEs in a low-cost manner – planned for completion by 2021 in the ASEAN Strategic Action Plan for SME Development 2016-2025;</i></p> <p><i>Promote the development and utilisation of e-commerce platforms to encourage expansion of SMEs – planned for completion by 2020 in the ASEAN Strategic Action Plan for SME Development 2016-2025.</i></p> <p><i>Enhance information on markets, FTAs, and potential partners (ASEAN SME Service Centre) – planned for completion by 2018 in the ASEAN Strategic Action Plan for SME Development 2016-2025</i></p>

THE DIGITAL ECONOMY IN ASEAN

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

https://en.oxforddictionaries.com/definition/digital_economy

There is no doubt that the “Digital Economy” has the power to add significantly to economic growth and development in South East Asia. The Masterplan on ASEAN Connectivity 2025 (MPAC2025) stated that “disruptive technologies (particularly mobile internet, big data, cloud technology, the Internet of Things, the automation of knowledge work and the SMAC) could unleash some US\$220 billion to US\$625 billion in annual economic impact in ASEAN by 2030”⁴. For its chairmanship of ASEAN 2018, Singapore is placing the need to develop the Digital Economy across Southeast Asia at the centre of policy thinking, emphasising the need to create the right eco-system for technological advancements, ensuring the right skills training, sufficient ICT infrastructure, and using digital platforms to enhance inclusivity in economic development across the region. Part of this effort will include the preparation of an ASEAN Framework Agreement on E-Commerce, which is being developed under the auspices of the ASEAN Consultative Committee on E-Commerce (ACCEC).

There are a number of areas that need to be looked at if ASEAN is to maximise the potential benefits that can be harnessed from the ‘Digital Economy’. Putting in place the right eco-system to encourage established businesses and start-ups to develop digital platforms to enable them to reach new markets and consumers, exchange and interrogate effectively big data, make and receive payments speedily and in a low-cost manner, and then meet the requirements of increasingly demanding end consumers, is of vital importance. It is not just a question of ensuring the right physical infrastructure, such as broadband networks and 4G or 5G data systems, are in place. It also requires the right policies and regulations to be developed which will encourage, and not hinder, the exchange of data and the movement of goods and services that are sold via digital platforms. Additionally, it is essential that the right skill sets are developed in ASEAN to support the further development of the Digital Economy: this will involve governments in the region adapting existing education programmes to improve and encourage the teaching of ICT related skills.

The ASEAN ICT Masterplan 2020⁵ sets out a clear vision for the region in terms of a strategic overview for both the hard and soft infrastructure to support the Digital Economy:

- **Digitally-Enabled:** Programmes for continual education and upgrading to equip ASEAN citizens with the latest infrastructure, technology, digital skill sets, information, applications and services.
- **Secure:** A safe and trusted environment in ASEAN, providing reassurance in the online environment by building trust in online transactions via a robust infrastructure.
- **Sustainable:** responsible and environmentally friendly use of ICT
- **Transformative:** A progressive environment for the disruptive use of technology for ASEAN’s social and economic benefits.
- **Innovative:** A supportive entrepreneurial environment that encourages innovative and novel uses of ICT
- **Inclusive & Integrated:** Empowered and connected citizens and stakeholders.

⁴ Master Plan on ASEAN Connectivity 2025, p.48.

⁵ See: http://www.asean.org/storage/images/2015/November/ICT/15b%20--%20AIM%202020_Publication_Final.pdf

The EU-ABC generally welcomes the ASEAN ICT Masterplan, especially the call within it to “harmonise regulatory practices and ICT standards” and to “facilitate access and relevance of information to promote ICT adoption”⁶.

There is no doubt that business practices are being widely transformed by digital platforms, with global data flows across borders increasing the world’s GDP growth⁷. The GDP impact by such data flows is even higher than the impact from the trade of traditional goods⁸. Almost every sector of a modern economy needs data to be shared all worldwide, especially for businesses that are data driven⁹.

In contrast with the dominance of finance and physical goods in the 20th Century, the 21st Century is being defined by data flows and information distribution across nations¹⁰. New trends and challenges are emerging, overcoming the difficulties of distance and immigration of the past¹¹ and thus greater improving economic development potential. ASEAN member states have previously established a good reputation for manufacturing and offering cost advantages, but to develop their economies faster, to remain competitive, and to ensure a better distribution of the benefits of economic development, it is crucial that more is done regionally to boost the Digital Economy.

Data localisation is not only worrying for ICT but also for goods and services¹², impacting any business using web technologies or worldwide transferred data.¹³ A McKinsey study points out that data flows do not only impact advantages of modern technology, with more than 75% of the benefits concerning traditional industries¹⁴. These shared network technologies, for example, are essential for small and medium sized businesses, non-profits and entrepreneurs¹⁵. The objective of this paper is to provide input to support ASEAN’s authorities in dealing with the consequences of data localisation. Transferred data across the world enable new instruments that “lower capital risk, expedite transaction processing, facilitate innovation, and make it easier to bring services to new markets quickly and efficiently”¹⁶. In summary, disruptive technologies boost efficiency and lower cost in all sectors. To understand this sector, some important facts about a few modern disruptive technologies are listed:

⁶ See ASEAN ICT Masterplan 2020, Appendix A, p.36

⁷ James Manyika et al., “Digital Globalization: The new Era of Global Flows: Executive Summary.” p. ii.

⁸ Ibid.

⁹ Daniel Castro and Alan McQuinn, “Cross-Border Data Flows Enable Growth in All Industries.” February 2015, p.1.

¹⁰ James Manyika et al., “Digital Globalization: The new Era of Global Flows: Executive Summary.” p. 1

¹¹ Anupam Chander and Uyen P Le, “Breaking the Web: Data Localization vs. The Global Internet.” March 18th, 2014 p. 4

¹² Neha Misra. “Data Localization Laws in a Digital World: Data Protection or Data Protectionism?” The Public Sphere 2016, December 4th, 2015, <https://ssrn.com/abstract=2848022>, accessed November 16th, 2016. p. 142

¹³ Jan Dhont and Katherine Woodcock. “Data localization requirements: Growing trends and impact for company compliance.” Compliance & Ethics Professional, February 2015, <http://www.lorenz-law.com/wp-content/uploads/Data-localization-requirements-Growing-trends-and-impact-of-compnay-compliance1.pdf>

¹⁴ Matthieu Pélissier du Rausas, James Manyika, Eric Hazan, Jacques Bughin, Michael Chui, Rémi Said, “Internet matters: The Net’s sweeping impact on growth, jobs, and prosperity.” McKinsey Global Institute; press release, May 2011. <http://www.mckinsey.com/industries/high-tech/our-insights/internet-matters>, accessed November 16th, 2016.

¹⁵ “Promoting Economic Growth through Smart Global Information Technology Policy: The Growing Threat of Local Data Server Requirements.” Business Roundtable; press release, June 2012.

http://businessroundtable.org/sites/default/files/legacy/uploads/studies-reports/downloads/Global_IT_Policy_Paper_final.pdf, accessed November 21st, 2016. p. 3

¹⁶ Ibid.



Cloud

"[U]sers can remotely store their data into the cloud so as to enjoy the on-demand high quality applications and services form a shared pool of configurable computing resources." In regard to the increasing data localisation laws, a fundamental aspect of centralized and outsourced information is rejected. The assumed potential economic impact from Cloud Computing is \$1.7 trillion to \$6.2 trillion in 2025. (Wang et al., 2013, p. 362) (cf. Wang et al., 2013) (cf. James Manyika et al., 2013)



Internet of Things

The technology is based on a broad number of internet-connected devices, which collect a vast number of data for numerous different analysis. The required data flows can be stored all over the world and burdens on data storage inside countries can be worrying avoiding this technology. One research study points out \$2.7 trillion to \$6.2 trillion potential economic impact in 2025. Furthermore, Chander and Le estimate an even higher amount of \$14.4 trillion in value, generated by the IoT market in the future. (cf. Leviathan Security Group, Inc., 2015, p. 2) (cf. James Manyika et al., 2013) (Chander and Le, 2014, pp. 41-42)



Big Data

As long as the traditional manufacturing age has come to its end, a new factor of production for the information age arises. Information becomes a major focused subject, but limiting data transfers can increase cost as well as add complexity. Currently data is a new production factor for companies across the world. (cf. Chander and Le, 2014, p. 44) (cf. James Manyika et al., 2011)

Governments force data localisation

ASEAN governments have improved their data privacy laws in the last few years, ensuring the privacy and security of their citizens, allowing for secured trade and enabling domestic economic growth¹⁷. These policies are necessary for the confidence of consumers and companies in interlinked information technologies within a modern world¹⁸. In this regard, ASEAN's move to establish data protection laws are commendable. These laws in general are not a bane by themselves, however, data residency requirements pose hurdles for the larger community. Administrations endeavor to keep the data within national territories to improve the privacy and security of their citizens¹⁹ and argue for increased surveillance to prevent data leaving the country²⁰. Governments promote local economic development and growth through data localisation laws,²¹ in order to attract greater investment from within and beyond the country²². Law enforcement as well as national security objectives are major governmental topics²³ that the ASEAN administrations push for to encourage businesses and ensure privacy protection, which are seen as commendable efforts. But there are some unwanted consequences of such actions that could inhibit the potential of the Digital Economy.

**"COOPERATE ON ISSUES
RELATED TO CYBER
SECURITY, INCLUDING IN
COMBATING CYBERCRIME;"**

*EU-ASEAN "Plan of Action", August
2017*

¹⁷ Jan Dhont and Katherine Woodcock. "Data localization requirements: Growing trends and impact for company compliance."

¹⁸ Gabriela Kennedy, Sarah Doyle, and Brenda Lui. "Data protection in the Asia-Pacific region." 2009, p. 59

¹⁹ Anupam Chander and Uyen P Le, "Breaking the Web: Data Localization vs. The Global Internet."

²⁰ Ibid. p. 3

²¹ "Meeting the Challenge of Data Localization Laws." Servers.Global Corporation, press release, 2015.

²² "Data Localization: A Challenge To Global Commerce and the Free Flow of Information." Albright Stonebridge Group, 2015, <http://www.albrightstonebridge.com/files/ASG%20Data%20Localization%20Report%20-%20September%202015.pdf>, accessed November 13th, 2016. pp. 3-4

²³ "Meeting the Challenge of Data Localization Laws." Servers.Global Corporation, press release, 2015.

ACHIEVING A SUCCESSFUL DIGITAL ECONOMY

**ASEAN's DIGITAL ECONOMY IS
PROJECTED TO GROW BY 500% AND BE
WORTH \$200 BILLION BY 2025**

<https://www.usasean.org/why-asean/digital-economy>

Free Flow of Data

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

Unfortunately, there appears to be an increasing trend in the region to put in place legislation that can be seen to inhibit the free flow of data.

Data localisation refers to “the act of storing data on a device that is physically located within the country where the data was created”²⁴. Apart from storing the data within national borders, it also has to be processed in its own territory²⁵. Moreover, laws often prevent data from being transferred out of the country freely by requiring consent to transmit the information across borders to be granted only after assessment – creating barriers to business operations, hindering innovation, and increasing costs to customers. A key aspect for ASEAN members is to agree on data interoperability. This could be part of broader framework of ASEAN countries as data interoperability-based framework or policies that could solve barriers of cross-border data transfers.

Although data localisation is not a newly-conceived notion, its effects are even more pervasive throughout professional and personal life than ever before. The implications will continue to grow as new policies to control the free flow of data across borders increases significantly, causing data residency to become a worrying barrier to the 21st Century’s economic, political and private life²⁶. In 2012, the ASEAN region was the most affected area in privacy protection developments²⁷. A concerted effort to prevent the World Wide Web from being separated by national borders deserves great support. Furthermore, many nations not only plan to curtail data-transfers regarding highly sensitive, secret national data but also plan to develop laws for ordinary data of citizens, which is a significant step to national burdens for data²⁸. Data localisation policies may induce barriers to cross-border data transfers²⁹ that have a broad and worrying effects³⁰.

As Deborah Elms of the Asian Trade Centre put succinctly in one of her recent blog posts when discussing how she was exclusively using e-platforms to book an entire trip to Europe: “The imposition of restrictions on the movement of information, particularly financial data or personal data, also risks changing the landscape. I could not have booked my hotels or paid for my car rental, if I had been unable to move my own data across borders. Yet governments are increasingly interested in stopping exactly these types of transactions. Not simply to keep me from travelling, of course, but a collateral impact of many poorly thought-through policies will

²⁴ “Meeting the Challenge of Data Localization Laws.” Servers.Global Corporation; press release, 2015. <http://servers.global/blog/meeting-the-challenge-of-data-localization-laws>, accessed November 13th, 2016.

²⁵ (cf. Ed Brzytwa, March 9th, 2015)

²⁶ Shawn Donnan, “Digital trade: Data protectionism.” The Financial Times, August 14th, 2014. <http://www.ft.com/intl/cms/s/0/93acdbf4-0e9b-11e4-ae0e-00144feabdc0.html#axzz3WD30VpD4>, accessed November 17th, 2016.

²⁷ “ASEAN Insights: Personal Data Protection.” ZICOLaw; press release, July 2013. <http://www.zicolaw.com/wp-content/uploads/2013/07/ASEAN-Insights-4.pdf>, accessed November 22nd, 2016.

²⁸ Anupam Chander and Uyen P Le, “Breaking the Web: Data Localization vs. The Global Internet.” p. 4

²⁹ Matthias Bauer, Hosuk Lee-Makiyama, Erik van der Marel, and Bert Vershelde. “The Costs of Data Localisation: Friendly Fire on Economic Recovery.” p. 3

³⁰ Jan Dhont and Katherine Woodcock. “Data localization requirements: Growing trends and impact for company compliance.”

be to hamper the freedom of consumers to operate globally and for firms to attract customers from anywhere.”³¹

Becoming a single market and production base within which, the free flow of data is allowed can be a powerful approach for ASEAN. The competitive advantage a combined entity has in comparison to other separated countries can help realise the capability for ASEAN as an association of nations. Up till now, ASEAN’s Digital Economy has only generated US\$150 billion in revenues per year yet will potentially become one of the world’s top five digital economies by 2025, enabling greater opportunities for ASEAN³².

Protecting data with the goal of privacy and security is difficult for each ASEAN government as the only way to ensure such safeguarding of privacy is by preventing data from being connected to the internet. However, data stored within national borders further creates alternative problems as it does not ensure that hackers are prevented from getting access to it³³. In fact, storing the data in different localities could prevent mass cyber-attacks on huge amounts of data. Taking this into consideration, the **EU-ABC suggests that the goal to encourage privacy and security may not be best achieved by data localisation, but instead by actively maintaining data and taking advantage of updated secured technologies. Such enhanced technologies in the world can be used synonymously with the free flow of data to protect citizens’ and governments’ data securely.**

With regards to economic advantages like growth and establishing new jobs, data centers are becoming more and more automated. Investments are decreasing rather than increasing and there have been limited numbers of high paying jobs emerging³⁴. Although there could be a short-term benefit for countries, the long-term costs may outweigh these short-term benefits, and expenses could be directly passed on to consumers, resulting in a lose-lose situation³⁵. In fact, the free flow of data in conjunction with the improved ASEAN privacy protection laws show a big potential for the domestic states, allowing ASEAN to gain long-term advantages rather than just immediate short-term benefits.

New prohibitions on free data flows of cross-border data transfers reduce services available locally and restrict access to information in society³⁶. For example, many countries such as Vietnam and Cambodia may not have a publicly-available Cloud Service³⁷. Figure 1 depicts the worldwide domestic settlements, amounting to 12 countries, of seven renowned Cloud Providers³⁸. Such technological capabilities could face problems and impediments if data localisation laws are passed, especially in ASEAN where cloud servers are even less prevalent. A vast number of ASEAN based industries use overseas Cloud Services (e.g. provided by HP, Amazon, Google, Microsoft, Rackspace, DigitalOcean, Linode) to produce goods and process data relevant to production, supply chain usage, and sales effectively and efficiently. ASEAN Member States could be seen as an attractive location for the establishment of further data centres by ensuring that these basic principles and services are made available for local businesses. The current IT infrastructure could be further leveraged upon if it is coupled with supporting policies³⁹.

Costs will be a major consequence occurring from implementation of data localisation requirements for which industries will be unable to plan ahead. For example, increased expenses arising from building infrastructure could lead to a reduction in services and profit loss for several

³¹ <http://www.asiantradedecentre.org/talkingtrade//the-power-of-digital-services-for-consumers>. 2nd January 2018

³² A.T. Kearney, “The ASEAN Digital Revolution: Policy imperatives will help ASEAN “leapfrog” into the vanguard of the Digital Economy - making the region globally competitive and enriching the lives of citizens. Realizing this opportunity must be a top priority.” Press release, 2015.

<https://www.atkearney.com/documents/10192/6986374/ASEAN+Digital+Revolution.pdf/86c51659-c7fb-4bc5-b6e1-22be3d801ad2>, accessed December 6th, 2016.

³³ Anupam Chander and Uyen P Le, “Breaking the Web: Data Localization vs. The Global Internet.”

³⁴ Daniel Castro and Alan McQuinn, “Cross-Border Data Flows Enable Growth in All Industries.” February 2015, p. 9

³⁵ Ibid.

³⁶ Ibid.

³⁷ “Quantifying the Cost of Forced Localization.” Leviathan Security Group, Inc., 2015. p. 3.

³⁸ Ibid.

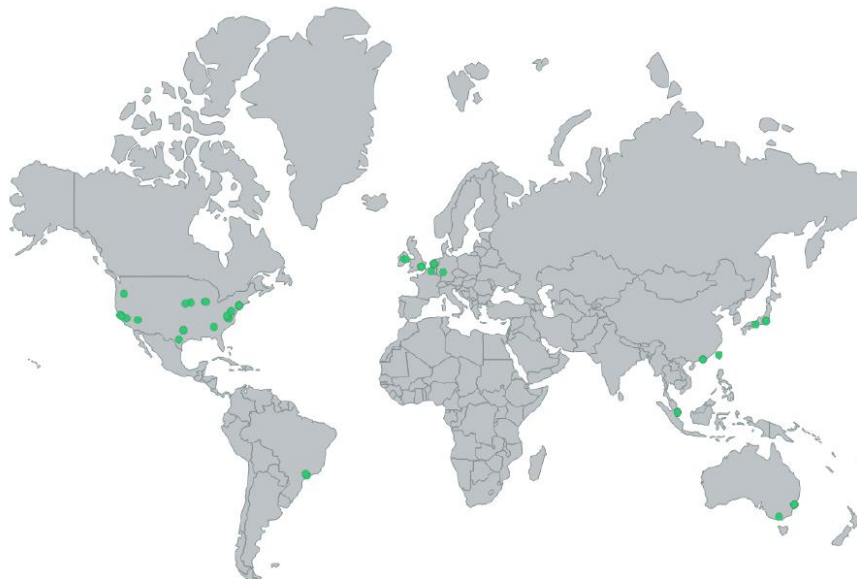
³⁹ Stephen J. Ezell, Robert D. Atkinson and Michelle A. Wein, “Localization Barriers to Localization Barriers to Trade: Threat to the Global Innovation Economy.” Information Technology and Innovation Foundation, press release, September 2013.

<http://www2.itif.org/2013-localization-barriers-to-trade.pdf>, accessed November 17th, 2016.

countries⁴⁰. Data localisation carried out by administrations can only be fulfilled by investing in local IT infrastructure that complies with national laws⁴¹. Under such conditions, enterprises are mandated to operate under sub-optimal economies of scale and use cost-ineffective locations⁴².

Moreover, certain developing countries have not been able to provide appropriate infrastructure to build secure and efficient data centers⁴³. Between 4% to 31% of the production inputs are data-related activities, including cross-border information⁴⁴. Both companies and consumers will be affected by such increases in costs⁴⁵. For example, Cloud Computing drives “productivity while reducing up-front capital costs, reducing fixed costs, aligning technology costs with usage and reducing the risks”⁴⁶. The banning of cloud technology will produce harmful consequences that include productivity losses in every economic sector⁴⁷. **We recommend ASEAN’s member states to permit the free flow of data across borders under explicit consent of the owners to avoid such productivity loss and to the detriment of the ASEAN economy.**

Figure 1: Data Centre locations of 7 Cloud Providers (HP, Amazon, DigitalOcean, Google, Linode, Microsoft, Rackspace)



⁴⁰ “Data Localization: A Challenge To Global Commerce and the Free Flow of Information.” Albright Stonebridge Group, 2015, pp. 7-9

⁴¹ Jan Dhont and Katherine Woodcock. “Data localization requirements: Growing trends and impact for company compliance.”

⁴² Robert D. Atkinson. International Data Flows: Promoting Digital Trade in the 21st Century, November 3rd, 2015.

<http://www2.itif.org/2015-atkinson-international-data-flows.pdf>, accessed November 23rd, 2016. p. 11

⁴³ Neha Misra. “Data Localization Laws in a Digital World: Data Protection or Data Protectionism?” p. 147

⁴⁴ Matthias Bauer, Hosuk Lee-Makiyama, Erik van der Marel, and Bert Verschelde. “The Costs of Data Localisation: Friendly Fire on Economic Recovery.” p. 3)

⁴⁵ (cf. Ed Brzytwa, March 9th, 2015)

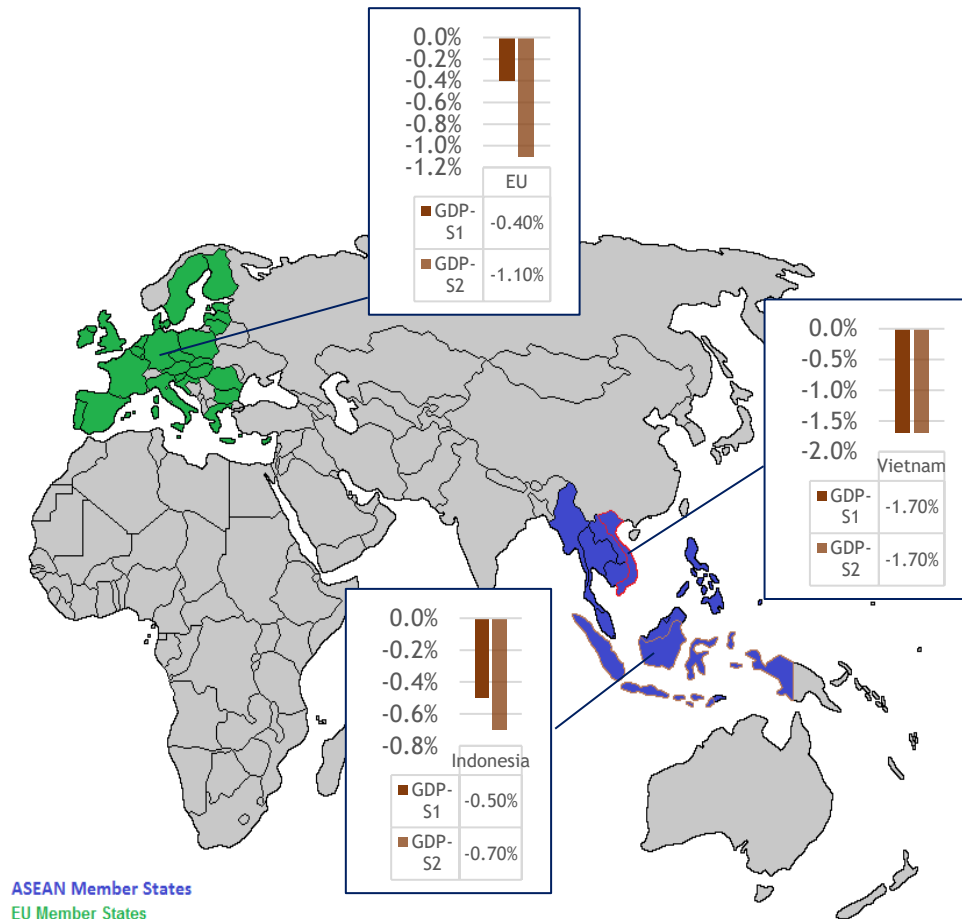
⁴⁶ “Advancing the ASEAN Economic Community: The Digital Economy and the Free Flow of Data.” US-ASEAN Business Council; Deloitte;

⁴⁷ Bert Verschelde. “The Impact of Data Localisation on India’s Economy.” ECIPE Bulletin 2014, no. 08.

http://www.ecipe.org/app/uploads/2014/12/ECIPE_bulletin814_dataoloc_india.pdf, accessed November 16th, 2016.

To make the effects of data localisation laws on GDP evident, Figure 2 reviews the forecasted Gross Domestic Product (GDP) consequences⁴⁸ in two different scenarios⁴⁹:

Figure 2: Economic Impact of Data Localisation Policies on the GDP in several Countries



The data presented is provided by Bauer et al. and published within the European Centre for International Political Economy (ECIPE)⁵⁰. The estimated GDP indicates a negative trend in both scenarios. The impact of economy-wide data localisation requirements (GDP-S2) is more worrying than the proposed legislation. For example, the decreasing EU's forecast is 1.1% (GDP-S2). So far, no economy-wide data localisation laws have been published in the EU. Vietnam and Indonesia, as ASEAN member states, show an impact up to 1.7% (GDP-S1 and S2 Vietnam) and 0.7% (GDP-S2 Indonesia)⁵¹. In ASEAN the differences between Scenario 1 and 2 are not as strong as in Europe. Indonesia and Vietnam, pointed out as example countries, already introduced or are starting work on data localisation drafts⁵².

Startups, small or mid-sized companies will be at the frontline of the detrimental impact of regulatory changes in data privacy and data localisation laws. The survival of these companies is contingent upon their ability to lease or rent low-cost server space⁵³. A McKinsey survey shows

⁴⁸ Matthias Bauer, Hosuk Lee-Makiyama, Erik van der Marel, and Bert Verschelde. "The Costs of Data Localisation: Friendly Fire on Economic Recovery."

⁴⁹ **Scenario 1:** Intended legislation of data localisation (S1); **Scenario 2:** Assuming a full economy-wide data localisation across all sectors (S2)

⁵⁰ Matthias Bauer, Hosuk Lee-Makiyama, Erik van der Marel, and Bert Verschelde. "The Costs of Data Localisation: Friendly Fire on Economic Recovery."

⁵¹ Ibid.

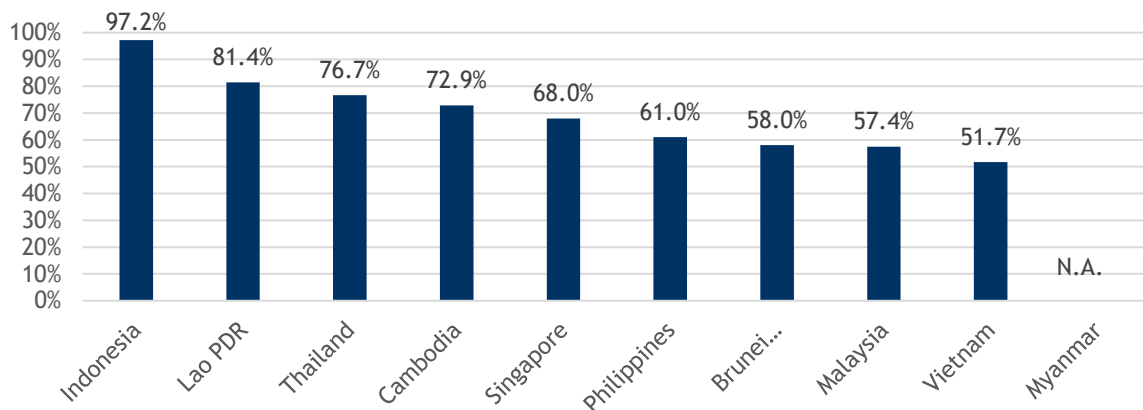
⁵² Ibid.

⁵³ "Data Localization: A Challenge To Global Commerce and the Free Flow of Information." Albright Stonebridge Group, 2015, pp. 7-9.

86% percent of the surveyed startups have at least one cross-border activity and also a broad number of customers or users in different countries around the world⁵⁴.

ASEAN is an attractive hub for many startups, whose appeal is enhanced by the free flow of data that can result in the creation of unique technology and greater economic growth. Startups and MSMEs are mostly accountable for establishing inimitable businesses, technologies and within these aspects they drive innovation, as mentioned above. Also, global players might not be able to sell affordable services and products in the current price range if data localisation laws are passed due to the reduction of economies of scale and scope are based on worldwide data transfer and outsourcing. The European Centre for International Political Economy estimates MSMEs to be the first to be affected by data residency requirements and be displaced from the market⁵⁵. MSMEs represent between 51.7% and 97.2% of the total employment in ASEAN member states⁵⁶. A detailed analysis is presented in the following Figure 3 revealing every member state and its individual SME share of total employment:⁵⁷

Figure 3: SME - Share of total employment



In summary, the market opportunities for small players to compete in will be greatly reduced⁵⁸. Main priorities for consumers, companies and organisations in choosing a location for their business would include being the best equipped provider⁵⁹ and most competitive environment. ASEAN as a fast-developing area can achieve major advantages compared to other territories by supporting cross border data transfers under certain security principles.

Foreign companies have a high desire to stay in the ASEAN market and additionally expand their investment and activities in ASEAN. The EU-ABC's own 2017 Business Sentiment Survey reported that 86% of European companies in ASEAN expected their level of trade and investment in the region to increase over the next 5 years⁶⁰. As other states ponder on establishing policies on data localisation which generally decrease the attractiveness of the region for both advanced technology providers and traditional industries, ASEAN's could amass greater competitive advantage and bigger worldwide impact in comparison to economies with strict rules,⁶¹ thereby

⁵⁴ James Manyika et al., "Digital Globalization: The new Era of Global Flows: Executive Summary." p. 8.

⁵⁵ Matthias Bauer, Hosuk Lee-Makiyama, Erik van der Marel, and Bert Vershelde. "The Costs of Data Localisation: Friendly Fire on Economic Recovery." p. 10.

⁵⁶ "SME Developments in ASEAN." The Association of Southeast Asian Nations, press release, January 4th, 2017.

⁵⁷ <http://asean.org/asean-economic-community/sectoral-bodies-under-the-purview-of-aem/small-and-medium-enterprises/>, accessed January 4th, 2017.

⁵⁸ (cf. 2015, p. 1)

⁵⁹ Jan Dhont and Katherine Woodcock. "Data localization requirements: Growing trends and impact for company compliance."

⁶⁰ Jonah Force Hill. "The Growth of Data Localization Post-Snowden: Analysis and Recommendations for U.S. Policymakers and Business Leaders." The Hague Institute for Global Justice, Conference on the Future of Cyber Governance 2014, accessed November 17th, 2016. p. 26.

⁶¹ See: www.eu-asean.eu/publications

⁶¹ Stephen J. Ezell, Robert D. Atkinson and Michelle A. Wein, "Localization Barriers to Localization Barriers to Trade: Threat to the Global Innovation Economy." 2013.

improving opportunities made available to consumers and standards of living for the citizens in the region if it adopted a more pragmatic approach to this issue.

It is difficult to distinguish which kinds of data are prohibited and identify those that need be stored locally,⁶² and differentiating between personal and non-personal data creates even greater complexity for stakeholders to grapple with⁶³. By clarifying the existing framework, corporations can be better equipped to handle new localisation laws, especially since these new trade barriers arising from data localisation requirements will increase operational and infrastructure costs⁶⁴. New rules included in permanent policy amendments of each country also pose further challenges for organisations⁶⁵. Ultimately, ASEAN can achieve a huge location advantage if equal territory-wide laws are established.

Strict data residency requirements reduce the ability of companies to efficiently allocate resources and hinder their participation within global supply chains⁶⁶. The essential nature of digital trade in the lives of consumers and citizens is made more apparent when new regulations cause people traveling to other countries “would not be able to use their credit cards or cell phones, because both require cross-border data flows”⁶⁷. In addition, flight operators, haulage services and medical records make use of cross-border data transfers under explicit consent of the owners⁶⁸. Fragmenting the internet and cross-border data flows with strict data residency requirements make the region undesirable for any businesses and users all over the world, which is worrying for ASEAN’s growth and attractiveness as an investment and manufacturing hub⁶⁹.

Allowing the free flow of data through both new ICT technologies as well as traditional channels would open up numerous and diverse opportunities for the 636 million people located in Southeast Asia⁷⁰. Such a liberal flow of data would enhance trade in goods and service, allowing it to be faster, easier and cheaper⁷¹. In the world’s fastest growing Internet region⁷², Southeast Asian economies could highly benefit from greater freedom of choice and innovation with the presence of companies remaining in such continually competitive economies and region.

“Manufacturers are currently seeing the most returns from IoT investments”⁷³ that are leading new opportunities in efficiency, lower cost and higher competitiveness⁷⁴. New global efficiency provided by Cloud Computing⁷⁵, IoT, and Big Data Analytics can realise major unexploited economic potential in ASEAN. Disruptive new technologies give Southeast Asia the opportunity to be more competitive through networked and distributed supply chains⁷⁶. Yet, these investments could be significantly impacted by administrative policies.

⁶² Neha Misra. “Data Localization Laws in a Digital World: Data Protection or Data Protectionism?” p. 141.

⁶³ Matthias Bauer, Hosuk Lee-Makiyama, Erik van der Marel, and Bert Verschelde. “The Costs of Data Localisation: Friendly Fire on Economic Recovery.”

⁶⁴ Ibid, p. 3.

⁶⁵ “Understanding Data Residency: Finding the right Solution for your Business.” Cogeco Peer 1, press release, March 2016. <https://www.cogecopeer1.com/wp-content/uploads/2016/04/3.0-GATED-CP1-White-Paper-Data-Residency.pdf>, accessed November 24th, 2016. p. 3.

⁶⁶ “Amcham Singapore Policy Take: Free Cross Border Data Flows for Growth.” The American Chamber of Commerce in Singapore, press release, March 5th, 2015. <http://www.amcham.org.sg/wp-content/uploads/2015/03/AmCham-Policy-Take-Data-Flows.pdf>, accessed November 23rd, 2016.

⁶⁷ Robert D. Atkinson. International Data Flows: Promoting Digital Trade in the 21st Century, November 3rd, 2015 p. 6.

⁶⁸ Ibid.

⁶⁹ Neha Misra. “Data Localization Laws in a Digital World: Data Protection or Data Protectionism?” 2015, p. 144.

⁷⁰ “Advancing the ASEAN Economic Community: The Digital Economy and the Free Flow of Data.” US-ASEAN Business Council; Deloitte.

⁷¹ Ibid.

⁷² “Customs & Trade Facilitation in ASEAN.” EU-ASEAN Business Council; press release. Singapore, April 2016. <http://eu-asean.eu/wp-content/uploads/2016/04/EU-ABC-Customs-Trade-Facilitation-Paper-April-2016-FINAL.pdf>, accessed November 13th, 2016.

⁷³ “The Internet of Everything: Providing in-depth insight, data, and analysis of everything digital.” BI Intelligence, press release. http://www.businessinsider.com/intelligence/iot-research-internet-of-things-slide-deck?IR=T&user_email_address=thomas.jakob%40bosch-si.com&utm_source=Triggermail&utm_medium=email&utm_campaign=BI20161103IoTSlideDeck&utm_term=BI20engagement%20list%20Engaged%20Active%20Passive, accessed November 22nd, 2016. p. 21.

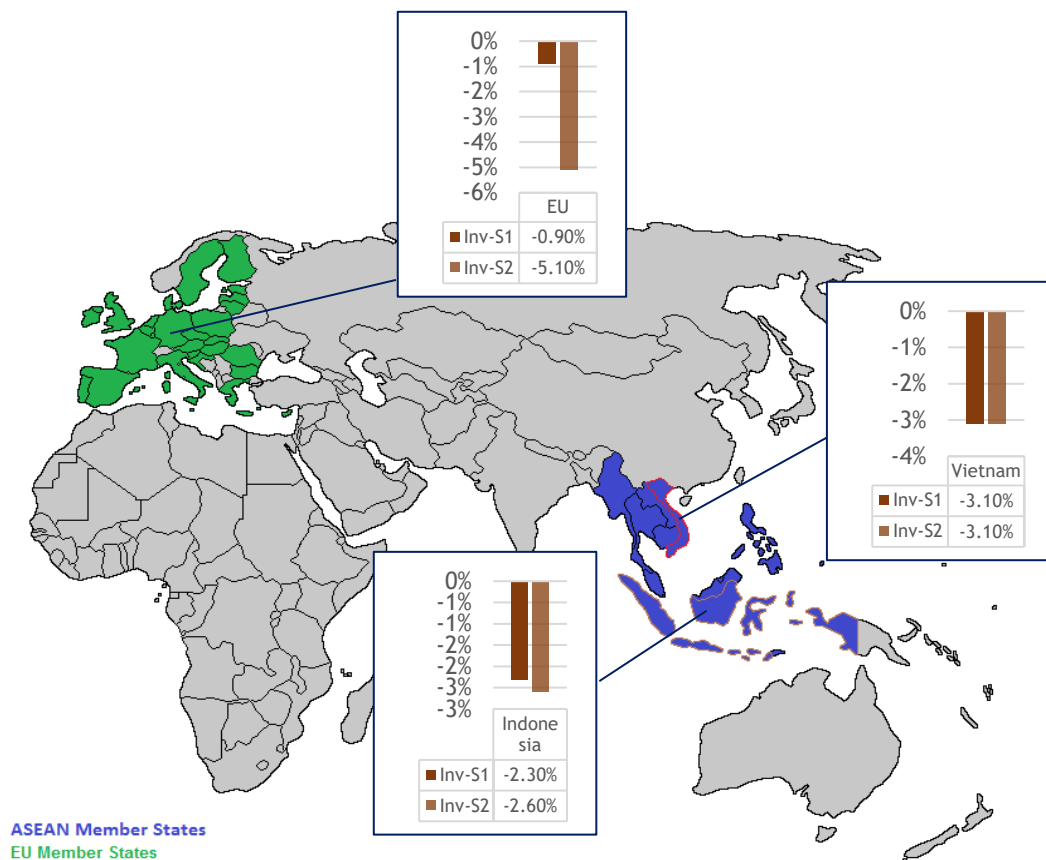
⁷⁴ “Promoting Economic Growth through Smart Global Information Technology Policy: The Growing Threat of Local Data Server Requirements.” Business Roundtable; press release, June 2012.

⁷⁵ Ibid. p. 2.

⁷⁶ “Advancing the ASEAN Economic Community: The Digital Economy and the Free Flow of Data.” US-ASEAN Business Council; Deloitte;

Figure 4 focuses on the economic impact on investments in several countries caused by data residency requirements and was published by the European Centre for International Political Economy (ECIPE)⁷⁷. Should data localisation laws be published in Europe, the investment loss for Europe would be the highest and more pronounced under economy-wide policies (Inv-S2) and data residency requirements (S2), which is even higher compared to ASEAN⁷⁸. For instance, the investments made in Indonesia have been forecasted to shrink by 2.6% (Inv-S2) and Vietnam will show a loss of 3.1% (Inv-S1 & Inv-S2)⁷⁹. The aforementioned countries, as mentioned in an earlier paragraph, have already established or are considering establishing laws on data localisation.

Figure 4: Economic Impact of Data Localisation Policies on Investments (Inv) in Selected Countries



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

- The goal to encourage privacy and security may not be best achieved by data localisation, but instead by actively maintaining data and taking advantage of updated secured technologies. Such enhanced technologies in the world can be used synonymously with the free flow of data to protect citizens' and governments' data securely.
- ASEAN's member states to permit the free flow of data across borders under explicit consent of the owners to avoid such productivity loss and to the detriment of the ASEAN economy.

⁷⁷ Bert Vershelde. "The Impact of Data Localisation on India's Economy." ECIPE Bulletin 2014, no. 08.

⁷⁸ Matthias Bauer, Hosuk Lee-Makiyama, Erik van der Marel, and Bert Vershelde. "The Costs of Data Localisation: Friendly Fire on Economic Recovery."

⁷⁹ Ibid.

Ease of Payments

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

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

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

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

In a paper on the difficulties faced on financial integration in ASEAN, released in March 2017, SWIFT noted that “in 2016, payments related to intra-ASEAN commercial flows continue to be intermediated via extra-ASEAN markets, with 85% of these payments denominated in US Dollars, majority of which were settled in the United States”⁸⁰. Sending payments for the provision of goods and services in such a manner adds complexity, time and cost for the suppliers of those services.

Hence, to better support the low value high volume payments that characterises cross-border e-commerce activities that connects ASEAN business-to-business (or B2B), business-to-consumer (or B2C) and to facilitate new fintech business models like crowdfunding and the “gig economy” that can support MSME entrepreneurship and financial participation of skilled workers regardless of geographic locations, cross-border ASEAN e-payments need to be low-cost (to both users and providers), efficient, secure and ideally be able to conduct near-instant cross-border payments.

The problem is not one of technology, but rather business process friction.

In 2015 the global banking community and SWIFT jointly assessed the challenges in cross-border payments with an aim to identify real underlying problems. It was noted that the SWIFT network takes only 2-3 seconds for messaging between any of its 11,000 users globally, securely processing billions of transactions annually, amounting every 3 days to the value of the World’s GDP. If it takes only a few seconds for a payments instruction from a bank in Singapore to securely reach

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

Dr. Vivian Balakrishnan, Singapore Foreign
Affairs Minister at ISEAS ASEAN Lecture, 5 Dec
2017 (from:
<http://www.todayonline.com/singapore/spore-help-asean-ride-digitalisation-wave-balakrishnan>)

⁸⁰ See: <https://www.swift.com/news-events/news/achieving-financial-integration-in-the-asean-region> 24 March 2017.

another bank in San Francisco or Jakarta, the question arises why it still takes a few days for the final funds to be credited to the recipient? The underlying problem was therefore found to be not technology, but rather the business process friction existing within correspondent banks.

In response, SWIFT gpi was launched in 2015 as an inclusive, global financial community initiative to address this business process friction. Today, this is the largest initiative in cross border payments occurring globally. ASEAN gpi banks and end consumers are already reaping benefits from this initiative with enhanced speed, certainty, transparency and innovations - ASEAN cross-border payments can now be processed in minutes - instead of days or weeks.

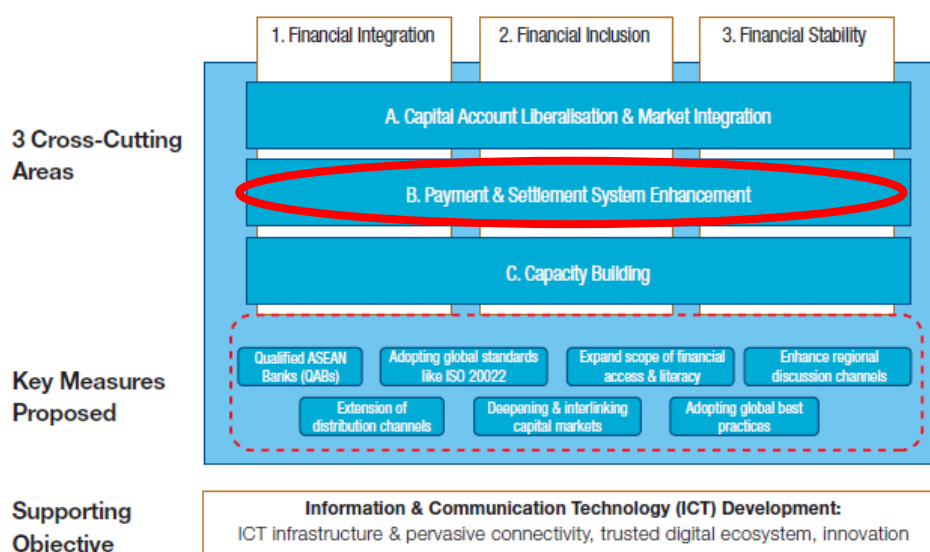
Banks in ASEAN region are adopting gpi with the highest traction in Singapore, Thailand, Indonesia and Vietnam. Gpi banks in the region are providing customers with same day credits, real-time status tracking, transparency on fees & exchange rates and confirmations of final credit.

With SWIFT gpi, the ASEAN region also has a ready, inclusive platform that supports banks of all sizes to provide an enhanced cross-border payments service experience to their customers. Future roadmap services like the cloud-based richer payment data layer will support additional use cases, for example trade digitisation or e-KYC⁸¹ processing. Innovative, emerging technologies like APIs and Distributed Ledger Technology (DLT) are being used and assessed as part of the initiative, and open innovation is being promoted via engagement of the global and ASEAN Fintech community in the creation of overlay services using gpi rails. ASEAN gpi banks are participating in a Proof of Concept undertaken to assess applicability of DLT to reconciliation between Nostro Accounts, and possible reduction in transaction cost processing for banks.

To progress on such a cross-border efficient lower cost near-instant payment environment, **the EU-ABC welcomes moves to put in place enhanced and more efficient payment and settlement systems across ASEAN. Adoption of ISO 20022⁸² is encouraged, as advocated by SWIFT and others.**

As Figure 5 below indicates, a key element in achieving financial integration, financial inclusion and financial stability in ASEAN is in putting in place enhanced payment and settlement systems. In much the same way as Singapore has put in place the FAST system for instant transfers between participating domestic banks, allowing for instantaneous financial transactions even between

Figure 5: ASEAN 2025 Vision: Strategic Objectives for ASEAN Financial Integration



Source: SWIFT - Achieving Financial Integration in the ASEAN Region. March 2017

⁸¹ Know Your Customer

⁸² ISO 20022 is a common global standard for financial messaging and provides an extensible repository of messages supporting all business processes in the financial industry. ISO 20022 provides an approach to unifying multiple existing financial standards and is today accepted as the de facto standard promoting global interoperability. The AEC 2025 Blueprint specifies adoption of ISO 20022 by 2025 as a key objective for regional financial integration and development of payments and settlements systems within ASEAN Markets.

different banks, the technology and protocols already exist today to allow for similar high speed, low cost, transfers across borders within ASEAN.

As an example, SWIFT gpi is already helping bring near-real time cross border payments to the region and enables reuse of existing infrastructure by banks already connected to SWIFT.

On retail payments, ASEAN member countries have been developing their own national retail payment schemes, such as Indonesia's National Payment Gateway that was launched in 2017, the National Payment Corporation of Vietnam launched in 2016 (NAPAS), and the Myanmar Payments Union in 2011. These schemes aim to integrate the countries' domestic retail payment systems and cut costs for banks and merchants and will in turn promote non-cash transactions.

However, global standards must be used for domestic and cross-border interoperability. Government-driven domestic payments systems will need to be based on global standards, i.e. ISO 20022, EMV⁸³, and PCI DSS⁸⁴ specifications. This will allow financial services providers to provide customers and merchants with secure and reliable payment solutions, which are crucial in the promotion of non-cash transactions. National retail payments infrastructures based on globally interoperable standards will be also be able to use the global supply chain to reduce costs.

ISO 20022 is a universal business language for financial industry that is increasingly acting as an enabler for new and emerging technologies. As a common business language for the financial marketplace, ISO 20022 is firmly positioned as a unifier for new and contrasting FinTech innovations, such as Distributed Ledger Technology (DLT), Smart Contract (SC) and Application Programming Interfaces (APIs). ISO 20022 is an advanced standard agreed at the business/contextual level regardless of different technologies in use within and across the financial industry. SWIFT is the registration authority for the business standard for financial messaging and is contributing as standing members to the ISO technical committees on the development of standards for technologies such as DLT.

In terms of notable payments system enhancements outside ASEAN, one of the most advanced retail payment systems globally has been launched in November 2017 in Australia - the New Payments Platform (NPP). As Australia's national real-time retail payments system, NPP supports 24X7 instant payments, ISO 20022 messaging, a simpler addressing service (using mobile numbers or email ids instead of account numbers) and high scalability through ease of integration with "overlay services" created by Banks, Fintechs or others. SWIFT has built the underlying infrastructure for NPP and now plays a key role in operating the same.

The EU-ABC also recommends central banks and financial services authorities across ASEAN to also consider the aspects of technological innovations and consumers' convenience in developing regulations and national payment schemes. Regulatory frameworks in the payments sector must facilitate participants' quick adoption of innovative payment technologies, such as the latest chip, contactless, mobile contactless, and digital payment solutions. The adoption of such technologies will support the governments' financial inclusion goals.

Consistent cross-border regulatory expectations, interpretation and licencing regimes including safety and soundness measures like cybersecurity and anti-money laundering will be of utmost importance to facilitate such progress. Due considerations will also need to be given to the trade-off between viable business cases, transaction fees required for sustainability and users' needs for lowest cost payment that is the most efficiently transmitted.

Conducive and efficient national retail payment schemes are and will be foundations for a closer e-commerce ASEAN economy and to build them with a balance between costs, usefulness and future expansion capabilities for cross-border uses. Central banks and financial services

⁸³ EMV -- which stands for Europay, Mastercard and Visa -- is a global standard for cards equipped with computer chips and the technology used to authenticate chip-card transactions.

⁸⁴ The Payment Card Industry Data Security Standard (PCI DSS) is a set of security standards designed to ensure that ALL companies that accept, process, store or transmit credit card information maintain a secure environment.

authorities must do so in consultation and collaboration with industry players and impacted stakeholders. This will ensure that the regulatory frameworks are holistic, non-discriminatory and inclusive, and can provide both existing and future industry players with sufficient room to innovate.

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

- i) Review the availability of the “last-mile” connectivity of bank branches in ASEAN so that cross-border payments can flow from senders in one country to recipients in another country efficiently. The low costs and time efficiency benefits of such payments will come from the straight-through processing of payment transactions without manual interventions;
- ii) The use of ISO 20022 message format. Transmission of cross-border payments need to include information necessary for Anti-Money Laundering, Sanctions and other compliance checking (“compliance checking”) by banks. Otherwise, without such needed information, cross-border Business-to-Business (B2B) payments will be rejected on good compliance basis and therefore not as cost effective nor time efficient as they could be.

The industry standard ISO20022 message type has the flexibility to contain the necessary information required for such compliance checks and lends to automated checking with only manual intervention on exception basis. Therefore, agreement and commitment on the payment message format (ISO 20022) for the region is necessary for efficiency benefits.

- iii) To ensure compliance information and interpretation consistency. Consistent information required for compliance checking by financial intermediaries in the different ASEAN countries on cross-border B2B low value payments need also to be available to avoid rejections of these cross-border payments.

For example, Country A-based money transmitter will be in compliance with that country’s Anti-Money Laundering (AML) requirements. However, an incoming transaction from outside of Country A into Country A may not contain sufficient information for the receiving bank in Country A to comply with its local AML regulations. This will cause the transaction to be rejected.

Across ASEAN, a consistent regulatory agreed level of compliance information and a consistent interpretation of requirements across the banking industry will be required. Without such agreements, payments’ costs and inefficiency can remain relatively high due to incomplete information necessary for efficient processing.

- iv) To review FX processes. An efficient FX settlement and central bank reporting procedure is a key area to facilitate lower cost, efficient and central bank-compliant B2B cross-border local currency payment initiation and local currency payment receipt. How this area can work for high volume low value payment is another complex area and we recommend central banks and regulators to work with the industry to understand the key details to solve including local currency/FX regulatory requirements and reports.
- v) If ASEAN e-payment is to be “near-instant” in addition to being cost and time efficient, it needs to consider all the above points (i) to (iv) and to leverage on national retail payment schemes and available Faster Payment infrastructures, as well as initiatives like SWIFT GPI that are delivering speed, transparency and predictability to cross-border payments. However, authorities will need to note that there not all banks may be on such faster payment infrastructure and therefore, the implications on choice, fair and equitable competitiveness. The different availability and functionalities of such payment infrastructures should also be factored in, as well as the trade-offs between viable business case and low-cost instant payments.

These and other considerations to support sequenced execution can lead to a more integrated, efficient, secure and inclusive ASEAN e-payment system to benefit ASEAN economic vitality in the digital age.

E-Commerce & the Movement of Goods

E-Commerce lowers barriers to entry by eliminating costs, connects the supply side to the demand without the traditional physical limitations and without certain transaction costs.

E-Commerce is the sale and purchase of goods and services through electronic networks and the internet, encompassing a broad range of commercial activity. While widespread adoption of e-Commerce in advanced economies is evident, physical and institutional barriers to its application in developing countries must first be overcome. Governments, multilateral organizations, and the private sector must cooperate in fostering an environment that is conducive to its implementation.

- E-Commerce facilitates trade and leads to job creation, which leads to economic growth.
- Multilateral organisations, national governments, and private firms contribute to its widespread adoption and sophistication.
- Inadequate infrastructure and disharmonious regulatory procedures restrain ASEAN from fully realising the potential of cross-border digital trade.
- International cooperation and a more focused national strategy are needed to further e-Commerce.

E-Commerce will play an increasingly important role in supporting economic growth in ASEAN and will help ASEAN's MSMEs to expand beyond their home markets. These are primarily the sale of goods through an online portal by individuals in another country, resulting in the export of these shipments. The economic changes wrought by e-Commerce have already had a large impact on the global economy. Consumers across ASEAN have embraced the convenience and savings of being able to order goods online and have them delivered to their home or office. Many MSMEs have taken the opportunity to market their goods directly to consumers. Studies have shown that MSMEs that trade online can reach up to ten times more export markets compared with conventional ways of exporting.

Besides, *"Promoting the development and utilisation of e-commerce platforms to encourage expansion of SMEs"* is mentioned by the ASEAN Strategic Action Plan for SME Development 2016-2025⁸⁵ as a programmatic action line to be achieved by 2020 – in line with broader actions for *"Enhancing the use of e-commerce"*, in support for achieving an essential desired outcome i.e. *"Support schemes for market access and integration into the global supply chain will be further developed"*, and toward the realisation of Strategic Goal C *"Enhance Market Access and Internationalization"*.

However, the regulations on the clearance of such cross-border shipments could impair an SME's ability to import these shipments since the requirements can be onerous, costly and time consuming. In addition, individuals who buy these shipments online may not have the capability to meet complex customs clearances and documentation requirements for these shipments.

Since MSMEs, in particular those companies involved in e-Commerce, typically ship goods with a low-value but on a frequent basis, there is scope to facilitate the clearance of such shipments. The following are possible best practice clearance requirements:

- a) *Simplify customs clearance requirements for low-value shipments by:*
 - i. *Introducing a common/baseline low-value threshold across ASEAN countries;*
 - ii. *Minimising data elements required for the clearance to include only basic shipment details sufficient for Customs to undertake risk assessment and controls. This excludes for e.g. HS Codes, tax ID numbers, etc;*

⁸⁵ http://asean.org/?static_post=asean-strategic-action-plan-for-sme-development-2016-2025-2

- iii. *Simplify taxes for low-value shipments;*
- iv. *Allow consolidated clearance i.e. one declaration for multiple shipments;*
- v. *Eliminate importer/exporter registration*
- b) *As other agencies frequently require licenses or permits for certain types of products with complex application and documentation requirements, exempt these requirements for low-value shipments, save for those goods that are controlled for security or public health reasons;*

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

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

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

Recommendations:

To stimulate cross-border e-Commerce for MSMEs in ASEAN, undertake the following:

- *Introduce simplified clearances for low-value shipments in line with WTO and WCO Guidelines for e.g. minimal data elements, consolidated clearance, importer/exporter registration exemptions, common value threshold for such shipments etc.;*
- *Introduce a requirement that new legislation is evaluated and assessed on its necessity, usefulness and impact before it is implemented. Governments also need to bear in mind that any unilateral regulation taken will also work against other governments as every country importing goods is also a country exporting goods;*
- *Exempt, as far as possible, licensing or permit requirements by other government agencies for low-value shipments, bearing in mind the need for some licences to apply regardless of shipment value (e.g. those relating to public health and safety);*
- *Consider an ASEAN-wide ‘trusted trader accreditation program’ for e-Commerce sites and shippers to address customs control concerns, without impairing legitimate e-Commerce trade facilitation.*
- *Governments need to be open to work in partnership to implement risk mitigation mechanisms while ensuring expedited clearance.*
- *Establish and promote a ‘Digital Service Hub’ that will enhance trade supply chain and also improve the competitiveness of ASEAN SMEs in a low-cost manner – planned for completion by 2021 in the ASEAN Strategic Action Plan for SME Development 2016-2025;*
- *Promote the development and utilisation of e-commerce platforms to encourage expansion of SMEs – planned for completion by 2020 in the ASEAN Strategic Action Plan for SME Development 2016-2025.*

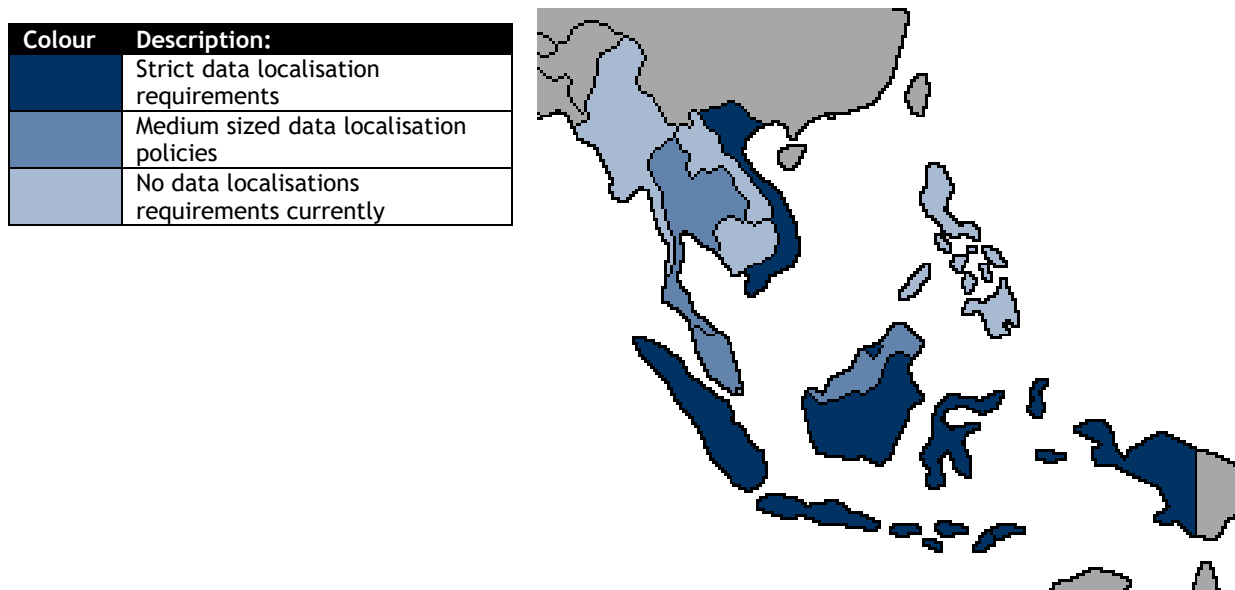
- *Enhance information on markets, FTAs, and potential partners (ASEAN SME Service Centre) – planned for completion by 2018 in the ASEAN Strategic Action Plan for SME Development 2016-2025.*

The EU-ABC fully supports the proposal submitted by the Joint Business Councils to ASEAN in 2017 on expedited clearances and simplified customs procedures for low value shipments that we saw as directly benefitting MSMEs and e-Commerce.

Country Studies of Data Localisation in ASEAN Member States

The following section gives a global overview of data localisation policies and its stamping in the individual ASEAN member states. In figure 6 below, these different countries are marked from in shades of blue to show the specificity of administrations rules regarding the economy. Details concerning individual countries are briefly explained below within the table.

Figure 6: Data Localisation in ASEAN



Brunei Darussalam

The Nation of Brunei, the Abode of Peace, demands strict data localisation requirements, data to be saved and processed on servers within the borders of the country.⁸⁶ Companies have to store information in the territory of Brunei.⁸⁷

Cambodia

A comprehensive policy on protection and processing of personal data does not exist.⁸⁸ No forced data localisation laws are published within the Kingdom of Cambodia. Thus, foreign investors and IT providers do not have to follow specific requirements.⁸⁹

Indonesia

First of all, Law No. 11 of 2008 on Electronic Information and Translation and Government Regulation⁹⁰ and secondly the Government Regulation No. 82 of 2012 regarding System and Electronic Transactions⁹¹ are mainly significant. These two models are not established on the basis of international agreements.⁹² Especially, Law No. 82 demands “a broad and undefined group of companies, ‘electronic systems operators for public service’ to set up a data center and

⁸⁶ “Data Localization: A Challenge To Global Commerce and the Free Flow of Information.” Albright Stonebridge Group, 2015, p. 5

⁸⁷ “Promoting Economic Growth through Smart Global Information Technology Policy: The Growing Threat of Local Data Server Requirements.” Business Roundtable; press release, June 2012. p. 5

⁸⁸ “ASEAN Insights: Personal Data Protection.” ZICOLaw; press release, July 2013, p. 3.

⁸⁹ International Business Publications, Usa. Doing business and investing in Cambodia: Strategic, practical information, regulations, ... contacts. [Place of publication not identified]: Intl Business Pubns Usa, 2015a, p. 196.

⁹⁰ Sc http://www.flevin.com/id/lgsso/translations/JICA%20Mirror/english/4846_UU_11_2008_e.html

⁹¹ Government of the Republic of Indonesia, October 12th, 2012, http://www.flevin.com/id/lgsso/translations/JICA%20Mirror/english/4902_PP_82_2012_e.html

⁹² “Data protection regulations and international data flows: Implications for trade and development.” United Nations Conference on Trade and Development

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

disaster recovery center in Indonesian territory for the purpose of law enforcement and data protection.”⁹³ Service providers have to store some of their data in local storage.⁹⁴ Corporations offering internet enabled services to any customers are demanded to store information in local data centers.⁹⁵ Such broad language has allowed regulators, such as the central bank and financial services authority, to require data onshoring for payment service providers, banks, and other financial institutions.

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

Lao PDR

Regarding the Lao People’s Democratic Republic, there are recently no policies on data storing within the borders or forced localisation⁹⁶. But an amount of policies are under revision focusing on “[n]ew laws need to be introduced to enable future trade initiatives”⁹⁷.

Malaysia

The first year Malaysia’s Personal Data Protection Act (PDPA) took effect was in 2014.⁹⁸ International data transfer demands approval so relevant burdens have been set up.⁹⁹ In fact, the location the data is transferred to is specified by the Minister of Information, Communications and Culture.¹⁰⁰ The Act has already been published in 2010 and includes requirements to store data about Malaysians citizens on local servers in the borders of Malaysia.^{101 102} Some exceptions are offered and enabled to send data through borders providing several conditions.¹⁰³

In September 2017, The Central Bank of Malaysia released the Exposure Draft on Outsourcing¹⁰⁴ for public consultation. The Exposure Draft requires foreign cloud services providers to locate data onshore, and to allow Bank Negara access to cloud server locations whenever requested. These requirements are not in line with internationally recognized security best practices for data security and creates confidentiality risks for businesses. Foreign cloud providers will also need to seek approval in order to operate in Malaysia. The criteria for approval has not been specified and has caused significant uncertainty for all cloud players in the ecosystem. There exists a large knowledge gap among regulators and the cloud services industry that needs to be remedied.

Myanmar

Currently, there are no laws concerning the data localisation topic available in Myanmar and also no plans on draft regulations are published¹⁰⁵. Only legislations affecting certain personal data, but no comprehensive data privacy policy is in force¹⁰⁶.

⁹³ Matthias Bauer, Hosuk Lee-Makiyama, Erik van der Marel, and Bert Verschelde. “The Costs of Data Localisation: Friendly Fire on Economic Recovery.” p. 12)

⁹⁴ Anupam Chander and Uyen P Le, “Breaking the Web: Data Localization vs. The Global Internet.”

⁹⁵ “Data Localization Snapshot.” Information Technology and Innovation Foundation, press release, September 15th, 2016. <https://www.itic.org/public-policy/SnapshotofDataLocalizationMeasures9-15-2016.pdf>.

⁹⁶ “Laos Investment Climate Statement 2015.” U.S. Department of State, press release, June, 2015. <http://www.state.gov/documents/organization/241836.pdf>, accessed November 22nd, 2016, p. 10

⁹⁷ “ASEAN Insights: Personal Data Protection.” ZICOLaw; press release, July 2013, p. 3

⁹⁸ Luke Grubb and Sally Murphy, “How data privacy regulations changed across Asia-Pacific in 2014.” 2015.

⁹⁹ Anupam Chander and Uyen P Le, “Breaking the Web: Data Localization vs. The Global Internet.” p. 5.

¹⁰⁰ “ASEAN Insights: Personal Data Protection.” ZICOLaw; press release, July, 2013, p. 3.

¹⁰¹ Ministry of Communications and Multimedia Malaysia, 2015.

¹⁰² “Meeting the Challenge of Data Localization Laws.” Servers.Global Corporation, press release, 2015.

¹⁰³ Anupam Chander and Uyen P Le, “Breaking the Web: Data Localization vs. The Global Internet.” p. 21.

¹⁰⁴ Bank Negara Malaysia Exposure Draft on Outsourcing, September 2017

¹⁰⁵ “ASEAN Insights: Personal Data Protection.” ZICOLaw; press release, July 2013, p. 3

¹⁰⁶ Luke Grubb and Sally Murphy, “How data privacy regulations changed across Asia-Pacific in 2014.” Latham & Watkins LLP; press release, March 4th, 2015. <http://www.lexology.com/library/detail.aspx?g=1d6e5a73-614b-4d70-9451-5166bfb47384>, accessed November 12th, 2016.

Philippines

The Data Privacy Act 2012 was signed in August 2015¹⁰⁷. The model follows the EU Data Protection Directive as well as the Asia-Pacific Economic Cooperation Privacy Framework.¹⁰⁸ This framework focuses on sensitive personal information to be protected, but does not include prohibits on cross border data transfers¹⁰⁹. The government uses this act to ensure innovation and growth by the free flow of data across borders¹¹⁰.

Singapore

The Personal Data Protection Act (PDPA) 2012 was fully implemented in 2014 and regards all companies located in Singapore apart from governmental organizations. Reasonable purposes and consent have to be given before collecting data from citizens.¹¹¹ A specific provision limits direct marketing¹¹². Restrictions on cross-border data transfers only require a comparable Act to the PDPA 2012 by the organization to which the personal data is sent¹¹³.

Thailand

At the moment, there is no specific statutory law on storing data inside the jurisdiction and no “distinction between an overseas transfer and local transfers”¹¹⁴ is formulated. As part of the effort to facilitate the growth of the Digital Economy, the military government is pushing for the enactment of Draft Personal Information Protection Act¹¹⁵ and Draft Cyber Security Act with deadline set in H2 2018. The Personal Information Protection draft focuses on preventing non-consensual personal data dissemination with exception for state’s request.

Vietnam

Since September 1st, 2013 the Decree 72 is effective¹¹⁶. It is a policy on Management, Provision and Use of Internet Services and Online Information. This Decree addresses the content of “harm national security, social order and safety”¹¹⁷. The Decree demands Internet service providers to store a copy of information, to give access for inspection authorities within Vietnam.¹¹⁸ At least one server must be located within Vietnam for a range of different internet services.¹¹⁹ Also a Draft Circular is announced in Vietnam. It includes the requirement all OTT service providers to store their data leastwise on one server within the borders of the Socialist Republic of Vietnam¹²⁰.

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

Requiring all Digital Economy players - from e-commerce to online providers, to Over-the-Top (OTT) companies - to use only a single payment gateway would lead to stifling of innovation. As

¹⁰⁷ Senate and House of Representatives of the Philippines, “Republic Act No. 10173.” 2012, <http://www.officialgazette.gov.ph/2012/08/15/republic-act-no-10173/>

¹⁰⁸ “Philippine Data Privacy Law is Signed into Law.” Hogan Lovells US LLP; Hogan Lovells International LLP, press release. <http://www.hldataprotection.com/2012/08/articles/international-eu-privacy/philippine-data-privacy-law-is-signed-into-law/>, accessed November 22nd, 2016.

¹⁰⁹ International Business Publications, Usa. Doing business and investing in Philippines: Strategic, practical information, regulations, ... contacts. [Place of publication not identified]: Intl Business Pubns Usa, 2015b, p. 43

¹¹⁰ “ASEAN Insights: Personal Data Protection.” ZICOLaw; press release, July 2013, p. 3

¹¹¹ Luke Grubb and Sally Murphy, “How data privacy regulations changed across Asia-Pacific in 2014.” 2015.

¹¹² Ibid.

¹¹³ “Customs & Trade Facilitation in ASEAN.” EU-ASEAN Business Council, 2016.

¹¹⁴ Dr. Chanvitaya Suvarnapunya and Pattama Jarupunphol, “Francise 2014.” Law Business Research Ltd, 2006, http://thaifranchisedownload.com/dl/group227_7613_20160524101258.pdf p. 166.

¹¹⁵ Office of the Secretariat of the Cabinet of Thailand, “Draft Personal Information Protection Act 2017, file:///C:/Users/_/Downloads/1_Cabinet_Draft-de_laws_data-privacy-act.pdf

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

Another draft law impacting developments of Digital Economy in Vietnam is the Draft Law on Cybersecurity. The first draft was released on 6 June 2017 for public consultation taking place between 8 June and 8 August 2017. An updated Draft Law has been submitted to the National Assembly for review and consultation during the 4th session of the 14th National Assembly in October 2017. On 10 January 2018, the Standing Committee of the National Assembly discussed various matters regarding the Draft Law. While the server localization provision has been removed, telecommunications and Internet service providers are still required to place personal or users' data in Vietnam (third-party servers allowed).

ABOUT THE EU-ASEAN BUSINESS COUNCIL

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

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

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

Executive Board

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

Membership

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

Our Members



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