

Research

# RESEARCH STUDY INTO THE IMPACT OF NEW DIGITAL AND TECHNOLOGY LAWS ON SMALL - MIDSIZED ENTERPRISES (SMES)



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Report prepared by  
Open Development Cambodia Organization (ODC)



Written by LAUREN Daffenberg, Legal Research Intern, Open Development Cambodia Organization (ODC)

Reviewed by THY Try

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### Contact details

Open Development Cambodia Organization: [contact@opendevcam.net](mailto:contact@opendevcam.net)

Cambodia ICT4D Network Secretariat: [secretariat@ict4dcambodia.org](mailto:secretariat@ict4dcambodia.org)

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# Research Brief

## Methodology:

Open Development Cambodia Organization (ODC) collaborated with William & Mary Law School in the United States to conduct a research study into the impact of new digital and technology laws on small - midsized enterprises (SMEs). In the last decade, Cambodia has seen a big surge in e-commerce and digital use. COVID-19 further propelled these economies the last few years. The study is designed to compile current legislation and resources to determine the best way to address the needs of the SME community. It then looks specifically at new and proposed laws such the National Internet Gateway (NIG) and data protection regulation. Since the SME economy is essential to developing the Cambodia economy, it is important to involve relevant stakeholders in the conversation.

This research first sets off to analyze the complex framework that governs small-midsized enterprises (SMEs). The framework includes a comprehensive overview of the legislation, policies, regulations, and resources. In this compilation, the research analyzed the needs of the SME community and how to best address the gaps in system. From the broad framework, research then began to focus on a few specific laws regarding digital governance. These laws are either newly enacted or in the creation process. One is the National Internet Gateway (NIG) that has been on the table for 2 years with no start date. Another is looking at Cambodia's data protection framework, which there is currently no comprehensive data protection law in the country. Because these laws have not been implemented, there are no studies on the effects of these laws. Comparative research was done in order to find the general trends and suggestions for Cambodia to best proceed.

Some of the gaps in the analysis was identified through desk research, which consisted of looking at laws, studies, and articles from inside of Cambodia and comparative research into other countries with similar laws. China, Thailand, and the European Union's legal systems helped identify where Cambodia can grow. Other gaps were identified through hosting workshops such as the ICT4D and the Digital Governance and E-Commerce Technology in Small-Midsized Enterprises (SMEs) allowed conversations into where entrepreneurs and SMEs needed the most help. Conducting a few key informant interviews established networks in the community and enlightened ODC and this research into directions where more help and research can be done.

## Key Findings on SMEs:

- There are many resources, programs, and organizations to help SMEs; however, lots of SMEs do not know that they exist. Or, SMEs do not know how to leverage the capabilities of this framework. The government can help build this bridge between SMEs and the help that they need.
- The registration process can be a lot smoother. The high costs of time and money inhibit SMEs from registering and gaining the advantages of registering. Even when companies are able to register, they do not know how to navigate all of the inspections and costs that are associated with the next steps. The high costs will lower competition in the market and create a disequilibrium between those that register and those that do not.
- The benefits of registering need to be expressed. Most SMEs only know that they are going to be taxed and have no idea what the benefits are to being registered.
- Some SMEs do not have any desire to grow into larger businesses as they are family run or self-sustaining enterprises. This gap between the SMEs that want to grow and those that do not may be an area for increased growth.

- Cambodia needs to stop brain drain. If Cambodia spends money on education of its citizens only for its citizens to leave, this is not successful in the long run. There needs to be incentives to stay in the country and work in the country. Finding a balance to educate the younger generation and keep them as they get older will be important for Cambodia's future.
- SME's dependence on Facebook needs to be monitored.

### Key Findings on Future Data Protection Laws:

- Data protection builds trust in a business and its brand. The younger generation in Cambodia is starting to become aware of what businesses online do with their data and are starting to act accordingly. In order to not lose out with this younger group, change may need to happen at many levels: infrastructure, training, education programs, etc.
- Consider the labor force required to assert an effective data protection regulation. SMEs are going to need help with compliance, but there may not be enough educated professionals to do this.
- Data is currency. SMEs of all kinds need to learn how to use and protect data for their advantage.
- Legal terminology surrounding technology needs to be defined. Once defined, SMEs can work with these definitions to protect data and to be compliant.
- The government needs to be aware of the increased desire for data protection. Having data protection laws will help businesses overall develop in the local markets as well as be compliant with international standards. There are many underrepresented groups that do not have any focus on data protection, and thus, a law may help these findings.



## Research Project

### Research Study IntoThe Impact Of New Digital And Technology Laws On Small - Midsized Enterprises (SMEs)

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# 1 Introduction

From 1998 to 2019, Cambodia has had an annual growth rate of 7.7%.<sup>1</sup> While COVID-19 has slowed this growth just slightly, the growth rate in 2023 is predicted to be around 5.2% - still an incredible pace.<sup>2</sup> The growth of the economy is due in large part because of the small-mid-sized enterprise (SME) sector of the economy. SMEs contribute 58% of the GDP in Cambodia, is responsible for 70% of the country's employment and 99.8% of businesses.<sup>3</sup>

# 2 Cambodia Governance over SMEs

Businesses and consumers have had increasing access to new technology the last few years, so a look at the existing framework is required. New laws, regulations, resources, websites, etc. are being launched at a rapid rate, which means that entrepreneurs and SMEs need to be made aware in a timely manner of all that is out there. This is an outline of the relevant laws, sub-decrees, policies, initiatives, organizations, and more:

## Relevant Laws

- **2015 Law on Telecommunications:** The law gives broad power to the Ministry of Post and Telecommunications over policies, regulations, cooperation, and competition in the telecommunications sector by establishing the Telecommunications Regulator of Cambodia (TRC).<sup>4</sup> In article 15, the language can be online businesses, which includes businesses using the internet for social media, their website, advertising, and selling.<sup>5</sup> The language held in article 66 gives the government the right to shut down any telecommunications company that disrupted the public order or national security.<sup>6</sup>
- **2019 Law on Electronic Commerce:** This law firmly planted electronic use as a viable method for various economic transactions. This law does not cover all of areas of E-Commerce but offers a good start as well as a basis for consumer and data protection.
- **Prakas on taxes:**
  - **Sub-decree No. 50 on custom incentives for SMEs:** The Sub-decree allows for exemptions in certain business categories on imports such as production and construction equipment. Aims to create more jobs and promote competition within the economy by lowering barriers to entry.
  - **Sub-decree No. 17 on tax incentives for voluntarily registered SMEs:** One of the biggest problems that SMEs face is competition of unregistered businesses that do not want to be formalized because they think the taxes will be too high.
  - **Sub-decree No. 124 on tax incentives for SMEs in prioritized sectors - 2022:** If you register and are in one of the priority sectors (agriculture, certain manufacturing, research and development, etc.), you get a tax break for about 3 years. If you register and you meet the criteria of using national resources, increasing employment, etc., there is a tax break for 5 years. Prakas No. 159 in 2020 was similar.
  - **Prakas No. 025 on the adjustment of taxpayers classification according to the self-declaration regime:** This update was the 2018 version of Prakas No. 009 to have equitable and transparent tax collection. It requires that businesses have to register 15 days after you start economic activity

(article 5), lays out the necessary documents needed (article 7), and mandates updates of changes to information (article 8).

- Prakas No. 319 on tax measures to reduce the impact of challenges on the textile industry: Specifically aimed at the textile industry to reduce costs.
- 2021 Management and Use of National Domain Names on the Internet sub decree 287: The government codified a more uniform national domain name change. The startup for the domain is 100 USD and is renewable for 30 USD in subsequent years. This sub decree is representative of the many startup costs a business would have to go through.
- 2018 Interministerial Prakas On Publication Controls of Website and Social Media Processing via Internet in the Kingdom of Cambodia: A jointly issued Prakas by the Ministry of Information, Interior, and Post and Telecommunications in order to monitor websites, social media, news, and other online activities. Together, they can act against sources that are determined to be falling short of expectations.<sup>7</sup> ISPs are also required to install infrastructure in order for the three ministries to monitor online use effectively.<sup>8</sup>
- Registration Related Regulations
  - Sub-Decree No. 84 on Online Business Registration through IT platform
  - Prakas 80 Management issuing business services and trade permit
  - Prakas 230 on Online Business association
  - Prakas No. 290 on Electronic commercial Permit License

## Relevant Ministries

- Ministry of Commerce
  - Go4eCAM: A project designed to help SMEs become a formalized business, launch their digital platforms, and find financial resources.
  - AIMS (Accelerating Inclusive Markets for Smallholders): They work in the agriculture market trying to create more revenue in their crops and a stronger economy within their locale.
  - General Directorate of Trade Promotion (GDTP): They promote domestic products on a global level.
- Ministry of Economy and Finance
  - Khmer Enterprise: This is the platform for developing and promoting startups and SMEs. They offer financial and nonfinancial resources, programs, and support to entrepreneurial activities and encourage investment from local and international markets. Their priority sectors include tech startup, tourism, agriculture, and manufacturing.
  - SME bank: This bank operates to help finance SMEs and promote strong, compliant, and interconnected economies that follow growth goals set out by the MEF. There are many schemes and initiatives that go along with SMEs' access to financial aid, literacy, and sustainability.
  - The General Dept of customs and excise (GDCE): During the last few years, they have provided easier access to the way the country does customs by introducing the Handbook on Customs

Clearance and launching the National Single Window. Both are easily accessible and consolidated information that helps facilitate trade.

- Techo Startup Center: Provides research, projects, and programs for emerging startups to have an organization to collaborate with to create good products and services.
- Skills Development Fund (SDF): Aims to provide the necessary skills and education that is needed to advance startups, entrepreneurial activities, and SMEs. They seek to narrow the gap in skilled labor.
- Ministry of Industry, Science, Technology, and Innovation
  - SME Department: The main department for helping SMEs and handicraft industries with policies, regulations, support, and other areas of aid.
  - KhmerSME: A web portal designed to help integrate Cambodian SMEs and other areas of the economy into the ASEAN markets. It gives simple advice and links to relevant law and concerns that an SME should have whether the SME is just starting or has been around. It offers many resources and programs to promote development and sustainability.
- Ministry of Post and Telecommunications (as well as the further extension in 2014 of the National institute of Posts, Telecommunications, and Information Communication Technology).
  - ICT Innovation Center: The center promotes research, development, and innovation in the ICT sector. The center is more focus on technology startups and supporting their emerging technologies, but all SMEs are welcome to use its resources.
  - Telecommunications regulator of Cambodia (TRC): An institution designed to support the growth of the Cambodian economy in its position with other ASEAN countries and all countries globally. This includes promoting and implementing laws passed by the government.
- Ministry of Agriculture, Forestry, and Fisheries
  - Agriculture sectors have many of the SMEs and informal economies here in Cambodia, so this ministry along with others collaborate to promote sector strength.

## Relevant Organizations and Institutions

- German Agency for International Cooperation (GIZ): It is now one of the key contributors to SME development in Cambodia with at least 3 projects: MSME project, ASEAN SME, and the SME component of ARISE+ Cambodia.
- We Act Project: The project collaborates with many business and development associations to work together to create a flourishing SME economy.
- ACRA (Accelerating E-commerce Regulator Adoption): Australian organization that seeks to disseminate information to SMEs and promote registration of SMEs.
- Cavac: They offer technical assistance with farmers to promote growth and efficiency in the agriculture business. They operate differently in the fact that they target not the farmers themselves but the government, policy makers, and regulators of the industry.

- **ICT Federation:** Their goals are to expand the ICT businesses of its members and create more jobs in these sectors.
- **La French Tech Cambodge:** This is a French organization providing community outreach to its members here in Cambodia. This organization is representative of the different kinds of international organizations that help startups in the country.
- **Chambers of Commerce - AmCham/AusCham/EuroCham/Etc.:** These are interconnected Chambers of the respective regions, Cambodian people and businesses that are trying to advance the local, regional, and global economies. They can act as a bridge between the private sector and the government.

## Relevant Business Associations

- **Federation of Small and Medium Enterprises of Cambodia (FASMEC):** Their goal is to promote domestic products from SMEs at a regional and global level. They help in several areas including finances, policy advocacy, and educational training.
- **Young Entrepreneurs Association of Cambodia (YEAC):** They promote the growth of SMEs through its support of young entrepreneurs by providing networking, training, informational, and business opportunities. They also run the Business Information Center (BIC) that tries to provide quality and up-to-date information for the sustainability and growth the SME market.
- **Cambodia Women Entrepreneurs Association (CWEA):** They have programs very similar to the above YEAC but with a directed focus on women in SMEs and startups.
- **The Garment Manufacturers Association of Cambodia (GMAC):** Has become one of the leading associations for the interest, workers, and businesses within the garment industry. There are many other sector promoting organizations such as this one in tourism, manufacturing, and agriculture but are not listed here.
- **Cambodia Logistics Association (CLA):** They offer training programs and information regarding the logistics of running a business that imports and exports. They have expanded topics from freight/rail to other means of transportation such as road, water, and air.
- **Cambodia Business and Franchise Association (CambFA):** They support the SMEs that want to grow via franchising.
- **Business Network International (BNI):** This is an international organization designed to grow businesses through network referrals.
- **Junior Chamber (JCI):** This organization is an international one that works closely with YEAC in promoting the younger generation's role in the growing economy. They offer community-oriented training and information.
- **Cambodia Chamber of Commerce:** The key connection to the international network. They provide training, information, networking, and advocacy to businesses of all sizes.

## Development Organizations

- SHE investments: Offers a lot of programs, projects, and platforms to help women owned SMEs grow.
- CJCC - Cambodia-Japan Cooperation center: Offers programs, studies, and classes to engage with the local entrepreneurs.
- Impact Hub: With the younger generations dominating the population of Cambodia, they focus on supporting the young entrepreneurs and startups in growing their businesses.
- Small world and Social Innovation Lab
- Cambodia Investors Club: They work with their members in supplying programs, resources, and information regarding financial investments and fund management.
- CEO master club: They work with entrepreneurs and family businesses providing financial advice, coaching, and other capacity development programs.
- National Productivity Center Cambodia: The NPCC promotes productivity enhancement programs. Many are funded from outside sources and have multi-national outreach.

## Relevant Initiatives/Policies

- Rectangular Strategy<sup>9</sup>: In regard to SMEs, the government's strategy involves bracing the fourth industrial revolution of technology and the internet. They see this as a chance to diversify their narrow economic base and become a regional hub. They promote education of the young labor force, grow ICT infrastructure, and support digital innovations in the economy. They also promote the financial and banking institutions that fund SMEs internationally and domestically. In 2018, the government implemented the fourth phase of this strategy, and it is likely phase five will be continued in 2023.
- Cambodia Digital Economy and Society Policy Framework 2021-2035: In response to the Rectangular Strategy's call to improve the economic diversity and strength competition, the government launched this framework for the digital economy. The framework rests on two foundations: building the infrastructure and building digital citizens that trust in the digital spheres.
- Industrial development policy 2015-2025<sup>10</sup>: The goal of the Cambodians is not to fall into the middle-income trap and keep expanding its growth into an upper middle-income country. One of these priorities to achieve these goals is the promotion of growth in all SME sectors.
- E-Commerce strategy<sup>11</sup>: Focuses on the digital and e-commerce development of the country to advance the economy and Cambodia's position among global economies. One of the points in the strategy is to develop SMEs through supportive tools.
- National Strategic Development Program (2019-2023): Elaborating on the previous NSDP ending in 2018, the recent program highlights the priorities each ministry should have with policy and regulations. In the proposed framework, there is commitment to the development of the SME market and resources for SMEs like banking, human resources, education, and other aid.
- Others: SME development Policy, Cambodian Millennium Goals, Cambodia Sustainable Development Goals, Cambodia's Trade and Integration Strategy Update

## 3

**Where SMEs Need Help**

In participation in events like ICT4D, Digital Governance and E-Commerce Technology in Small-Midsized Enterprises (SMEs), and a few key informant interviews, there are many areas where SMEs need help. While there will always be more work and resources needed, here are the two biggest suggestions to help entrepreneurs in the SME industry.

**Improve online platform communication and networking**

The government has done a lot for the SME community by providing updates on new laws and regulations. They have implemented sites such as the Khmer SME, which is designed to be a place to have all these updates and ways to comply with the registration and inspection processes. These sites need to be user friendly to be successful. Further, SMEs must be aware that these resources exist. Improving communication platforms and online aesthetics will help many businesses get the information that they need.

There are so many resources and organizations out there, many are listed above. However, if SMEs do not realize how to navigate these paths, how to use the resources, or that they even exist, it does not matter how many websites and organizations are started. The bridges between these communities and the information needs to be built, and many have argued that the way to do this is through the government. They have the best access to people and how to communicate with them. In fact, the legal structure that exists in Cambodia is very good thus far, but there is not enough information coming from the government. For example, the government has been pushing for the registration of SMEs. The number of registered businesses is moving in the right direction, but innovation networks will help entrepreneurs and businesses see the benefits of registering. Some businesses are not registered because they do not want to pay taxes, but there are other incentives that would overall help the individual businesses and the entire economy grow if registered. This thought process is the same for workshops: workshops are only effective if the correct people are attending them.

SMEs need to find their voice in the public dialogue. As mentioned above, the SME community contributes a lot of GDP, labor participation, and businesses. Recognizing the successful channels to direct feedback and voice concerns/suggestions will be a major step getting the private and public sectors to cooperate for the betterment of the country.

**Improve education in digital areas and incentivize learning**

One of the biggest ways to satisfy this goal is to improve on the current education system. A focus on technology and advancing the way that classrooms are run is one way to enhance Cambodia's position in the global markets. There are many programs out there that teach the younger generation how to make technology and the digital world work for them in their careers. This is ultimately a bottom-up approach that will work more and more as the younger generation gets older; however, more efforts need to be happening from the top-down. Educating teachers, employers, government officials, and others that hold higher positions in the economy will help spur the economy much faster than its already impressive rate. Coming from both angles will achieve a faster transition into the digital global markets.

Another way that learning and education can become better is by trying to limit the effects of brain drain on the country. Brain drain occurs when a significant amount human capital emigrates away from a country. Incentivizing people to stay in the country will mean that more educated people are running businesses, interacting with the government, and educating the next generation. For Cambodia to achieve its economic goals, more Cambodians need to get involved.

## 4 Digital Governance

### National Internet Gateway (NIG)

In May of 2022, it was estimated that 90% of Cambodia's population subscribes to mobile internet connection, and this number is expected to keep rising.<sup>12</sup> The current internet service provider (ISP) market in Cambodia directs internet traffic depending on the needs of the individual ISPs and what kind of internet plan the ISP has chosen. Smaller ISPs can use the services of larger ones such as Keongnet, EZECOM, Smart, etc.<sup>13</sup> The proposed system might create much more uniformity across the industry, so small and large ISPs will have the same access.<sup>14</sup> There are many that have raised concerns over the right to free speech and privacy. While those concerns are important, they are tangential to and not the subject of this research.

The Sub-Decree on the Establishment of the National Internet Gateway is designed to regulate the internet connections through a single gateway to strengthen tax collection, national security, and the nation's culture.<sup>15</sup> The government also hopes that the NIG will stop cybercrime such as illegal cross-border connections, online gambling, and internet scams.<sup>16</sup> Consisting of the Domestic Internet Exchange (DIX) and the International Internet Gateway (IIG), the NIG will be operated by the Ministry of Post and Telecommunications (MPTC).<sup>17</sup> Provisions allow the NIG operators to block and disconnect network connections,<sup>18</sup> retain this data for a year,<sup>19</sup> and penalize ISPs who do not comply.<sup>20</sup> NIG operators are supposed to keep the Internet smoothly running but never to exceed 80% of the infrastructure's capacity.<sup>21</sup> Increased or abnormal usage should be reported to the MPTC.<sup>22</sup>

If the National Internet Gateway is created, it is likely that the system would not be as strong as the current one. When all internet activity runs through one point, and that point malfunctions, the whole internet could go down.<sup>23</sup> Practically all sources say that the NIG will undeniably lower the speed of the internet.<sup>24</sup> Another obvious effect of the NIG is higher costs for everyone involved, which negates the easily accessible market that Cambodia has already established.<sup>25</sup> Entities such as ISPs, data centers, content providers, submarine cable stations, and satellite stations all must spend more money to connect through the NIG.<sup>26</sup>

### Effects on SMEs and Overall Economy

"One of the qualities that makes the Internet so valuable and successful is you do not need permission from a central authority to connect to the Internet."<sup>27</sup> The NIG operators will now be able to identify the devices and operating systems that go through the single gateway.<sup>28</sup> Citizens, in fear of strict laws regarding internet access, may self-censor not only their ideas but internet usage as a whole.

Even though Cambodia is "sandwiched between two giants,"<sup>29</sup> referring to Thailand and Vietnam, Cambodia still wants to become a regional connectivity hub.<sup>30</sup> When the internet is unstable, unreliable, slower, and more expensive, all industries "from technology companies to manufacturing plants...will be a less attractive place to do business."<sup>31</sup> Outside entities are already nervous about the untrustworthiness of the NIG and the motives behind them, so if this is implemented, it would be no surprise that it would scare away international investment and business opportunities.

In recent years, foreign direct investment has increased and led to the digital economy in Cambodia today. In fact, the emergence of these industries has been and will keep propelling Cambodia out of the wake of the COVID-19 pandemic.<sup>32</sup> International businesses look for low prices and fast internet speeds, two things that Cambodia currently has. The low prices in the IT sectors create a great position to develop and innovate but if the NIG does slow down the internet speeds, this could be a problem.<sup>33</sup>

The NIG also has effects on online shopping and advertising. When a user accesses a site on the internet, advertisements can be posted in the form of auctions that are very time sensitive.<sup>34</sup> Slowing the internet even by small fractions of a second means that the consumers in Cambodia are losing out on these businesses.<sup>35</sup>

Facebook became the main source of news for Cambodia in 2017.<sup>36</sup> After the number of users continued to go up, many businesses, government officials, and citizens accessed news, education, and the digital economy through Facebook.<sup>37</sup> Most small businesses have Facebook pages instead of websites. The benefit of Facebook is the access to billions of people's data on the internet, so when a business wants to target a group of people for advertising, it is easy to find the audience that is willing to listen.<sup>38</sup> Since Cambodia Facebook users are very engaged on the app, leaving comments and liking business pages can be very useful to signal good and bad market strategies.<sup>39</sup> If this Facebook community and order is disrupted by the NIG, the country could see an economic decline.<sup>40</sup>

Fear of getting into trouble and being watched, citizens may choose to self-censor. This is extremely detrimental to research and development in academia. If researchers are scared to access online content or post their findings, innovation and development will slow in all industries.<sup>41</sup>

## Comparative Study

Because the National Internet Gateway has not been implemented, other countries' pasts illuminate what Cambodia can do or not do in the coming future. China and Thailand offer examples of which way region is trending with digital controls.<sup>42</sup> Sub Decrees such as the NIG can be indicative of the future of the digital sphere in Cambodia.<sup>43</sup>

### China

The shadows of China's Golden Shield project have been casted on the National Internet Gateway. Since the 1990s, China has implemented their Golden Shield project: a combination of legislation, regulations, and technology that controls the internet within China. China has long adopted the notion that the Internet within its borders is for them to control.<sup>44</sup> While the Golden Shield Project is only active inside their own borders, they have tried to turn their version into a viable model for other countries. Cambodia's NIG parallel's this inward type of thinking. The language regarding safety, national revenue, social order, dignity, culture, traditions, and customs is important but could be very damaging to its budding SME economy.<sup>45</sup> When a country seeks to contain the internet even for good purposes, it destroys the chance to integrate into international markets.<sup>46</sup> Cambodia has been trying to gain international presence in its economy and businesses, particularly with SMEs. Businesses that cannot reach international markets digitally will not be able to attract the foreign investment and market opportunities they need to be innovative and sustainable.<sup>47</sup>

### Thailand

Before 2001, the Internet was still new to the Southeast Asia region. This made the Internet an expensive endeavor. To bring down these high prices, the government directed the internet through one gateway. It did help lower costs in the beginning, but then more people began regularly accessing the internet which drove up costs and slowed down speeds. In 2006, another gateway became operational and combatted the high costs and low speeds. Although the extra gateway helped, it was no match for the increasing internet usage in the country. Problems persisted until the market was officially opened, allowing a free market of ISPs to carry the weight of the growing number of internet users but also keep as good of quality internet as possible.

In 2015, Thailand attempted to reinstitute a single international gateway, emphasizing that this would be a solution to the rampant cybercrime. There was such a large public outcry against the legislation that the government backed down from the single gateway, and it was never implemented.<sup>48</sup> There was even a hacking incident into the Thai government websites because of the anger towards the possibility of this new legislation.<sup>49</sup> The people of Thailand such as the President of the Thai E-Commerce Association expressed concern for the government's actions stating that he believed the private sector is best suited for handling these types of problems.<sup>50</sup> Thailand was trying to decrease costs and increase capacity of internet services; however, this goal cannot decrease the current quality of the networks.<sup>51</sup> Thailand's goal of becoming a regional digital hub would be near impossible since the measure would cause slow speeds and other technical problems.<sup>52</sup>

If Thailand had slower internet speeds, businesses would lose money and the government would have to spend more.<sup>53</sup> In order to maintain quality and high speeds, Thailand would have to invest enormous amounts of money.<sup>54</sup> Early in 2022, talks of the single internet gateway reemerged yet again in Thailand.<sup>55</sup> Internet experts suggested that subsidizing ISP efforts to maintain data or enforcing and amending other laws could achieve the same goals as the NIG without the harmful economic effects.<sup>56</sup>

## Conclusions and Suggestions

In speaking with relevant stakeholders, a lot can be learned about the NIG or similar legislation moving forward. The government has cited the COVID pandemic and the voices of CSOs have raised concerns about the sub decree, thus, delaying the implementation. Other discussions have pointed out that there may be an issue with the financial burden that building the NIG would acquire. If the NIG is supposed to intake all the country's network activity, a gateway would likely have to be extremely large and competent for the growing needs of the country. Regarding money and infrastructure, the NIG might not be in the government's budget.

Moreover many citizens have raised privacy and free speech concerns. Christopher McCarthy was quoted in an article explaining how the damage may already be done regarding the impact of the NIG.<sup>57</sup> Simply by proposing this legislation, even if the government does not enact it or has no mal-intent, it could still bring fear to all citizens and SMEs.<sup>58</sup> Self-censorship may have already occurred.<sup>59</sup> This means that the potential impact of this law on the SME economy is of great importance and something that can be changed still.

Further, through discussions at workshops such as the Digital Governance and E-Commerce Technology in Small-Mid-sized Enterprises (SMEs), it was revealed that most organizations and SMEs do not think that the NIG in its current form will be the result. It may be reconfigured and passed in smaller chunks, which means that SMEs, organizations, and other entrepreneurs need to be aware of legislation and laws that appear to be like the NIG. While there is not a lot of research on Cambodia's new Domain Name change regulation, a law that demands businesses in Cambodia to have the country code domain for an internet website, people fear that this may be like the NIG.

Like Thailand, the people have come forward with concerns over the NIG. Civil Society organizations have expressed that the government has an easy route to "cut the country off from the international internet."<sup>60</sup> One of the goals that Thailand had was to reduce prices and raise the speeds of accessing internet networks. Cambodia does not have this problem. In fact, the healthy competition and economic freedom has led to a blossoming digital economy in recent years. If the National Internet Gateway follows similar paths like the Great Firewall in China, then the preference to domestic websites will decrease international investment and the emergence of startups. These actions are antithetical to what the Cambodian government is trying to accomplish with the SME market.

Cambodia is worried about internet fraud, online gangs, illicit gambling, and other illegal activities, changes to other laws may be more appropriate than the NIG.<sup>61</sup> Data protection and cybercrime legislation, which are not fully established in Cambodia at this time, would be much more conducive to the country's goals than the instances in Thailand and China.

## Data Protection

Data protection begins with the Constitution. Article 40 grants the right of privacy to its citizens and is an integral piece of digital rights.<sup>62</sup> While there is still no data protection law in place, Cambodia has seen growth in securing its data. The E-Commerce Law of 2019 was one of the first steps on the road to data protection. It gives a broad jurisdiction over activities on the Internet as well as provides a large scope for exactly what activities fall under the act.<sup>63</sup> These include documents, transactions, information, and advertising.<sup>64</sup> One of the most useful tools for data protection is the Annex, which gives definitions to important words such as "data" and "access;" however, it still lacks important definitions such as "personal data."<sup>65</sup>

Businesses and SMEs need to begin the process towards better data management techniques whether a law exists or not. Countries such as the United States do not even have a comprehensive law on data protection, but because of their interactions in international markets, most companies are already looking to comply. One of these laws is the European Union's General Data Protection Regulation (GDPR). While the European countries are directly affected, it is important to know that there is no jurisdictional element to the GDPR.<sup>66</sup> Like most laws regarding data, the focus is to protect the consumers.<sup>67</sup> In fact, the GDPR establishes several rights of the individual throughout the articles of the legislation. Any entity, inside the European Union or otherwise, that collects GDPR protected data of a European Union citizen to offer goods or services must comply with the GDPR.<sup>68</sup> There are multiple of Cambodia's industry sectors that may find themselves under the reach of the GDPR.

Taking steps towards data protection helps with more than just compliance under a law. It also helps create trust with consumers by creating a strong and reliable name of business.<sup>69</sup> This trust can spread and expand the consumer base that you are trying to reach.<sup>70</sup> There are many steps that small businesses can take that increase preparedness for a data protection law and increase consumer trust in their businesses. One way to help grow this base is by expanding disclosures of data. This can be terms and agreement pages before accessing websites, notifications when transacting, or other physical ways to notify people. If Cambodia is to enact legislation, legal advice may be necessary to make sure that a business is putting its consumers on notice. Another step is to put the consumers more in control of their data. Being responsive when consumers ask for copies of the data that you have, providing receipts automatically, or having reliable customer service, especially in product-based SME markets, can go a long way. Lastly, there are several security measures that can be put into place. These can be very technical in nature such as new computer codes or machine operations, but it can also be measures such as implementing employee training. Training all employees on correct management of the internet, emails, copying techniques, data destruction, data management, and passwords can go a long way into securing data protection.

Many of these measures can be costly, especially when expanding personal and physical capital; however, data protection is a process rather than an all or nothing affair.<sup>71</sup> Many businesses in the European Union have noted that they have not even started to comply with the legislation, and there are many others that are not quite fully compliant.<sup>72</sup> Starting now to secure data or at least set goals for progress will save money in the long run. Fines in the GDPR are very high and would be enough financial damage to destroy an SME.<sup>73</sup>

The GDPR has been criticized for its complexity and overbearing length. There is an ongoing debate on how much regulation is good regulation for the economy, specifically the small business and start up economy.<sup>74</sup> Those that say the GDPR is too strict point to a slowdown in innovation and development. One study found that when the GDPR was enacted,  $\frac{1}{3}$  of the software application submissions for android dropped out because of the high requirements needed by the GDPR.<sup>75</sup> Another found that venture capital investment in SMEs and MSMEs decreased by \$3.4 million per week following GDPR's enactment.<sup>76</sup> The GDPR also hurts research studies. About 40 cancer studies were stalled because of the regulations,<sup>77</sup> and in 2019, about 5000 other scientific research studies were stopped because of compliance concerns.<sup>78</sup> Other volunteer opportunities and socially beneficial could be hurt in the future.<sup>79</sup>

Although the GDPR is strict, having no interest in securing data is not a successful practice either. If there is no data protection, then trust in the economy, innovation, and development processes cease to exist, which stagnate the markets. Data does not flow in and out of countries very easily if one does not have businesses that put data protection as necessary.<sup>80</sup> When data does not move smoothly throughout the international market space, it makes it harder to economically cooperate with other countries.<sup>81</sup> Without laws, a country and its businesses can be more subject to hacking, scams, and other illegal activities.<sup>82</sup> Having some data protection is important for the advancement of society.

Scholars have posited that the appropriate amount of data protection regulations is what the consumer wants out of their data.<sup>83</sup> Therefore, the GDPR can be overbroad because it applies to many sectors. Consumers may think some businesses hospitals or financial institutions should have higher standards for data management, but they may not really care about the data on day-to-day transactions.<sup>84</sup> The GDPR gets rid of this type of distinction.

## 5 Recommendations

Without a data protection law, Cambodia can learn from the actions of countries that have enacted such legislation. Here are a few suggestions for further development, research, and consideration:

### Consider the analogous role Data Protection Officers can play in Cambodia

The GDPR highly suggests hiring a Data Protection Officer (DPO), no matter what type of company or business. DPOs bring companies a lot of benefit, are well-trained in the law, and give the best advice to their company. Should a data protection law include a provision of these officers in Cambodia, it is unlikely that many small businesses or even midsized ones would be able to afford one of these Data Protection Officers. Further, after speaking with relevant stakeholders in the data and SME industries, “brain drain” of competent and educated workers is a big issue in the labor force. Because SMEs lack the ability to hire expertise and access resources, more research needs to be done into how businesses and entrepreneurs are supposed to keep up with a new data protection law. Specifically, Cambodia needs to understand that it may not have enough human capital to have DPOs. Even if there was room to have these professionals, a lack of education within each business might not even listen to any advice from the DPOs. Resources and aid may need to go elsewhere, and the SME community needs to be included in these conversations or resources will continue to be inefficient or unused.

### Articulate what data needs consent

With or without a data protection law, consent to use of personal data is becoming more and more important. However, some data (that is not personal) does not necessarily need consent to have it. Cambodia already exports most of their data, ultimately losing out on the money that comes from collecting and processing data. There is a lot of good data from internet use that a business may lose out on if they ask users for their consent. However, a vague law or a super strict law may lead many businesses to simply having an all or nothing consent because they want to be compliant. Data is currency, and businesses will lose out on obtaining this currency if they will not even use data that is not sensitive. It will be important for any future data protection law to articulate what needs consent and what does not.

### Consider defining important legal terminology

A data protection regulation will affect consumers and businesses of all backgrounds, socio-economic statuses, ages, and education levels, so precision in language is going to be key in two areas: from the law and from businesses. A clear law helps businesses adapt faster and understand the requirements set before them. If an SME understands what is expected of them from a future data protection law, they can communicate to their consumers. This can save time and money during these transition periods and as consumers wish to have more control over their data. Precision of language ultimately comes from legal definitions, something that current legislation in Cambodia’s digital legal world does not have. For example, personal data is not defined yet. A data protection law will be the perfect opportunity to define legal and economic language.

### Conduct research on appropriate penalties

Fines (Intent): Both the GDPR and the PDPC have extremely high fines for data protection violations. While violations to personal data should be taken seriously, these fines can cripple smaller businesses. It will be important to fine the correct amount of punishment, but not hurt SMEs and startups from entering the market. One way that this can be done is by lessening the fines when the business was attempting to comply with the regulation but simply failed to do so. This may encourage a movement to higher standards in data protection but does not hurt the economy.

## Get the government involved and aware

Data Protection laws are conjured because of two forces: the government and the consumer. The government will need to understand the importance of data protection for the safety of its people. However, data protection is also extremely important for the economy to grow. Data is a currency that Cambodia is missing out on, and the government should feel more pressure to get these laws and focuses in place. Furthermore, the average Cambodian, as already analyzed, has become increasingly aware of their personal data and its use by businesses. However, there are still many underrepresented groups that are not aware of the importance of their data and its potential benefit to the economy. Unless the approach for a regulatory framework is top down, the consumer pressure from the bottom up will not be enough to get these laws in place maybe in the next decade.

It is important to emphasize that data protection practices are an important move for Cambodian SMEs no matter if there is a comprehensive law in place. It will inevitably put them on good standing with consumers and the rest of the industry. It will also allow growth into the international markets and gain international consumers. 81% of Americans have said that they would rather have data protection than other advantages of being on the internet.<sup>85</sup> This trend is resonating with the people of Cambodia as well. Business owners at the Digital Governance and E-Commerce Technology in Small-Midsized Enterprises (SMEs) have pointed out that the people are becoming more aware of where their data is going or how data is being processed. They are asking the right questions and wanting more protection.



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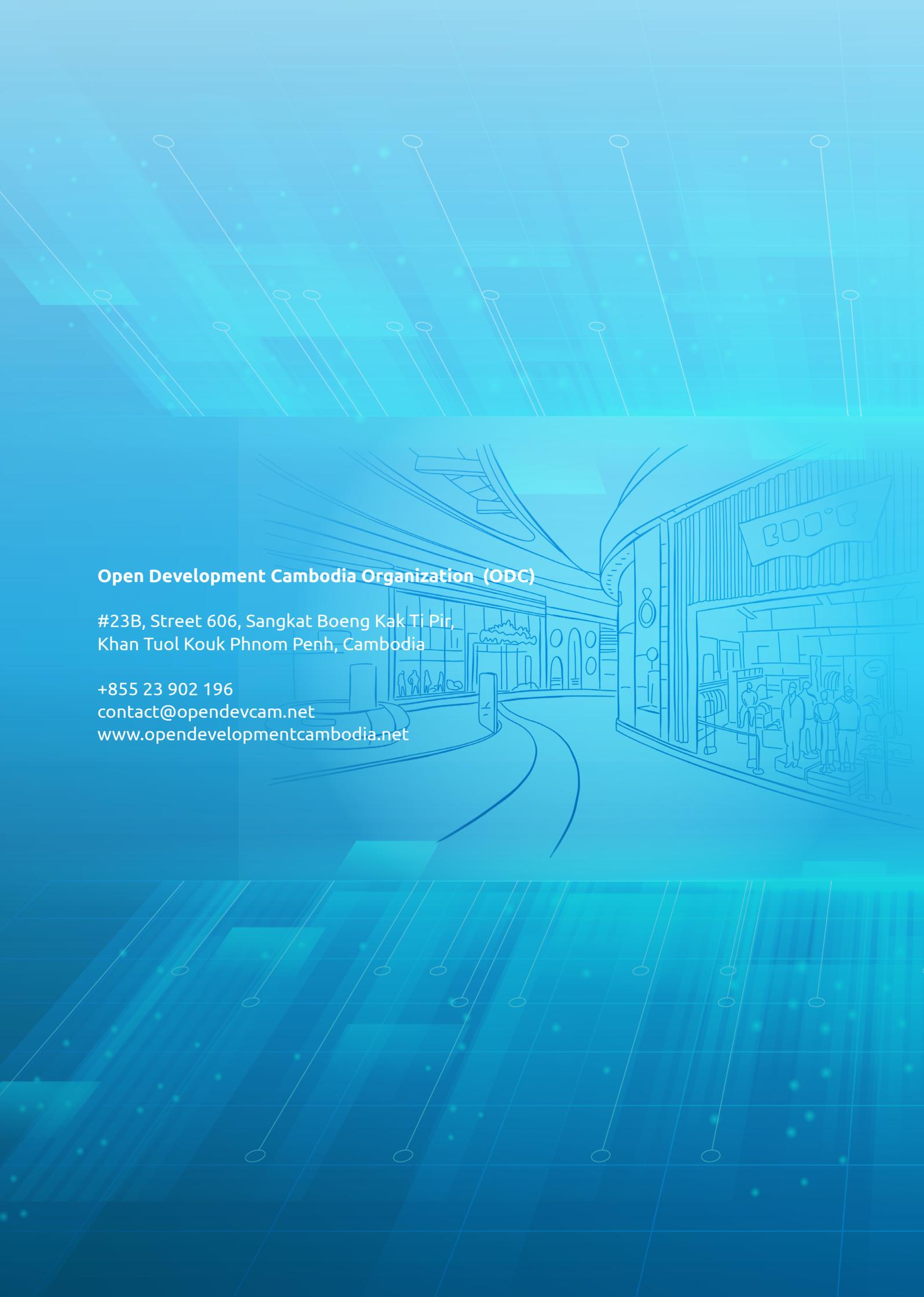
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**Open Development Cambodia Organization (ODC)**

#23B, Street 606, Sangkat Boeng Kak Ti Pir,  
Khan Tuol Kouk Phnom Penh, Cambodia

+855 23 902 196

[contact@opendevcam.net](mailto:contact@opendevcam.net)

[www.opendevdevelopmentcambodia.net](http://www.opendevdevelopmentcambodia.net)