



Global Data Alliance Comments on Draft Law on Personal Data Protection of the Kingdom of Cambodia

October 5, 2023

The Global Data Alliance¹ (GDA) appreciates the opportunity to submit the following comments to the Ministry of Post and Telecommunications (MPTC) of the Kingdom of Cambodia (Cambodia) in relation to the Draft Law on Personal Data Protection (Draft Personal Data Protection Law).

I. Introduction

The GDA is a cross-industry coalition of companies that are committed to high standards of data privacy and security, and that rely on the ability to transfer data responsibly around the world to create jobs and make local industries more competitive. We limit our comments to cross-border data issues.

The draft Law addresses cross-border data transfers primarily in Articles 22-24. Article 22 prohibits transfers of personal data from Cambodia to any other country or territory; Article 23 imposes strict disclosure mandates; and Article 24 mandates the storage of all locally collected personal data within Cambodia.

As reflected in the GDA's [Cross-Border Data Policy Index](#),² the ability to access technology and transfer data securely across international digital networks is of central importance to both [economic](#) and other [governmental policy](#) objectives: Not only do restrictive cross-border policies fail to protect [privacy](#),³ but they also hurt [developing countries](#)⁴ and [small businesses](#); ⁵ impede [financial inclusion](#); ⁶ undermine [cybersecurity](#); ⁷ slow [innovation](#); ⁸ and impair various [health and safety](#),⁹ [environmental](#),¹⁰ and other [regulatory compliance](#) goals.¹¹ Data transfers are critical to economies [across all sectors](#)¹² and at [every stage of the value chain](#).¹³

The [United Nations](#), [World Trade Organization](#), [World Bank](#), and other development banks have warned that data localization mandates and data transfer restrictions are particularly harmful to developing economies.

Economies including Indonesia, Malaysia, the Philippines, Singapore, Thailand, Bangladesh, India, Pakistan, and Sri Lanka have **all decided in recent years NOT to adopt** the types of strict localization mandates and transfer restrictions set forth in Articles 22 and 24. As a result, these countries are better positioned to benefit from cross-border trade and cross-border digital transformation. Articles 22-24 will harm Cambodia alone.

We urge Cambodia to remove or relax the restrictions found in Article 22-24, which will harm Cambodia's international relations, its economic development, and the ability of its local enterprises to export.¹

II. Discussion

First, Article 22 contains a complete prohibition on all personal data transfers out of Cambodia. We recommend that Cambodia adjust the drafting of this Article. While we understand that the Law foresees the future promulgation of data transfer regulations, we are concerned that the outright prohibition on personal data transfers will be highly disruptive. Such a prohibition would block all Cambodian personal data transfers,

¹ Even China – whose economy faces major challenges in part due to the dozens of cross-border data restrictions that it has imposed on itself – has not adopted measures as burdensome as Articles 22-24 appear to be. And even China is attempting to relax some of its existing restrictions. See, GDA, [Cross-Border Data Policy Index](#) (2023), at: <https://globaldataalliance.org/wp-content/uploads/2023/07/07192023gdaindex.pdf>

effectively cutting Cambodia off from international commerce, scientific and educational exchanges, and various other cross-border knowledge and information sharing activities.

We therefore urge Cambodia to alter the drafting of this provision so as to permit personal data transfers subject to the requirements set forth in future regulations issued by MPTC. We respectfully recommend that Article 22 be revised as follows:

22.- Transfer of Personal Data Outside the Kingdom of Cambodia

A data controller may [DELETE: ~~not~~] transfer personal data to any country or territory outside the Kingdom of Cambodia [DELETE: ~~unless~~] [INSERT: as] authorized under this law and relevant instruments. ...

Second, Article 24 contains a requirement to localize all personal data in Cambodia. Like Article 22, this Article could have significant unintended consequences. We therefore urge Cambodia to revise this provision so as to permit storage of data outside of Cambodia subject to the requirements set forth in future regulations issued by MPTC. We respectfully recommend that Article 24 be revised as follows:

Article 24.- Location of Personal Data Storage

A data controller [DELETE: ~~shall~~] [INSERT: may] store collected personal data [DELETE: ~~in~~] [INSERT: outside] the Kingdom of Cambodia [INSERT: , as authorized under relevant instruments].

[DELETE: ~~A data controller may store personal data in its own personal data storage system or a data center or a secure cloud system of a third party in accordance with other laws and regulations in force.~~] ...

Third, we urge you to consult with stakeholders regarding the “conditions, formalities, and procedures” in Article 22 and the “technical specifications, conditions, and rules” in Article 24. As outlined in the GDA’s [Cross-Border Data Policy Principles](#),¹⁴ any limits on cross-border data transfers or requirements to localize data should be transparent, non-discriminatory, and no more restrictive than necessary to achieve their stated goals.

Fourth, in designing such “conditions, formalities, and procedures,” we recommend that MPTC bear in mind the following:

- **Ensure that prevailing data transfer mechanisms are available:** If Cambodia plans to restrict cross-border data transfers, we urge the adoption of the full array of internationally accepted data transfer mechanisms. These may include transfers pursuant to: (a) an international agreement (e.g., a trade agreement); (b) an adequacy determination; (c) legally binding and enforceable instruments between public authorities or bodies; (d) binding corporate rules; (e) standard contractual clauses; (f) codes of conduct; (g) and other legal mechanisms.
- **Accommodate international interoperability mechanisms:** We also urge Cambodia to work towards Cambodia’s future participation in the adoption of data transfer interoperability mechanisms that conform to ASEAN data transfer mechanisms and the recently launched Global Privacy Rules Forum.
- **Address specific data transfer situations:** We recommend that Cambodia’s regulations address special data transfer circumstances. These could include circumstances in which: (a) a transfer is necessary for reasons of public interest; (b) the transfer is necessary for the establishment, exercise or defense of legal claims; (c) the transfer is necessary in order to protect the interests of the data subject or of other persons; (d) the transfer is made from publicly available information; or (e) other special cases.

Fifth, we urge MPTC to consult closely with other parts of the Cambodian government on the potential impacts of these measures – particularly the [Ministry of Commerce](#) and the [Ministry of Foreign Affairs and International Cooperation](#). We elaborate on these issues below:

- **Impact on Cambodia's Broader Economic Goals:** According to various international organizations, data localization mandates and restrictions of the nature set forth in Articles 22 and 24 impose significant costs on those countries that implement them.

Articles 22 and 24 would likely have a broad economic impact on Cambodia. For example, the World Bank's 2020 *World Development Report* found that, "restrictions on data flows have large negative consequences on the productivity of local companies using digital technologies... Countries would gain on average about 4.5 percent in productivity if they removed their restrictive data policies, whereas the benefits of reducing data restrictions on trade in services would on average be about 5 percent."¹⁵

Impact on Cambodia's Exports and Jobs: Cambodia's exports exceed \$25 billion,¹⁶ with exports to the United States (alone) totaling over \$12 billion.¹⁷ Measures (like the restrictions in Articles 22 and 24) that impede the ability to exchange information on a cross-border basis undermine all trade. Data transfers are also critical to reducing the costs of reaching markets outside of Cambodia. Data transfers not only enable local firms to find prospective customers in export markets, they also reduce supply chain-related transaction costs.¹⁸ One recent study estimates that digital tools helped MSMEs across Asia reduce export costs by 82% and transaction times by 29%.¹⁹

Articles 22 and 24 would likely undermine Cambodia's exports. As noted in the World Bank's 2021 *World Development Report*, measures that "restrict cross-border data flows ... materially affect a country's competitive edge in the burgeoning trade of data-enabled services."²⁰

- **Impact on Cybersecurity in Cambodia:** Articles 22 and 24 could undermine Cambodia's cybersecurity. Cross-border data transfers are critical to cybersecurity in part because they allow for cybersecurity tools to monitor traffic patterns, identify anomalies, and divert potential threats in ways that depend on global access to real-time data. Conversely, when governments mandate localization or restrict the ability to transfer and analyze data in real-time, they create unintended vulnerabilities.²¹
- **Impact on Cambodia's International Relations:** Articles 22 and 24 would complicate Cambodia's international relationships, including in the following respects:
 - **ASEAN:** Cambodia is a member of the ASEAN Economic Community. ASEAN has developed the ASEAN Digital Data Governance Framework, which seeks to build trust in data sharing. ASEAN also recognized the importance of cross-border data transfers in the [Leaders' Statement on the Development of the ASEAN Digital Economy Framework Agreement \(DEFA\)](#). As an important ASEAN member, Cambodia should promote integration with its neighbors, rather than isolation via the restrictions found in Articles 22 and 24.
 - **WTO:** Articles 22 and 24 raise concerns regarding Cambodia's ability to negotiate outcomes on data transfers and data localization in the WTO Joint Statement on E-Commerce. These Articles also raise concern regarding Cambodia's compliance with its obligations: (1) to permit the cross-border provision of computer-related services under the WTO General Agreement on Trade in Services, and (2) to permit the provision such services under the WTO Government Procurement Agreement.

III. Conclusion

The Global Data Alliance appreciates the opportunity to offer these comments. We look forward to consulting with MPTC in the future. Please feel free to contact me as josephw@bsa.org if you have any questions.

¹ www.globaldataalliance.org.

² <https://globaldataalliance.org/resource/cross-border-data-policy-index/>

³ <https://globaldataalliance.org/issues/privacy/>

⁴ <https://globaldataalliance.org/issues/economic-development/>

⁵ <https://globaldataalliance.org/issues/small-businesses/>

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- ⁶ <https://globaldataalliance.org/sectors/finance/>
- ⁷ <https://globaldataalliance.org/issues/cybersecurity/>
- ⁸ <https://globaldataalliance.org/issues/innovation/>
- ⁹ <https://globaldataalliance.org/sectors/biopharmaceutical-rd/>; <https://globaldataalliance.org/sectors/medical-technology/>; <https://globaldataalliance.org/sectors/healthcare/>
- ¹⁰ <https://globaldataalliance.org/issues/environmental-sustainability/>
- ¹¹ <https://globaldataalliance.org/issues/regulatory-compliance/>
- ¹² <https://globaldataalliance.org/wp-content/uploads/2021/07/GDAeverysector.pdf>
- ¹³ <https://globaldataalliance.org/wp-content/uploads/2021/07/infographicgda.pdf>
- ¹⁴ <https://globaldataalliance.org/wp-content/uploads/2021/07/03022021gdacrossborderdatapolicyprinciples.pdf>
- ¹⁵ <https://www.worldbank.org/en/publication/wdr2020>
- ¹⁶ https://www.wto.org/english/thewto_e/countries_e/cambodia_e.htm
- ¹⁷ <https://ustr.gov/countries-regions/southeast-asia-pacific/Cambodia->
- ¹⁸ [https://globaldataalliance.org/downloads/03182021\[\]primersupplychain.pdf](https://globaldataalliance.org/downloads/03182021[]primersupplychain.pdf)
- ¹⁹ <https://www.adb.org/sites/default/files/publication/185050/adbi-pb2016-2.pdf>
- ²⁰ <https://openknowledge.worldbank.org/bitstream/handle/10986/35218/9781464816000.pdf>
- ²¹ <https://globaldataalliance.org/issues/cybersecurity/>