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COMMENTS ON DRAFT E-COMMERCE STRATEGY FOR MYANMAR AND DRAFT E-COMMERCE GUIDELINES 2020.

Myanmar Centre for Responsible Business (MCRB) welcomes the Ministry of Commerce (MoC)'s invitation to comment on its draft E-commerce Strategy document for Myanmar (version 1, June 2020) and the public availability of the draft e-Commerce Guidelines 2020.

Consultations with stakeholders on strategies, policies, and laws are the best way to ensure that before finalizing policy or regulation, government can consider the potential impacts on various stakeholders including business and the public, and address their concerns.

MCRB focusses on the integration of responsible business standards and concepts into Myanmar law, as well as on supporting better understanding and practice of responsible business conduct among businesses and stakeholders in Myanmar, including in the ICT (information and communications technology sector). MCRB's ICT Sector-Wide Impact Assessment (SWIA), analysed the state of the ICT sector in Myanmar in 2014-2015 and provided a series of recommendations to government on incorporating human rights and other responsible business conduct protections into relevant Myanmar laws and policies, as well as recommendations to ICT businesses and others.

MCRB welcomes the multi-stakeholder approach to the strategy. As part of the annual Myanmar Digital Rights Forum (MDRF), a multi-stakeholder dialogue platform, MCRB, Phandeeyar, MIDO, and Free Expression Myanmar have been engaging civil society organizations, businesses, and government on digital rights. The fourth MDRF 2020 included panel discussions on e-commerce, with a particular focus on cybersecurity and the right to privacy, which brought together the Ministry of Commerce, Ministry of Transport and Communications and business and consumer stakeholders.

Our comments on the draft Strategy cover (1) ensuring coherence between Ministries; (2) prioritising the enabling policy and regulatory framework; (3) inclusion and (4) leaving the private sector to act when it is best placed to do so.

1. Ensuring coherence

MCRB welcomes Goal 1 on Institutional Framework, intended to promote a coherent and coordinated cross-government approach in the draft E-Commerce Strategy. We also welcome the clear connection to the MSDP, Digital Economy Roadmap and CERP (to which should be added the forthcoming Myanmar Economic Recovery and Reform Plan (MERPP).

However, we suggest that the draft E-Commerce Strategy distinguishes more clearly between:

a. goals/actions which are essential to the expansion of ecommerce e.g. an enabling regulatory environment, cybersecurity, effective postal services, business awareness of e-commerce opportunities,

b. policy/regulatory goals/actions being pursued for wider reasons than e-commerce. An example is rural electrification (3.1.2).

To avoid the risk of incoherence, divergence or duplication with these wider strategies under category (b), we suggest that the National E-commerce Committee could invite lead Ministries (and other stakeholders) to present and discuss these, and make recommendations for necessary actions to be incorporated into their approaches to meet the goals of the E-Commerce Strategy.

A non-exhaustive a list of issues in this category is below, together with additional points which MCRB considers important to mention in the E-Commerce Strategy:

o **public procurement** (2.3)
    o the draft Strategy should recognise that there is a draft Law under discussion which should be reviewed to ensure that it facilitates e-procurement, and with which activities under the E-Commerce Strategy should align,
o **digital ID** (5.1, 6.2.1)
    o introduction of digital ID has many implications for human rights; we encourage the government to integrate the ID4D Principles into its approach, and reference these in the e-Commerce Strategy[1],
o **internet access and digital literacy**
    o we believe the Strategy should highlight the need for stable and affordable internet[2] and implementation of the Universal Service Strategy (3.1.1) and impacts of the internet shutdown in much of Rakhine State and Paletwa.

2.   Prioritise Policy and Regulatory Gaps and Reform
The Strategy, and government action, should focus above all on precisely identifying, with the private sector, and consumer groups, the **policy/regulatory barriers and gaps** to e-commerce. These include data protection and cybersecurity; legal recognition of ecommerce; protecting consumers from fraud; and protection of intellectual property, and the importance of a cross-border approach both in and beyond ASEAN. We therefore recommend that:

o **Goal 6 (Legal and Regulatory framework) should be elevated to Goal 2,** coming immediately after the Goal 1 on the Institutional Framework)
o **Cybersecurity and data protection** issues should be given more emphasis in the Strategy, since these are essential for building trust and confidence. At the moment, they barely feature (3.2.3). Inter alia:
    o the Strategy should explicit identify as a high priority the need for a **Data Protection Law** which should be explicitly mentioned in 6.1.1/6.2.2 on consumer protection.
        ▪ 6.1.1 says '*Finalize and enact Myanmar's cyber law (with laws on e-Government, e-commerce and cybersecurity), and issue implementation decrees*'. The exact mix of laws planned by government under the 'cybersecurity' heading is yet to be finalised. Rather than 'an e-government law' we understand that a 'data protection law' may

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[1] ID4D Principles, World Bank
[2] *Myanmar Consumer Report E-Commerce Survey Report And Other Consumer Issues 2019 found that disconnection or interruption of internet during the e-commerce operations was found in different types of e-commerce (ATM, online shopping, online registration, e-payment, i-banking, mobile money transfer, etc).*

be planned. This is necessary, particularly for ecommerce, since data protection is not a subset of e-government, but a requirement for private sector organisations.

- A Data Protection Law is a fundamental enabling factor for consumer trust in e-commerce. Inter alia, this needs to put legal obligations on businesses to optimise business processes between business, financial service provider and customer, so that unnecessary access to sensitive personal data such as credit cards is minimised, and these processes must be auditable.
- A Data Protection Law is also likely to be necessary for **cross-border e-commerce** in support of Goal 9 (International Trade). Data protection laws form a core part of e-commerce in other jurisdictions such as the EU[3] and Singapore[4] and 132 out of 194 countries have legislation in this area.
- It is also essential to ensure that data protection regulations are aligned with the discussions underway in ASEAN led by MoTC, as well as those in the recently signed Regional Comprehensive Economic Partnership (RCEP)[5] so as to promote regional integration of e-commerce.

o An MCRB policy brief covers issues to be considered in a Data Protection Law[6] . Another MCRB Policy Brief identifies ICT-related laws which need to be amended or replaced to establish an effective cybersecurity and digital rights framework which would support e-commerce and consumer trust in digital transactions, including the Electronic Transactions Law [7] .

o We agree with the need (6.2.2) to update **Consumer Protection Law** to incorporate privacy and data protection in e-commerce, including restrictions on sharing of personal information to third parties without their consent.

o mmCERT will play an essential role in supporting safe e-commerce sector and must be resourced to play this role.

3. Inclusion

o We welcome the prioritisation of gender but believe Goal 7.2 on training should explicitly include **persons with disabilities** as a target group. The ICT and Accessibility Sub-Committee of the Myanmar National Committee for the Rights of Persons with Disabilities should be considered a stakeholder.

o Furthermore, the Strategy should be explicit that all platforms developed or encouraged as part of this Strategy are compatible with W3C Web accessibility standards[8].

4. Recognise where government or private sector is best placed to act

Goal 1.1 notes that '*Actions covered will include those undertaken directly by government and actions undertaken by the private sector that government recommends, encourages and facilitates*'. In a recent webinar on e-commerce organised by the Myanmar Private Equity and Venture Capital Association (MPEVCA), two leading B2C Myanmar e-commerce providers were asked what help they thought the e-commerce sector needed from government. They could not immediately identify any needs. Their (lack of) response may also have been a recognition that government lags behind the private sector in

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[3] General Data Protection Regulation (GDPR)
[4] Public Consultations on Draft PDPA(Amended)
[5] Regional Comprehensive Economic Partnership(RCEP)
[6] Policy Brief Data Protection
[7] Policy Brief the Legal and Policy Framework for (ICT) in Myanmar: Implications for Human Rights
[8] Business Case for Digital Accessibility

understanding of e-commerce, and also that there are insufficient ICT and project-management skills in government, even at Union level.

We observe that the draft Strategy appears to intend to undertake an extensive number of activities under Goal 2 such as government funding of projects to establish B2B platforms in all States and Regions, as well as sector level platforms. This risks unnecessary fragmentation by State/region compared to nationwide approaches. It will also stretch scarce government human and financial resources. We see a risk that public money will be spent on platforms which are not then used. We recommend that development of e-commerce platforms is left to businesses and the market, supported if necessary by pre-existing tech incubators, rather than with government intervention and using scarce public funds (e.g. 2.1.2 and 2.2.1, 2.2.3).

Monitoring

Finally, we suggest that these two UN indexes may also be useful for monitoring purposes: UN E-government Development Index (EGDI) [9] and E-participation Index (EPI)[10].

Draft E-Commerce Guidelines

We welcome the circulation of this draft which we understand to be intended to a step equivalent to that taken in Japan to interpret the various provisions of relevant laws in an e-commerce setting, and also that data protection is one of the requirements included in the voluntary registration process. However, the requirement in 11c. of the draft Guidelines 'with regard to use of private data, to comply with the provision of relevant laws and procedures' is meaningless in the absence of genuine provisions for data protection in Myanmar's legal framework, We therefore recommend that the guidelines require those who register voluntarily to 'Establish and maintain a privacy policy and data protection arrangements consistent with the requirements of the EU General Data Protection Regulation' since this is increasingly the international standard.

We would be happy to work with the Ministry to develop further guidance on this.

Yours faithfully,

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[9] E-government Development Index
[10] E-Participation Index