



FRAMEWORK FOR E-COMMERCE POLICY FOR BHUTAN

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Table of Contents

1. Introduction	2
2. Background	2
3. Forms of e-Business in Bhutan	3
4. Vision	4
5. Relevant Provisions of the e-Commerce Guidelines	4
6. General principles	4
7. Objectives	5
8. Policies	6
A. Building an e-Commerce Ecosystem	6
B. Building productive capacities for Inclusive Growth	7
C. Regulation: Supervision and Administration	8
D. Legal Framework	10
E. Cross border e-Commerce	11
9. Implementation Mechanism	13

1. Introduction

The Royal Government of Bhutan (RGoB) has emphasised the importance of e-Commerce for expanding economic opportunities and employment, particularly for cottage and small industries (CSI). E-Commerce creates a major opportunity for domestic enterprises to reach larger parts of the global market using established and new products. Bhutan's Information, Communications and Media (ICM) Act of 2018 covers e-Commerce as well as a number of significant areas that would help develop its operational framework. The Department of Trade (DoT) has subsequently issued guidelines on e-Commerce in 2019 and e-Commerce guidelines for consumer protection will be formulated by OCP to facilitate e-trade, and protect the economic interest and safety of consumers. Building on the provisions of these two major documents, this e-Commerce Policy provides a comprehensive and practical framework for enabling the development of e-Commerce in Bhutan. In this context, a number of other laws and policy initiatives are also relevant for an integrated perspective on e-Commerce Policy, such as the E-Government Master Plan 2014: G2C and G2B services, Bhutan ICT Roadmap 2011 (Revised 2015), ICT Industry Development Plan (2016-2020)-iDzodrak, Economic Development Policy, 2016, Trade and Investment Bill, 2018, Cottage & Small Industry Policy, 2019, and e-Commerce Guidelines (2019).

To take Bhutan to its next stage of development the main challenge that the RGoB faces is a lack of an industrial base and a high rate of youth unemployment of about 10%¹, especially among its graduates. Economic output lacks diversity and CSIs account for a very large portion of the industrial base (over 90%).² Bhutan has large trade deficits (over 33% of its GDP) resulting in a severe shortage of foreign exchange (FOREX).³ In this environment, while e-Commerce offers major opportunities to address some of Bhutan's fundamental concerns, a coherent structured policy initiative is required to prepare the ground for an extensive coverage of e-Commerce. In a number of ways, Bhutan has good grounds to use its specific strengths in e-Commerce such as abundant electricity and good telecom infrastructure. Its young English speaking people is also a big asset.

2. Background

E-Commerce is the process of purchase and sales including web and electronic data interchange using personal computers, laptops, tablets, mobile phones, and other electronic devices. Companies are classified as 'brick and mortar' (traditional commerce), 'click and mortar' (partial e-Commerce) and 'virtual companies' where product, delivery, and payment is digital. Therefore, the concept of e-Commerce incorporates transaction of physical goods as well as digitized products and services. M-Commerce (Mobile Commerce) and F-Commerce (Facebook Commerce) have become two popular terms in the current e-business world. The e-Commerce guidelines issued by the MoEA in 2019 also list the kinds of e-Commerce to be found in Bhutan.⁴

E-Commerce provides a platform for companies, irrespective of their size, especially empowering small enterprises which face difficulties in conventional trade. With e-Commerce the CSIs in Bhutan can connect with their target market, reduce costs through an increase in their efficiency in information search and knowledge management, reduce cost of communications, create a larger outreach to enable entry into a larger number of global markets, and promote customer convenience. CSIs in Bhutan too could develop such products for exports from the country. Notably, the investment required under e-Commerce is relatively low. A study on SME's in India shows that about 27% of the SME's have entered the e-Commerce market space with an investment as low as INR 3,000.⁵

1 <https://www.statista.com/statistics/811680/youth-unemployment-rate-in-bhutan/>.

2 https://rtm.gnhc.gov.bt/wp-content/uploads/2019/03/Economic-Diversification_RMA.pdf

3 <https://tradingeconomics.com/bhutan/balance-of-trade>

4 <https://www.moea.gov.bt/wp-content/uploads/2017/07/Guidelines-on-E-Commerce-2019.pdf>

5 https://assets.kpmg/content/dam/kpmg/pdf/2015/10/Snapdeal-Report_-_Impact-of-e-Commerce-on-Indian-SMEs.pdf

Digital technologies lead to several opportunities but also pose challenges in a country like Bhutan. Challenges include shortage of skills, physical infrastructure for delivery, inadequate payment mechanisms, legal infrastructure, and lack of widespread use of ICT services, along with cyber-crimes. An e-Commerce policy should be designed to provide comprehensive guidance in e-trade policy, trade facilitation, investment in digital infrastructure, development of human capital, and regulatory measures.

3. Forms of e-Business in Bhutan

E-Commerce in Bhutan covers mainly business to consumer (B2C) or business to government (B2G) transactions, with a small proportion being consumer to consumer (C2C). The most common form of B2C e-Commerce includes retail sales often called e-retail (or e-tail). B2G is used as a pathway to create e-government. B2G e-Commerce is expected to rise after the 3rd Phase of the E-Government Master Plan. Over time, with the growth of e-Commerce, B2B and G2B transactions would also increase in Bhutan. The total value of e-Commerce including government procurement is estimated between 900,000 and 1 million USD in 2019. **Globally online platforms, subscription services offers and a mix of online-offline models are emerging. The mechanism of service delivery include a range of digital technologies including artificial intelligence, block chain, or autonomous delivery of devices like drones or robots.**

4. Vision

To build an efficient ecosystem for e-Commerce in Bhutan to achieve major economic and social policy objectives. To facilitate producers to competitively export existing and new products with wider global market reach. To provide a strong base to benefit from synergies from upgradation of technological and management solutions brought about by e-Commerce.

5. Relevant Provisions of the e-Commerce Guidelines

The seventeen provisions in the Guidelines are all relevant to the e-Commerce Policy detailed in this document. This document includes those provisions and builds on them to provide a more comprehensive e-Commerce policy framework. In some ways this document qualifies the provisions of the guidelines.

6. General principles

The following principles will guide the framework of e-Commerce policy in Bhutan:

1. **Facilitating and Supportive role of the RGoB:** The government will facilitate and support building the eco-system for e-Commerce, build productive capacities of e-tailers and producers to link them with regional and global value chains.
2. **Affordability and accessibility:** All e-tailers whether big or small will have access to affordable logistics, internet services, e-payment mechanisms and the services provided by the government in support of e-Commerce.
3. **Reducing costs:** Costs would be brought down through regulation and enabling policies that improve operational conditions and competitiveness.
4. **Promotion of Exports:** Improve export opportunities through supportive policies on payments, logistics, foreign exchange, and expanding markets.
5. **Inclusiveness:** Improve opportunities and capabilities of all sectors, especially the CSI to effectively participate in the e-Commerce activities.
6. **Leadership:** Promote leadership in e-Commerce initiatives at all levels of society, especially through collaborative efforts of MoEA, MoIC, DCSI, RMA and the private sector.
7. **Strongly driven by the private sector, with fair competition:** E-Commerce should be strongly driven by the private sector and at no point of time should the government installed portals be

perceived to create a non-level playing field with private sector portals. Consumer protection is an important guideline for e-Commerce.

8. **Self -Declaration model:** The regulatory framework should not require excessive documentation, and be based significantly on self-declaration by e-tailers.

9. **Trust building: The regulatory system should be based on building** trust of consumers and management of risks. If the key stakeholders trust the eco-system built for e-Commerce, the market will progressively improve in depth and reach.

7. Objectives

1. **Establishing an eco-system for e-Commerce.** This requires integrating e-Commerce within the overall production chain and to bring about substantial improvements in related areas, such as telecom and internet services, logistics and financial services. Establishing this eco-system would have spillover effects in other areas such as conventional trade, financial inclusion, and in building IT products and services which can be traded digitally.

2. **Promoting Exports through e-Commerce.** This may require specific intervention in facilitating customs and standards related requirements, easier access to FOREX, specific policies for encouraging e-services, and building productive capacity to link up with international value chains, including assembly line production for electronics.

3. **Building productive capacity through skill development, with an important focus on youth.** Most e-tailers are young people. By building ICT skills the youth of Bhutan could develop new products, enter e-Commerce market place and link up with the global economy.

4. **Integrating CSI to global markets through e-Commerce.** CSI accounts for over 90% of the industrial base of Bhutan. By linking e-Commerce policy to DSCI flagship program on developing some products from cradle to exports, an e-Commerce policy would help promote e-exports, augment employment opportunities and improve inclusiveness.

5. **Providing an appropriate Legal Framework for e-Commerce.** While a legal framework already exists for a digitized economy, e-Commerce has some specific requirements such as cyber security, authentication of digitized signatures and contracts, and product liability which goes beyond conventional retail. An appropriate legal structure provides stability and predictability, with spillover effects in other areas related to the digital economy such as Artificial Intelligence, Internet of things, and blockchain development.

6. **Risk mitigation under e-Commerce.** Unlike, traditional models of business where the assets are physical, e-Commerce is conducted in the virtual world where technology and innovation co-exist with cyber risk, data security and loss of internet connectivity. Up to date risk management systems should be established to limit the losses due to risk and implement timely approvals/clearance of trade transactions.

7. **Foster market competition** and Promote fair trade practices in e-commerce to protect economic interest and safety of the consumer

8. Policies

Policies in five strategic areas would be required to make e-Commerce significant in Bhutan's economic development by building productive capacities in hitherto unexplored areas, moving towards integrating rural and young in the Bhutanese economy and building a digital infrastructure that can have spillover effects.

A. Building an e-Commerce Ecosystem

RGoB shall:

- a) By end 2020, establish a Consultation Platform for discussion and co-ordination among the main stakeholders to build the e-Commerce ecosystem.
- b) Set up a Monitoring mechanism for the different initiatives to identify and address obstacles that arise through the consultations.

RMA shall by 2021:

- a) Establish a consultation forum for periodic consultations with Banks and e-tailers association to explore ways to improve the digital system of payments, nationally and internationally.
- b) Extend awareness programs of the existing policies such as BIPS to facilitate national and international e-payments and financial digitisation to e-tailers through its association.
- c) Initiate a time bound program to reduce charges and credit limits of foreign credit cards. This will form a part of its initiative to improve international payment gateways.
- d) Establish systems to move towards international standards used for credit card security.
- e) Extend wallet services in mobile banking to cover all registered e-tailers by 2021.
- f) Instruct banks to incentivise e-tailers to accept credit cards and digital payments by offering small discounts (e.g. 5%) to consumers.

BICMA shall by 2021:

- a) Develop a consultation paper along with e-tailers association to provide guidance on reduced outages of not more than 5 minutes per day, full coverage of internet services, reduced internet charges and data packages. **In this context e-tailers may need to build redundancy in their lease lines as the topography of Bhutan may lead to internet outages.**
- b) Create a separate accounting category for e-tailers to identify e-tailers and encourage telecom companies to offer them deep discounts depending on usage.
- c) Develop schemes to use the Universal Service Fund for rural e-business, **consistent with the Information, Communications and Media Act 2018.**
- d) Improve connectivity to address security concerns of sudden server outages and seamless communications between financial entities.

BICMA shall by 2022:

- e) Develop schemes to reduce lease line rates by at least 10%⁶ with volume discounts to encourage increase in e-Commerce operations.
- f) Develop a template for a 'model service agreement' for providing guidance to telecom companies on conditions of service relating to price/discounts, volume, quality, maintenance of the devices installed, to pass on benefits of technological change and providing end to end services.

E-Commerce entities shall by 2021:

- a) Form an association of e-tailers to serve as a focal point to effectively participate in the Consultation Platform.
- b) Develop an information database to enable informed basis for policy.
- c) Develop training modules for new and existing e-tailers on creation of e-portals, e-marketing, methods of e-payments, e-contracts, deliveries, liabilities and e-security in collaboration with MOIC, RMA, Bhutan Post, Tourism Council of Bhutan, and Banks.
- d) Open holding accounts in banks for 15 days which can be used to return money to clients should the client find the product unsatisfactory.
- e) Along with MOIC build incubators to develop IT related products most suited to e-Commerce.
- f) Use RMA and Bhutan Post's portals to sell good quality certified products.

⁶To achieve objectives of 12th FYP, BICMA will: 'Review and bring in around 10% reduction in the tariffs for ICT services; SMS, mobile data and leased-line service.' Annual Report BICMA, 2018-2019, page 23

- g) In collaboration with the RGoB set up mutual recognition systems for gaining international acceptability for Made in Bhutan, Quality of Excellence and other Bhutan certified trademarks.

E-tailers Association shall:

- h) Identify possibilities for reducing logistic costs for transport of e-exports through Druk Air which has excess capacity on outbound flights.
- i) Develop partnerships with B2B transboundary clearing agents.
- j) Develop multi modal transport options with Bhutan Post and other transport companies.

B. Building productive capacities for Inclusive Growth

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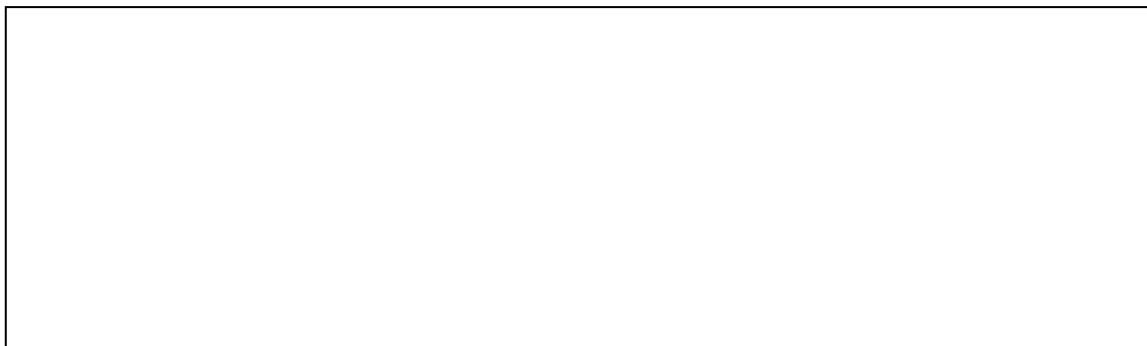
Commerce entities shall by 2021:

- a) Along with RGoB develop mechanisms for collaborating with established international companies to expand and facilitate the scope of operations of e-tailers.
- b) Explore options for participation in regional and global value chains for high value low volume products such as mobiles, internet based services, religious products, and high end textiles.
- b) With Bhutan Post and RMA develop a collaborative approach for using existing international platforms, e.g. the digital marketing platform of Google.
- c) Help DCSI create its own portal and host information and advertisement for private vendors to enable them to increase sales of their own brand.
- d) Use the DCSI flagship products for developing new areas of e-Commerce.
- e) Along with BAFRA examine ways to expand awareness among co-operative farms about branding and developing their own portal for E-Commerce.
- f) Identify niche markets where organic Bhutanese products can be a part of regional or international value chains.
- g) Begin on-line courses and encourage training and collaborative arrangements for video marketing, and establish the relevant institutional support for promoting this activity.
- h) Establish business incubators, co-working spaces, mentorship schemes and common business platforms.

E-tailers Association shall by 2022:

- a) Develop training programmes for brand creation, product advertisement, using graphics to expand the legend of specific products, especially, but not exclusively in the area of Traditional Knowledge.
- b) Establish a platform with the relevant Government Departments that need to collaboratively promote e-trade in agricultural products, and determine the training needs in collaboration with farmers to create a single window for training in this area.

C. Regulation: Supervision and Administration



E-Commerce entities shall self-regulate and along with OCP:

- a) Maintain platform neutrality, i.e. not promote one brand more than others. They shall provide equal opportunities to all e-tailers, whether big or small, to sell their goods.
- b) Maintain complete transparency and credibility around their user review and rating policy and will not manipulate the web search results.
- c) Provide fair and equitable terms to all players who want to use their platforms by providing fair commission rates and not compromise the brand equity or profitability of e-tailers.
- d) Not allow Platform owners to include exclusivity clauses in their contracts with e-tailers unless it is the latter's interest to do so.

RGoB shall:

- a) Build upon the Licensing conditions in **MOEA's e-Commerce guidelines** to include all aspects of competition itemised under self-regulation clauses of e-Commerce entities.
- b) Issue a single licence for Brick and Mortar and Click and Mortar operations.
- c) By 2022, assess the option of becoming part of the international UPS return Company used to manage product returns.⁷
- d) Monetise the value of RGoB data collected through various government schemes.

OCP shall:

- a) Not permit e-tailers and platform owners to adopt any unfair method or deceptive practice to influence transactional decisions of consumers in relation to products and services.
- b) Prohibit e-Commerce players from falsely representing themselves as consumers and post reviews, misrepresent or exaggerate the quality or the features of goods and services.
- c) Require e-Commerce entities to furnish details about sellers, including identity of their business, legal name, and principal geographic address, name of website, the products they sell, and how they can be contacted by consumers.
- d) Require e-tailers and platform owners to protect personal data and information of the consumers.
- e) Require e-tailers to allow customers to return goods, if delivered late, or if the product is defective, unsafe, wrong or spurious without any cost to the consumers
- f) Require e-tailers to accept refund requests of the customers within a period of maximum of 14 days.

⁷Automating returns enables customers to make return requests from e-tailers company website. These returns are processed online, they enter the e-tailers website directly. As with all UPS Returns services, Returns Technology solutions give e-tailers visibility into where a return is from the moment the label is scanned at collection, giving them time and information to manage their inventory. A customer simply visits a website and submits a return request based on the company's return policies. A return label is provided by their browser, by e-mail or both. The customer prints and affixes the label to their package. He or she can then drop it off at a UPS location, hand it to a UPS driver, or request a collection.

g) Require e-tailers in case of exports to open a holding account in foreign currency for a month to be able to return money if the product is found defective.

h) Require e-tailers to display terms of contracts relating to return, refund, exchange, warranty/guarantee, delivery/shipment, mode of payment, and grievance redressal mechanism to enable consumers to make informed decisions.

i) Formulate guidelines on e-commerce for consumer protection

By 2021, reduce consumer risk by:

(i) Listing websites of web manufacturers/ suppliers which are not operational.

(ii) Black-listing of manufacturers that are found to be fraudulent or do not address consumer complaints

For Risk Mitigation RGoB shall:

a) By 2022, increase employment of technological experts to address technological risks, and develop the regulatory regimes for bitcoins and crypto currency.

b. By 2021 establish efficient processes for authentication of electronic signatures and electronic contracts.

c) Train e-tailers on ways to reduce cyber risk, e.g. through strong passwords and periodic revision of passwords, one-time Password (OTP), retinal/thumb scans and 3D security systems.

d) By 2021 identify security systems that could be used by web-sites to improve their cyber security, such as Secure Sockets Layer (SSL) which encrypts the data that is being transmitted and authenticates the identity of the website, thus guaranteeing visitors and users that the website is not on a bogus site.

e) By 2021, explore appropriate insurance mechanisms for a cyber liability policy or commercial crime insurance, and seek the most competitive rates which could be made available to e-tailers from Bhutan.

f) Align its Consumer Protection Guidelines, to make it mandatory for e-tailers to disclose terms of data usage.

g) Engage professional ethical hackers to verify the robustness of government and other e-Commerce sites and systems.

h) Encourage e-tailers to use Unique Product Identifier (UPI) such as Global Trade Item Number (GTIN) or Barcode from GS 1, to secure supply chain, traceability and data capture.

i) By 2021 issue Guidelines for Data encryption, installation of Firewall, Secure and reliable hosting platform.

j) Improve the technological expertise available by 2022 to effectively enable Bt-CERT to address issues of cyber security.

D. Legal Framework

E-Commerce entities shall be legally liable if it:

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a) Provides unsolicited information to the consumer through e-Mail, SMS or any other electronic form.

b) Does not develop by 2021 a system for electronic redressal of grievances with a provision for compensation to the aggrieved consumer electronically.

- c) Does not upon obtaining knowledge of any illegal activity, remove or disable access to the information.
- d) Does not provide an undertaking of authenticity from the sellers/service suppliers and publish it on their websites/applications.
- e) Does not inform the legal proprietor of the registered trademark (in the case of counterfeit products) and remove all information about the alleged counterfeit product from its website/application within a month of the legal notice.
- f) Provides misleading information on the product or service on its website. Misleading can be defined as:
 - (i) False description of a product or service.
 - ii. False guarantees that mislead consumers about a product or service.
 - iii. Convey representations, which would constitute unfair trade practice.
 - iv. Deliberately conceals important information.
- g) Does not protect the privacy of the customers. This includes not sharing information with unauthorized parties.
- h) Changes the information obtained from the consumer in any way.
- i) Does not include a non-repudiation clause on its website, i.e. confirmation that the two way transaction between the seller and the buyer did take place and cannot be denied by either party.

For e-security RGoB shall formulate laws or regulations:

- a) Against cyber-crimes related to e-Commerce, including financial thefts, fraudulent contracts, extortion of money.
- b) Against identity theft and impersonation.
- c) On data integrity, customer & client authentication and non-repudiation.
- d) Against Denial of Service (DoS) attacks which arises from overwhelming a server, a network or a website in order to paralyze its normal activity.
- e) Against phishing which is fraudulent acquisition of sensitive information such as usernames, passwords and credit card details, by masquerading as a trustworthy entity in an electronic communication.
- f) Against inappropriate social engineering which manipulates people into performing actions or divulging confidential information.
- g) To establish privacy systems related to IP, including for any information stored on the system/website of ISP's. This will form the basis for the data localisation law which can be instituted later when Bhutan is able to develop its own servers.

For Protection of Intellectual Property (IP) RGoB shall:

- a) By 2021 strengthen intellectual property laws to address counterfeiting and piracy issues in the online platform.
- b) By 2021, extend the scope of the Copyright Act to include e-Commerce issues such as storage, use, re-use, reproduction, offering for sale, broadcasting in multi-media, pay-per-view, video streaming websites and posting of copyright works on social media.
- c) Examine the possibility of simplifying/removing the requirements for prior approval under the Trade and Investment Bill for technical marketing, management and franchise collaborations for providing flexibility to e-Commerce entities to deal with specific situations faced by them in different markets.
- d) Initiate a detailed assessment of IP-related issues for establishing privacy systems, including for any information stored on the system/website of ISP's.
- e) By 2022 initiate in consultation with the local communities and agencies a special initiative to establish a legal and regulatory regime to recognize and protect Bhutan's Traditional Knowledge and Traditional Cultural Expressions, and carry out feasibility to establish a separate Regulator or Registry under the Department of Intellectual Property.

f) By 2021 Institute legal means of giving international acceptance to Bhutan’s “Seal of quality and excellence” used to certify authentic Bhutanese products, like “Made in Bhutan” and “Grown in Bhutan”. This law should also have a mechanism for dealing with infringements of these trademarks either in Bhutan or outside Bhutan.

For dispute resolution the RGoB shall:

a) By 2021, install an on-line dispute resolution (ODR) system or tribunals under Bhutan’s Alternative Dispute Resolution System.

b) Install the three stages of ODR i.e. on line evaluation (through appropriate software installation), on line facilitation (assisted by OCP), and on line judges (appointed by OCP). **This system could apply more to B2B and B2G.**

b) Require the e-Commerce entities to provide in their website a system by which consumers can register complaints.

c) Till such a scheme is in place, use the OCP to resolve disputes related to B2C.

E. Cross border e-Commerce

For promoting e-Exports, RGoB shall:

a) Use a uniform definition of “e-Commerce” amongst various acts and policies.

b) By 2021, build a consultative group with RMA, Department of Revenue and Customs, **Department of Trade**, Bhutan Post, and the private sector to detail the norms that can ease e-Commerce exports. Foreign players operating in Bhutan should also be a part of this group.

c) By 2021, identify a list of products which would be most suitable for e-Commerce including using the products specified in flagship programs of CSI, RMA, BAFRA to promote products for exports.

d) Provide specific support for marketing in foreign countries through e-Publicity and brochures provided to the embassies in Bhutan and of Bhutan in other countries.

e) With technical assistance from regional and international organisations build tools that enable easier links to international value chains for expanding and sustaining e-markets outside the country.

f) Augment the schemes available, such as **Foreign Exchange accounts**⁸ to facilitate access to foreign exchange for e-Commerce entities to meet their requirements for marketing and maintaining a US dollar account for possible refunds and other expenses abroad. These schemes should be examined periodically to improve their practical impact.

⁸Bank of Bhutan provides the following Foreign Currency Accounts as per RMA regulations.

FCA-I – Foreign Currency Account for Foreign Individuals

This account is for all foreigners residing in Bhutan as diplomats or expats.

FCA-II – Foreign Currency Account for Project, NGOs, and International offices

FCA-III – Foreign Currency Account for FDI and Local Industries

FCA-IV – Foreign Currency Account for Bhutanese Exporters & Individual Bhutanese Citizens, having earnings/remunerations in foreign exchange in Bhutan

FCA-V Foreign Currency Account for Non-Resident Bhutanese Citizens Abroad

See <https://www.bnb.bt/foreign-currency-account/>

g) Incentivise e-transactions by allowing e-tailers to hold at least 30% of their Forex earnings for inputs and marketing purposes. This should be equally applicable to tour operators which are a large segment of e-tailing in Bhutan.

h) Provide a percentage of export earnings as scrips to be used for tax refund or payment of customs duty for imports purposes. This system would be similar to Merchandise Exports from India Scheme (MEIS) which provides scrips equivalent to 2% to 4% of export earnings. Such support should be provided to e-exports of all products and services.

h) Extend beyond 2020 the income tax holiday provided to small businesses, to e-Commerce entities too.

i) Increase the limit of USD 3,000 per year given to individuals when they travel abroad to USD 10,000 per year to e-Commerce entities provided their export earnings are at least 5 times this amount.

For export facilitation, RGoB shall:

a) By end 2021, establish the internationally accepted Single Window Interface for Trade (SWIFT), thus reducing interface with Governmental agencies, dwell time and the cost of doing business. This can be started at the dry ports with a special focus on e-exports.

b) By end 2020, prepare the process for SWIFT by simplification and reduction of the requisite documents and processes.

c) Create a special category for e-tailers in the ongoing process of digitisation of customs data. This will help e-tailers retrieve their local taxes at the time of export and also exempt their inputs from customs duties.

d) By 2021, develop an export facilitation index for Bhutan, to identify and address procedures that involve higher costs or are more time consuming than regional benchmarks.

e) By 2021, create a national index of logistics performance in terms of costs and time taken for different parts of the logistics chain, and aim to improve this index by 5% every two years.

f) Use international indices as points of reference to identify and improve postal performance, e.g. the Universal Postal Union's Integrated Index for Postal Development.

g) By 2021, extend the use of Zip Codes together with the use of mobile phones to facilitate the operations of e-tailers.

h) Encourage foreign direct investment in transportation services by providing a level playing field between domestic and foreign players. Conditions of entry should be developed through the consultation process between e-tailers, MoEA, Bhutan Post and the RMA.

i) By 2021, develop training programmes to effectively implement initiatives through interaction with selected logistics management firms in the region to improve logistics performance.

j) By 2021 Sensitize / train Enforcement/ Customs /Postal staff on IP, Trade Mark and counterfeiting issues

For preparing for e-Commerce in Bilateral and other Free Trade Agreements (FTA), the RGoB shall:

a) Build upon the provisions of the ICM Act of 2018 for e-Commerce provisions in FTAs, by examining the different positions being taken by major economies in the context of the WTO plurilateral negotiations on e-Commerce.

b) Build capacity in policy areas which are considered as controversial in the context of e-Commerce negotiations. These include market access, cross-border transfer of data flows, non-discriminatory provisions which potentially have very wide coverage, and data localisation.

c) Focus on policies that facilitate e-Commerce and establish an operational framework for it. Some of these take time and therefore in any negotiation should be considered for offering them on a "best effort" basis.

d) Brings its domestic legal frameworks governing e-Commerce at par with the principles of the UNCITRAL Model Law on Electronic Commerce adopted in 1996.

e) Ensure that in e-Commerce negotiations, flexibilities are built in for review, and timelines for negotiating technically difficult or controversial areas in the context of negotiations.

- f) Develop collaborative arrangements with other countries, including within an FTA, to facilitate international trade and build more coherent regulatory approach with information sharing and problem-solving mechanisms as part of the collaborative effort.
- g) While keeping several issues open or in terms of “best efforts”, domestically develop guidelines on e-Commerce liberalisation, cross-border data flows, data localization, and mechanisms to monetise the value of data. These guidelines would generate experience with respect to these areas and provide a basis to improve policy options for achieving the desired objectives.

9. Implementation Mechanism

Several Departments of the government are involved in the implementation of e-Commerce policy. A coordinated approach should be followed, with the Policy Planning Division, Ministry of Economic Affairs (PPD, MoEA) overseeing and monitoring the policy implementation, and being the custodian of the policy for interpretation purposes.

The existing institutions should be used to implement different parts of the policy, and the mandate of these existing institutions should be expanded as required. In co-ordination with the relevant institutions, the PPD, MoEA would monitor performance, and recommend appropriate policy measures based on the performance with respect to different parts of the policy and projections about the future.

The agencies responsible for implementing different parts of the e-Commerce policy would be specified in the Action Plan. In addition, to ensure implementation and accountability of the policy:

- (a) The specified activities for various agencies must be incorporated in the Annual Performance Agreements with timelines.
- (b) A system to monitor and report on the implementation of policy initiatives must be established.
- (c) The overlapping tasks under different parts of the policy must be clarified, coordinated and obstacles to implementation identified and addressed.
- (d) Committees should be established for policy areas that require inter-sectoral representation and decisions, with clear delineation and responsibility of the members.



Development of an e-Commerce Policy Framework for Bhutan

Table of Contents

Table of Contents.....	1
Acronyms.....	2
Glossary	5
Chapter 1 Ecosystem fore-Commerce in Bhutan	8
Chapter 2. Legal Framework and Enforcement Mechanism in Bhutan for Electronic Commerce	25
Chapter 3.e-Commerce in Bhutan: Challenges and Opportunities	39
Chapter 4. Risk Management undere-Commerce	60
Chapter 5: Institutional Structure fore-Commerce	71
Chapter 6 Free Trade Agreements ande-Commerce	79
Chapter 7 Taxation undere-Commerce.....	86
Chapter 8 Best Practices from other Countries one-Commerce	94
Chapter 9- Framework for Policy one-Commerce in Bhutan	118
Bibliography	124

Acronyms

ATM	Automated Teller Machine
BAFRA	Bhutan Agriculture & Food Regulatory Authority
BCCI	Bhutan Chamber of Commerce and Industry
BEFIT	Bhutan Economic Forum for Innovative Transformation
BFS	Bhutan Financial Switch
BHIM	Bharat Interface for Money
BICMA	Bhutan Infocomm and Media Authority
BIMSTEC	Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation
BIPS	Bhutan Immediate Payment Service
BITS	Bhutan Integrated Tax system
BoB	Bank of Bhutan
BSB	Bhutan Standard Bureau
COD	Customs Office Declaration
CPA	Consumer Protection Act
CSA	Cloud Security Alliance
CSI	Cottage and small scale industries
CVV	Card Verification Value
DITT	Department of Information Technology & Telecom
DoIP	Department of Intellectual Property
DRC	Department of Revenue & Customs
EBA	Everything but Arms
EDP	Economic Development Policy
E-GP	Electronic Government Procurement

FDI	Foreign Direct Investment
FER	Foreign Exchange Regulations
GNH	Gross National Happiness
HAB	Handicrafts Association of Bhutan
ICMA	Information, Communications and Media Act
ICT	Information and community technology
IEC	Interim Executive Committee
ILL	Internet leased line
IoT	Internet of Things
ISO	International Organization for Standardization
ISP	Internet Service Providers
ITES	Information Technology Enabled Services
LLDC	Landlocked Least Developed Country
MIRA	Maldives Inland Revenue Authority
MoEA	Ministry of Economic Affairs
MoF	Ministry of Finance
MoIC	Ministry of Information and Communication
MRP	Maximum Retail Price
MTP	Medium term programs
OCP	Office of Consumer Protection
OECD	Organisation for Economic Co-operation and Development
OSP	Online Service Provider
OTP	One-time Password
PG	Payment Gateway
PIN	Personal Identification Number

PPD	Policy & Planning Division
PPP	Public-private partnership
RAMIS	Revenue Administration and Management Information System
RBI	Reserve Bank of India
RGoB	Royal Government of Bhutan
RMA	Royal Monetary Authority
SAARC	South Asian Association for Regional Cooperation
SAFTA	South Asian Free Trade Agreement
SAGQ	South Asian Growth Quadrangle
TCS	Tax Collection at Source
TK	Traditional Knowledge
TOR	Terms of Reference
TPN	Tax Payer No
UNCTAD	United Nations Conference on Trade and Development
UPI	Unified Payment Interface
USD	United States Dollar
VAT	Value Added Tax
VAT	Value Added Tax
VC	Venture Capital

Glossary

Bandwidth: It describes the maximum data transfer rate of a network or Internet connection. It measures how much data can be sent over a specific connection in a given amount of time.

Blockchain: A blockchain, originally block chain, is a growing list of records, called blocks that are linked using cryptography.

Codex: The Codex Alimentarius is a collection of internationally recognized standards, codes of practice, guidelines, and other recommendations relating to foods, food production, and food safety.

Cookies: Cookies are small files which are stored on a user's computer. They are designed to hold a modest amount of data specific to a particular client and website, and can be accessed either by the web server or the client computer.

Copyright: *Copyright* is the exclusive right given to the creator of a creative work to reproduce the work, usually for a limited time.

Consumer to consumer: C2C is a business model, whereby consumers can trade with each other, typically, in an online environment.

Cyber-attacks: A cyber-attack is an assault launched by cybercriminals using one or more computers against a single or multiple computers or networks. A cyber-attack can maliciously disable computers, steal data, or use a breached computer as a launch point for other attacks.

Demographic Dividend: the economic growth potential that can result from shifts in a population's age structure, mainly when the share of the working-age population is larger than the non-working-age share of the population.

E-Commerce: e-Commerce (electronic commerce) is the buying and selling of goods and services, or the transmitting of funds or data, over an electronic network, primarily the internet.

E-governance: e-governance is the application of information and communication technology (ICT) for delivering government services, exchange of information, communication transactions, integration of various stand-alone systems between government to citizen (G2C), government-to-business (G2B), government-to-government (G2G), government-to-employees (G2E) as well as back-office processes and interactions within the entire government framework.

Ethical hackers: an ethical computer hacker, or a computer security expert, who specializes in penetration testing and in other testing methodologies that ensures the security of an organization's information systems.

Free Trade Agreements: A free trade agreement or treaty is a multinational agreement according to international law to form a free-trade area between the cooperating states.

G2B: Government to Business

G2C: Government to Citizen

General System of Preferences: Generalized System of Preferences (GSP) is a preferential tariff system extended by developed countries to developing countries (also known as preference receiving countries or beneficiary countries). It is a preferential arrangement in the sense that it allows concessional low/zero tariff imports from developing countries.

Gross National Happiness: GNH is a measure of economic and moral progress that the King of Bhutan introduced in the 1970s as an alternative to gross domestic product. Rather than focusing strictly on quantitative economic measures, gross national happiness takes into account an evolving mix of quality-of-life factors.

Intellectual Property: Intellectual property is a category of property that includes intangible creations of the human intellect. There are many types of intellectual property, and some countries recognize more than others. The most well-known types are copyrights, patents, trademarks, and trade secrets.

Internet penetration: The relationship between the number of Internet users in each country and its demographic data.

Least Developed Country: The Least Developed Countries is a list of developing countries that, according to the United Nations, exhibit the lowest indicators of socioeconomic development, with the lowest Human Development Index ratings of all countries in the world.

Mobile cellular subscriptions: Mobile cellular telephone subscriptions are subscriptions to a public mobile telephone service using cellular technology, which provide access to the public switched telephone network (PSTN) using cellular technology.

Preferential Trading Arrangement: Preferential trade arrangements (PTAs) in the WTO are unilateral trade preferences. They include Generalized System of Preferences schemes (under which developed countries grant preferential tariffs to imports from developing countries), as well as other non-reciprocal preferential schemes granted a waiver by the General Council.

Revised Kyoto Convention: The International Convention on the simplification and harmonization of Customs procedures

Rules of Origin: Rules of origin are the rules to attribute a country of origin to a product in order to determine its "economic nationality".

Safeguards: A safeguard, in international law, is a restraint on international trade or economic development to protect communities from development aggression or home industries from foreign competition.

Sanitary Phytosanitary measures: Sanitary and phytosanitary measures and agreements. Sanitary and phytosanitary (SPS) measures are measures to protect humans, animals, and plants from diseases, pests, or contaminants.

Sustainable Development Goals: The Sustainable Development Goals are a collection of 17 global goals designed to be a "blueprint to achieve a better and more sustainable future for all". The SDGs, set in 2015 by the United Nations General Assembly and intended to be achieved by the year 2030, are part of UN Resolution 70/1, the 2030 Agenda.

Tax holidays: A government incentive program that offers a tax reduction or elimination to businesses.

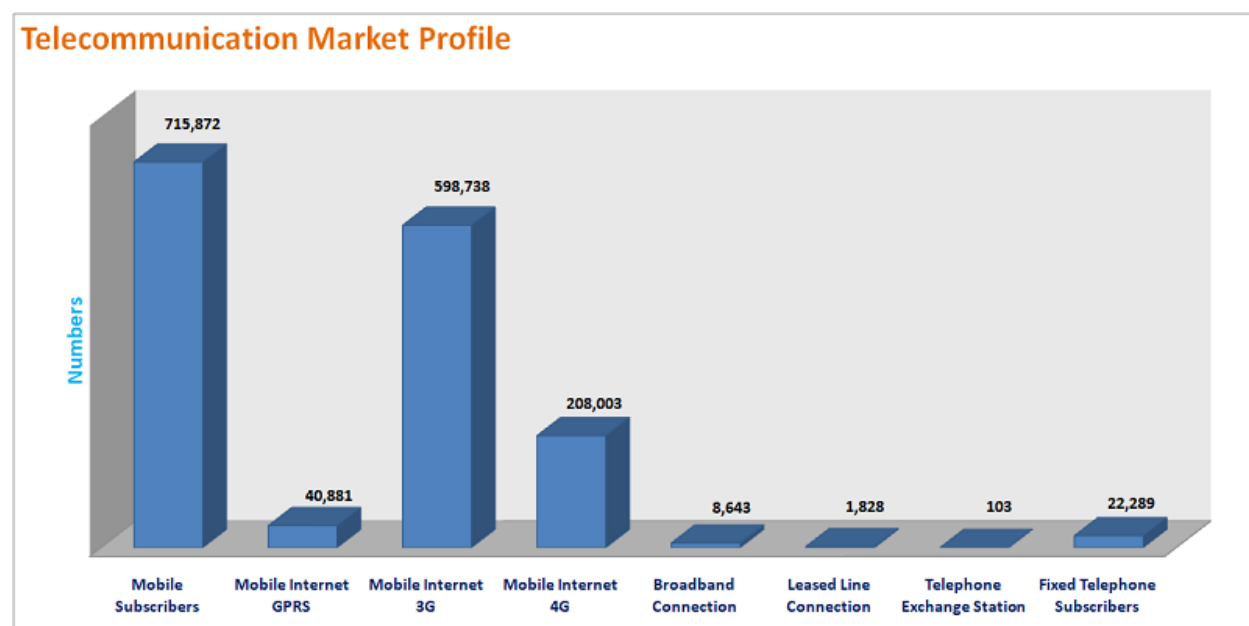
Value Added Tax: a tax on the amount by which the value of an article has been increased at each stage of its production or distribution.

Watermark: A watermark is an identifying image or pattern in paper that appears as various shades of lightness/darkness when viewed by transmitted light, caused by thickness or density variations in the paper.

Chapter 1 Ecosystem fore-Commerce in Bhutan

BACKGROUND

Bhutan is a Landlocked Least Developed Country (LLDC) with a population of 815,910 in 2018 and an area of 38,394 sq. km. It is a small country with a small economy. Its GDP is around USD 2.5 billion (statistical yearbook 2018). It was largely dependent on the primary sector but now the percentage share of the secondary and tertiary sectors in GDP is increasing (Table 1 annex). It has a bilateral trade agreement with India, Bangladesh, and Thailand and it is also a member of SAFTA and BIMSTEC. Its nearest seaport is Kolkata, West Bengal, India (708 KM). Because of the country's location, its transport and communication arrangements with India are critical. The top export destinations of Bhutan are India, Bangladesh, Italy, Netherlands and Nepal, and its top import origins are India, South Korea, China, Singapore and Thailand.



Source : https://www.bicma.gov.bt/bicmanew/?page_id=495. (31st July, 2019)

Bhutan is a latecomer to the information and community technology (ICT) space, with the earliest efforts at introducing TV or other ICTs dating back to 1999. In the past decade, the ICT sector (including Broadband) in Bhutan has experienced rapid development. The number of mobile cellular subscriptions per 100 inhabitants and fixed internet subscription has increased while the number of fixed telephone lines per 100 Inhabitants has decreased from 5.9 in 2006 to 3 in 2018 (Ministry of Information and Communication (MoIC) Annual Report 2019, Table 3 annex). The international Internet bandwidth has increased from 10 Mbps in 2005 to 5 Gbps in 2015, with a total of over 779,966 Internet users as of December 2018 (MOIC Annual Report, 2019). Bhutan is characterized by a unique environment for the development of an ICT-based society by way of a stable government, a small population and Demographic Dividend, widespread knowledge of English, ICT Infrastructure and services, access to finance, good telecommunications network in many of the urban areas and the Government's commitment to adopting ICT as a development tool. Bhutan appears to have a robust set of policies, laws and regulations providing a sound basis fore-Commerce to grow, although a comprehensive, up-to-date and business-friendlye-Commerce strategy and ane-Commerce law are still missing. The infrastructure is in place, with moderately high costs and low reliability of Internet.

1.1 Bhutan's Trade Profile

The products which constitute the top ten exports of Bhutan are not products that are typically being traded through e-Commerce (See Table 1.1 below). Most of these products are commodities which are traded internationally either at pre-agreed prices or in the commodity market at spot prices.

Table 1.1: Top Ten Commodities Export

BTC Code	Products List	Export Values in million Nu. In 2018
7202.21.00	Ferro-alloys (Containing by weight more than 55% of silicon)	13050
2516.90.10	Boulders	2122
7207.12.00	Semi-finished products of iron or non-alloy steel. {Other, of rectangular (other than square) cross-section}	1420
2518.10.20	Dolomite, not calcined or sintered, chips	1232
2523.29.30	Portland pozzolana cement	1091
0908.31.00	Nutmeg, mace and cardamoms. (Neither crushed nor ground)	929
2517.10.00	Pebbles, gravel, broken or crushed stone, of a kind commonly used for concrete	895
2849.20.00	Carbides, whether or not chemically defined (Of silicon)	843
2520.10.00	Gypsum; anhydrite	719
2523.29.10	Ordinary portland cement	616

Source: Bhutan Trade Statistics, 2018

Imports

Similarly, none of the top ten products imported into Bhutan are at present amenable to e-Commerce (See Table 1.2 below). Both exports and imports of e-Commerce would be for a different group of products and services in comparison to normal trade.

Table 1.2 Top Ten Commodities Import

BTC Code	Products List	Imported Values in Nu. in 2018
2710.19.15	Other light oils and preparations (HSD)	7943
7203.10.00	Ferrous products obtained by direct reduction of iron ore	2563
2710.12.10	Petroleum oils and oils obtained from bituminous minerals, other than crude; {Motor spirit (gasolene) including aviation spirit (petrol)}	2334
4402.90.00	Wood Charcoal (Other)	2226
8704.10.00	Motor vehicles for the transport of goods (Dumpers designed for off-highway use)	1916

2704.00.10	Coke and semi-coke of coal, of lignite or of peat, whether or not agglomerated; retort carbon (Coke and semi-coke)	1797
1006.30.00	Semi-milled or wholly milled rice, whether or not polished or glazed	1689
8537.20.00	Boards, panels, consoles, desks, cabinets and other bases (For a voltage exceeding 1,000 V)	1253
8704.21.00	Motor vehicles for the transport of goods (g.v.w. not exceeding 5 tonnes)	992
2713.20.00	Petroleum bitumen	851

Source: Bhutan Trade Statistics, 2018

The typical products traded under e-Commerce as well as the state of the required ecosystem for conducting e-Commerce strategies is shown in Table 1.3 below. Information provided in table 1.3 has been obtained from different sources provided by the PPD.

Table 1. 3: Typical e-Commerce products and ecosystem in Bhutan

E-Payment System	Local Bank Account like BNB, TBank, M-BOB and others using the Royal Monetary Authority (RMA) payment gateway. E-money institutes like (B-ngul, and Chharo) can also function without payment gateways.
Value of online trade	Not Known but estimated to be less than 1 million USD.
Products covered	Clothing, shoes, electronics and gadgets, kids' items, adult products etc.
Top e-Commerce websites	Bhutanbuy.com, Druksell, Shop.bt, Druk shopping, Bhutan shoppers, flipkart.com and snapdeal.com It is estimated that about 40 firms are registered e-Commerce licensed firms and as many may be operating informally (estimates gathered through interviews suggest around 37 firms are operating informally).
Internet penetration	Estimates vary between 60 and 90%
% of population has an account with a financial institution	64.47%
% of population has a credit card	0.3%
% of population makes online purchases and pays online	0.8%
% of women making online transaction	1%
% of men making online transaction	0.6%
Initiatives for the development of e-Commerce	1. Bhutan ICT Roadmap 2011 (Revised 2015); 2. E-Government Master Plan 2014: G2C and G2B services; 3. Bhutan Telecommunications and Broadband Policy 2014 4. Economic Development Policy 2016; 5. ICT Industry Development Plan (2016-2020)-iDzodrak; 6. E-payment gateway; 7. Rapid e-Trade Readiness Assessment; 8. Trade and Investment Bill of Bhutan, 2018; 9. Cottage & Small Industry Policy, 2019; 9. Guidelines on e-Commerce, 2019.

Source: Footnote¹

1.2e-Commerce framework in Bhutan

The development and growth of e-Commerce and e-services generally go hand in hand with the development and improvement of ICT facilities and technology. As such, the following sections cover programs and policies that the Royal Government of Bhutan (RGoB) has adopted for the development of the e-Commerce ecosystem in the country.

E-Payment System

a. **Electronic Fund Transfer and Clearing System (EFTCS)** system was implemented in 2009 with technical assistance from the Reserve Bank of India (RBI). In 2017, the RBI announced the discontinuation of the system ending future support. Therefore, RMA launched the replacement system, Global Interchange for Financial Transactions (GIFT) with three payment modes: real time gross settlement (RTGS), banking information and technology services (BITS), transactions in bulk (BULK). The EFTCS was to be discontinued by RMA starting from 1st October 2019. Nationally and internationally GIFT has worked well, though its use for transactions such as paying bills is relatively limited.

b. **Bhutan Immediate Payment Service (BIPS)**: BIPS is an instant inter-bank fund transfer service through delivery channels such as Internet, Mobile phones and ATMs. BIPS empowers a consumer to send money instantaneously to any other person in any of participating banks. Further, RMA has incorporated a domestic Payment Gateway in BIPS to automate collection by government agencies for rendered services and also interested companies registered as Merchants under payment gateway (PG) through an online payment facility for common citizens. Experience of e-tailers suggests that PG connections are, however, not stable. Again, this system has not been fully tested yet as its usage is very limited. Most of the transactions in Bhutan still happen with cash.

c. **Bhutan Financial Switch**: The RMA operationalized the Bhutan Financial Switch (BFS) on 2nd December, 2011. BFS facilitates interoperability of ATMs and point of sale (POS) machines of all commercial banks. With the implementation of BFS, consumers can avail of the ATM facility of any bank as per their convenience. The introduction of BFS not only improves payment systems, but it also encourages people to use banking facility thereby promoting financial inclusion. However, reportedly ATMs frequently run out of money and one bank's ATM card may not work in another bank's ATM. Hence this system needs to be improved.

d. **Remit Bhutan**: In 2015, the RMA developed the Remit Bhutan platform to help non-resident Bhutanese to apply conveniently for non-face-to-face foreign currency account with an authorized bank in Bhutan. The service pioneered by the RMA was developed with the objectives of promoting the safe transfer of remittances from overseas Bhutanese back to Bhutan, and eventually, promote national savings and enhance the country's foreign exchange reserves. Yet, feedback from retailers suggests that several e-Commerce operators prefer to bank their foreign exchange outside the country as even small amounts of foreign exchange for normal operations may be difficult to obtain in Bhutan.

¹ <https://www.dailybhutan.com/article/bhutan-buy-e-Commerce-platform-seeks-to-promote-sale-of-bhutanese-products-and-change-the-way-bhutanese-shop>

<http://www.dhi.bt/documents/10180/17712/final+melong+2016+final.pdf/ab533ae4-84d9-4085-8b9c-1aed363562b6>

"E-Commerce in Bhutan: Initiatives and strategies", Department of Trade, Ministry of Economic Affairs.2017

Digital 2019 Bhutan (January 2019) v01

<https://www.slideshare.net/DataReportal/digital-2019-bhutan-january-2019-v01>

e. **National e-Payment Gateway:** The national e-Payment Gateway provides an operational component of the e-governance infrastructure and full-Commerce facilities that allow secure online payments. Improving access to the gateway will increase the market access of local merchants and promote the use of e-Services along with electronic payments, particularly Internet-enabled payments which are easy and efficient. The presence of such a secure e-Payment Gateway enables e-government shared services to be paid for electronically using major local and international credit and debit cards, and in the future, other electronic payment instruments besides business and private transactions. E-PG will facilitate Online Purchases, Online Bill Payment, and payment transactions from G2C and G2B e-Services. However, very few shops, hotels and other vendors in Bhutan accept credit or debit cards. In addition, there is a 3.5% charge on credit card operations. RMA is working on improving awareness of consumers and subsidizing the provision of POS machines.

1.3 Initiatives for the development of e-Commerce by RGoB

a. **Bhutan Telecommunications and Broadband Policy 2014:** The Bhutan Telecommunications and Broadband Policy 2014 provides guidelines, principles, and rationale on how to go about developing and promoting the sector. The main objectives of the policy are connectivity for all, strengthening of rules and regulations, creation of a conducive environment for private investments and competition leading towards an efficient market and affordable broadband and telecom services. This policy provides an over-arching framework for programs in the 12th Five Year Plan and beyond (annex table 1.4).

However, there is a need to make continued progress is paramount as there are many outages both in mobile connections and in internet. Internet shutdowns are not uncommon and mobile networks are not available in several parts of the country. On account of lack of scale, the cost is high which in turn makes certain services expensive in Bhutan. The scale of operations could be increased by combining BT and TICL network, which would cover almost all parts of Bhutan. However, an expansion and overlay of network would still be required because of congestion during peak times, and the expected increase in traffic as internet usage increases.

b. **Economic Development Policy 2016:** The Economic Development Policy (EDP) sets the agenda and the general direction for the development of sectors that have the highest potential. This Policy has been prepared in consultation with a wide range of stakeholders from private to government. Under this Policy, the following steps are specified to mainstream ICT into the national development agenda:

- a) The Royal Government shall formulate and update the ICT Infrastructure Development Policy periodically.
- b) Licensing for Internet Service Providers (ISPs), mobile service providers and cable operators shall be liberalized to encourage and increase penetration of internet use and accessibility by 2018.
- c) Software development, animation, R&D and data processing centers shall be promoted as priority activities in the ICT sector.
- d) Investment in IT and IT Enabled Services (ITES) industries shall be encouraged by providing capability development training and quality education in the ICT field.
- e) Review and integrate market-oriented ICT courses in colleges and educational institutions to develop the required skills.
- f) The minimum investment threshold for FDI in IT/ITES activities located in the IT Park shall not be applicable.
- g) Foreign investor's equity limit in electronics and computer hardware is now 74% (table 5 annex).

However there has been very little investment in Bhutan as the market size is not large.

c. Fiscal Incentive Act 2017

To stimulate economic growth, foster private sector development and generate employment, the Ministry of Finance will frame these Rules on the Fiscal Incentives Act of Bhutan 2017 for the IT/ITS sector.

Income tax holiday of 5 years to newly established IT/ITES business [Section 21(a)]:

(1) It shall apply to IT/ITES, approved by MoIC and operating from within and outside the IT park.

(2) To avail the incentives, the following conditions must be fulfilled:

(a) The business entity must be licensed and registered with the Department of Revenue & Customs (DRC).

(b) The business entity must commence commercial operation between 8th May 2017 and 31st December 2020.

(c) At least 80% of the staff employed should be Bhutanese nationals throughout the tax holiday period. In the event of non-compliance to this condition, the tax holiday shall be withdrawn for the relevant year.

(d) There must be a recommendation letter from the Ministry of Information and Communications (MoIC).

Offline-Commerce business unit doesn't specifically qualify for a tax holiday. However as per DRC Tax Policies tax holidays should apply equally to small business start-ups offline-Commerce units. Offline-Commerce transactions should be taxed equally.

Benefits offline-Commerce include deep discounts, simplified record keeping and tax neutral policies. However, to encourage e-Commerce many countries have provided tax holidays which is removed once the business attains maturity. One suggestion in this context is to provide tax exemptions for exports earning hard currency either through e-Commerce or otherwise.

It is difficult to estimate how many e-Commerce firms have been able to avail these tax holidays.

d. Bhutan ICT Roadmap 2011 and Its Review

The Royal Government of Bhutan (RGOB) developed the Bhutan ICT Roadmap in October 2011, recognizing the value that ICT can bring to social and economic development guided by the values of Gross National Happiness (GNH). The Ministry of Information and Communications (MoIC) with assistance from The World Bank in May 2015, initiated a review of the 2011 Bhutan ICT Roadmap to evaluate the roadmap's objective based on the current state of political, economic and social development in Bhutan, and to assess the progress of the 34 programs identified in the roadmap. Following are the key recommendations provided for the revised ICT roadmap:

- Establish change management planning for all programs.
- Strengthen collaboration between GNH Commission, MOF, and MOIC for e-Governance.
- Dedicated team to drive the e-Government System and e-GIF Programme.
- Explore alternate funding models such as PPP (Public-private partnership) funding model or subscription model for applicable ICT projects.
- Establish ICT training and competency roadmap.
- Augment capability with domestic or foreign expertise.
- Revise Bhutan ICT Roadmap
- Establish expert pools to bring together personnel with similar knowledge onto a single platform.

- Finance recurrent program (Google Apps, e-Government Interoperability Framework, e-Government System) through the annual budget.
- Govern all ICT programs and projects through the e-Governance framework.

1.4 Bhutan E-Government Master Plan

The e-Government Master Plan is the first ICT master plan for Bhutan. It builds on existing ICT policies and strategies and complements the 11FYP by providing a holistic view of RGoB's vision, desired outcomes and initiatives as an e-Government. The Master Plan covers whole-of-government ICT initiatives that serve the Government, people, and businesses.

a. E-Government policy

The Royal Government of Bhutan (RGoB) has prioritized information and communications technology (ICT) developments with the vision of "An ICT-enabled, knowledge society as a foundation for Gross National Happiness." Further, Bhutan Information, Communications and Media (ICM) Act 2018 mandates the Ministry of Information & Communications (MoIC) to set strategic directions for implementing and promoting electronic government (e-Government) in Bhutan. E-Government policy is expected to provide clear guidance for the implementation of E-Government initiatives in the country. Besides, the policy will enable the government to fully leverage existing and emerging ICTs to increase competitiveness, enhance productivity, improve service delivery and strengthen good governance in pursuit of Gross National Happiness.

b. E-Procurement system

The Electronic Government Procurement (e-GP) System facilitates all procuring agencies to publish the Tenders, Corrigendum, and Notification of Contract Award. The primary objective of this portal is to provide single point access to the information on procurements made across various procuring agencies. These transactions in principle may be large as RGoB has declared that all its procurement would be on-line and roughly one fourth of the GDP is expected to be spent on government procurement.

c. Revenue Administration Management Information System (RAMIS) - Online Tax Filing System

A web-based system called Revenue Administration and Management Information System (RAMIS) has been developed during the 11th FYP. With its implementation, the time lag in the compilation of reports will be brought down thus enabling the Department of Revenue and Customs to report on a real-time basis. RAMIS also enables tax payers to file their annual tax returns electronically thereby avoiding the need for tax payers to visit DRC offices to file tax returns and reducing paper work for the DRC staff. DRC is planning to replace RAMIS with Bhutan Integrated Tax system (BITS).

Government Inventory System: For efficient management of government properties, the MoF will develop a web-based online inventory system.

The MoLHR, in its effort to create easy access for employment opportunities and information sharing/dissemination, came up with the initiative of developing the Online Job Portal System, setting up Regional Offices incorporating Service Centres and other resources for effective public service delivery.

d. ICT Industry Development Plan 2016-2020 (iDzodrak)

iDzodrak is the first attempt in Bhutan to develop plans proposing strategies needed to boost the ICT industry for the next five years. It is a living plan with specific programs and projects recommended for implementation in the short and long terms. In this context, iDzodrak consists of a total of 14 programs and 34 projects which will be implemented over five years starting 2016 to 2020. It's difficult to estimate how many of these projects have been implemented or successfully concluded.

1.5 E-Trade Readiness Assessment

The E-Trade For All initiative, launched at the fourteen Ministerial Conference of UNCTAD in July 2016, is a practical example of how to harness the digital economy in support of the 2030 Agenda for Sustainable Development, notably the Sustainable Development Goals (SDGs) Gender equality, Decent work and economic growth, Industry, Innovation and infrastructure and Partnerships to achieve goals. The initiative seeks to raise awareness, enhance synergies and increase the scale of existing and new efforts by the development community to strengthen the ability to develop countries to engage in and benefit from e-Commerce by addressing seven policy areas. The findings and recommendations for all policy areas (Table 6-7 annex) are given below:

1. **e-Commerce Readiness Assessment and Strategies Formulation:** Bhutan has a nascent e-Commerce ecosystem which is fueled by private initiatives and strong ICT policies. Its growth is mainly hampered by the lack of a dedicated e-Commerce strategy. For this, the development of a national e-Commerce strategy aligned with ICT Roadmap is required. This will provide a roadmap for e-Commerce development ensuring coherence and alignment of actions among the public and private sectors. Bhutan can ensure e-Commerce features prominently in future EDP and DTIS, MTP (Medium term programs) updates, to maximize its visibility and role in economic development and diversification.

2. **ICT Infrastructure and Services:** Despite an adverse geographic landscape, 95 percent of the population has access to electricity and above half the population to Internet, although the fixed/broadband Internet is still both costly and not always unreliable. Bhutan should carry out a data center investment attractiveness assessment. The attractiveness assessment study will ascertain the country's readiness to attract FDI to data centers in terms of skills requirements, infrastructure needs, business demand, legal and policy environment, fiscal schemes, linkages with hydro-power plants and building standards. Specially Data Centres such as BT and Tech Park should be assessed.

3. **Trade Logistics and Trade Facilitation:** The challenging transport scene combined with a small population makes logistics uncompetitive, prompting the deployment of innovative solutions by local entrepreneurs. Bhutan should support Bhutan Post "last mile" address localization projects outside Thimphu. Better delivery options will increase the interest in investing in online portals and complete delivery solutions. Supply chain needs to be understood for better government policy especially with respect to cold storage, postal code etc.

Interventions in the expediting delivery of packages to boost exports of Bhutan. Trade agreements including bilateral agreements with countries like Thailand, China and Brazil could help exports as Bhutanese products are of interest to a number of them.

Regarding trade facilitation:

- The Ministry of Economic Affairs (MoEA) may facilitate and promote exports through appropriate schemes in line with Bhutan’s rights and obligations under international instrument.²
- The Ministry may restrict or prohibit exports of goods and services as may be necessary as provided in the draft Bhutan Trade and Investment Bill, 2018 to:
 - (1) Ensure food security;
 - (2) Protect national treasures of artistic, historic, antique or archaeological value;
 - (3) Preserve environment and natural resources;
 - (4) Protect national and international security interests; and
 - (5) Implement the international instrument to which Bhutan is a party.
- The Ministry shall not impose quantitative restriction on exports and import of goods and services other than duties, taxes or other charges.
- The Ministry shall prescribe registration or licensing requirements as a precondition for imports.
- The Ministry may safeguard domestic industries through appropriate schemes in line with Bhutan’s rights and obligations under international instrument.
- The Ministry may apply safeguard measures in the event of increased imports of a product causing or threatening to cause serious injury to domestic industry or producers that produces like or directly competitive products, after conducting necessary investigation.

4. **Payment Solutions:** Financial inclusion is a key Government priority and has enabled the development of mobile payment solutions and an e-payment gateway. The National e-Payment Gateway will provide an operational component of the e-governance infrastructure and full-Commerce facilities that allow secure online payments. Enabling the gateway will increase the adoption of e-Commerce in the tourism industry along with electronic payments, particularly Internet-enabled payments, which are easy and efficient. The RGoB should support the development of MoEA’s strategic-Commerce framework. This framework will put in place regulations to govern and facilitate e-Commerce in Bhutan.

5. **Legal and Regulatory Framework:** The absence of a robust enabling environment has allowed an embryo of private initiatives. The financial/payment regulations are in place to allow for mobile payment solutions. The RGoB should review the compatibility of ICT-related regulations in different sectors to ensure they are in-line with expected outputs of ICT master plan and other ICT development strategies. This will increase coherence among lead agencies on ICT-related regulations.

6. **e-Commerce Skills Development:** The Royal University of Bhutan (RUB) has progressively added ICT-related topics in the curriculum, and Bhutan Tech Park provides a useful platform for more skills and knowledge into start-ups; yet these initiatives are insufficient considering needs and potential. For this purpose, the RGoB should set up an ICT Academy – Industry Council.

7. **Access to Financing:** Finance remains a key constraint to private investment and MSME growth in Bhutan. There is no special facility to provide much-needed finance to fuel e-Commerce sector growth. The RGoB should develop training programs for BICTTA members on preparing business plans and accounting books to gain access to finance.

²<https://sitreport.unescapsdd.org/bhutan/status-ratification-key-international-instruments-and-legal-framework>

Conclusions

While the use of the Point of Sales (POS) and Mobile banking are growing in popularity, there is a need for the e-payment gateway to be made more effective and other means of Internet banking should be explored. The use of credit cards both nationally and internationally should grow. Mechanisms through discounting should be instituted to encourage cashless transactions. Furthermore, there should be no charge for the use of debit and credit cards. As costs and conveniences are the major factors for the success of e-Commerce, it is recommended for the government to explore the possibilities of establishing reliable, affordable and efficient logistics.

Annex 1

Table 1: Sector-Wise Share in Real GDP (in %)

Year	Primary Sector	Secondary sector	Tertiary Sector
1980	55.9	12.2	31.9
1990	44.6	23.3	32.1
2000	33.5	33.3	33.2
2010	16.8	42.78	40.42
2015	16.67	41.34	41.99

Source: Economic Development Policy of Bhutan (2016)

Table 2: Summary Statistics from the e-Commerce Readiness Report of UNCTAD

Category	Value
Population	776,461
Population density (per sq. KM.)	20.33
GNI per capita (USD)	2,370
ICT Development Index 2016 Rank (out of 175 countries)	117
ICT Development Index (The IDI is a standard tool that governments, operators, development agencies, researchers and others can use to measure the digital divide and compare ICT performance within and across countries.) 2016 Value	3.74
Percentage of households with computer	24.63
Percentage of households with internet access	31.70
ICT Development Index use sub index	3.40
Percentage of individuals using the index	39.80
Fixed (wired) broadband subscriptions per 100 inhabitants	3.56
Active mobile –broadband subscriptions per 100 inhabitants	56.41
ICT Development Index sub index	3.84

Source: Bhutan Rapid eTrade Readiness Assessment Report (UNCTAD,2017)

Table 3: ICT and Broadband Measures for Bhutan Data (as of December 2018)

Measure	2018
Fixed Line telephone subscribers	22,015
Number of Dzongkhags HQ's with Fixed Line connections	All 20 Dzongkhags
Internet subscribers	779,966
Mobile Cellular subscribers	703,554
% of population using Mobile phones	95.8%

Number of Gewog HQ's with access to Mobile network	All 205 Gewogs
4G subscribers/users	157,874
3G subscribers/users	608,894
No. of Gewogs with access to Mobile services	All 205 Gewogs

Data provided by MOEA (2018)

Table 4: Goals of Bhutan Telecommunications and Broadband Policy 2014

Goal	Description and targets
Community access	<ol style="list-style-type: none"> Review the operation of the Universal Service Scheme to determine whether: <ol style="list-style-type: none"> It is meeting its objectives. The current objectives need to be amended, and The Community Centre program needs to be augmented by other programs for delivering broadband services to villages and local communities. Determine the minimum entry level speed for broadband from time to time to meet the changing needs of users – noting that the May 2012 entry level is a capacity of 512 kbps. Ensure that broadband service speeds are measured in terms of the speed experienced by the end user. Ensure that end users are informed of actual speeds and that licensed service providers implement plans to ensure that the speed delivered meets the description of the service offered. Review the arrangements and terms of operation for the Community Centres to ensure that they are achieving the objectives for which they were established and make amendments to the arrangements in conjunction with all stakeholders.
Individual availability	<ol style="list-style-type: none"> Achieve availability of broadband at the minimum entry level or higher speeds to 80% of the literate population of Bhutan. Encourage fixed and mobile service providers to include a range of price packages for broadband in their service offering schedules, and review the appropriateness and adequacy of the range on an on-going basis. Study feasibility of legalising application of Voice over IP (such as Skype to Skype) in Bhutan – subject to necessary consumer protections and study of licensing mechanism
Affordability	<ol style="list-style-type: none"> Undertake a study into the causes of penetration (or lack of it) for broadband services, and examine responses that might assist, including ways of improving affordability. An entry level broadband service option to be available to all at an affordable price, as a mandated offering in the service schedules of all licensed service

	<p>providers. Once the regulated price of the mandated broadband service offering has been established for each service provider, remove price controls on other retail broadband offerings.</p> <p>3. In order to reduce costs of internet access:</p> <p>(a) examine the feasibility of Bhutanese ISPs peering on a non-paying basis and without having to use other networks, and</p> <p>(b)examine the feasibility of establishing internet termination points in India, either instead of or as well as, the current locations.</p>
Broadband penetration	<p>1. Within the overall availability target of 80% by 2018, determine the penetration target that shall apply within each Gewog for each year of the Plan.</p> <p>2. Monitor service take-up by Gewog, and examine patterns to determine if there are applications or implementation arrangements that, if adopted more broadly, will facilitates greater and speedier take-up of services.</p> <p>3. Examine and implement incentives for broadband service take-up by individuals and households and incentives for service providers to set and achieve challenging targets for penetration, including collaborating with service providers to provide free Wi-Fi spots in public areas.</p>
School access and education	<p>1. All primary, secondary schools and youth centres to have broadband</p> <p>2. Establish Bhutan’s research and education network</p> <p>3.Primary and secondary school syllabuses to be formatted for complete delivery, as necessary, via broadband means. Promote the use of digital content for learning and teaching in schools, through the development of appropriate enriched content for broadband delivery.</p>
Lead applications in Government programs	<p>1. Government to develop a range of lead applications for delivery of new, enhanced or extended services online using broadband in Health, Education, Tourism, Finance, Foreign Affairs and Agriculture, specifically.</p> <p>2. 100% of hospitals and health units to be connected to broadband for remote diagnostic and supervisory support.</p> <p>3. Develop comprehensive patient data bases to enable all Bhutanese to be provided with the best possible care and attention wherever they are present with health issues in Bhutan.</p> <p>4.Tourism planning and information on broadband availability for tourists and tourist organisations, via Tourism Council and tourist operator websites.</p> <p>5.Develop detail plan for overall RNR statistics system for decision making and provision of clearances</p> <p>6.Enable online payments:</p>

	<p>a) Identify enabling policy requirements to be adopted, and</p> <p>b) Develop online payment gateway in relation to payment to be made to Government for fines, permits, taxes, passports and other services</p>
Recognition of ICT Champions	Design and implement a scheme for the identification and public recognition of outstanding leadership and entrepreneurship in the application of broadband to advance Bhutan's society and/or economy
Data collection to measure broadband progress	Review existing arrangements, and, if necessary, design and implement enhanced data collection and reporting arrangements to enable baseline and progress to be understood and for achievement of the Policy and Plan goals to be measured and communicated.
Consumer Protection	<p>1. Establish a consumer protection framework to be adopted by the telecom operators based on the Consumer Protection Act 2012</p> <p>2. Conduct consumer awareness campaigns</p>
Green Telecom	<p>1. Enforce infrastructure sharing rules. It is to be noted that Tower sharing already exists</p> <p>2. Minimize use of fossil fuels for telecom equipment by switching to clean energy. Solar energy in highlands is already being used, and diesel generators are used as backup power sources only.</p> <p>3. Encourage use of energy efficient devices.</p>
Skills Development	Develop a comprehensive skill development plan to meet HR requirements in new technologies
Telecom Division	Establish a Telecom Division within the Department of Information Technology and Telecom

Source: Bhutan Telecommunication and Broadband Policy (2014)

Table 5: Foreign Direct Investment Policy 2012

Sector	Minimum Project Cost (Nu m)	Maximum Foreign Investor's Equity (%)	Conditions/Requirements
Other manufacturing i. Electronics ii. Electricals iii. Computer hardware iv. Building materials	50	74	None
IT Park development	200	100	None
IT/ITES - Inside IT Park - Outside IT Park	NA 3	100 100	As per sector policy
Financial Services	As per FSA	51	As per Financial Services Act
Consultancy Services	5	74	Established firms employing a minimum of 5 experts and having presence in more than

			two countries or experience in international market.
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Source: Foreign Direct Investment Policy (2012)

Table 6: Main findings and recommendations (UNCTAD 2017)

Main Findings	Main Recommendations
1.e-Commerce Readiness Assessment and Strategies Formulation	
Nascente-Commerce ecosystem fueled by private initiatives and strong ICT policies, hampered by the lack of a dedicated e-Commerce strategy.	Development of a national e-Commerce strategy, aligned with ICT Road map, BICMA Act and contributing to revised EDP and 6th FYP.
2. ICT Infrastructure and Services	
Despite an adverse geographic landscape, 95 per cent of the population has access to electricity and the Internet, although fixed/ broadband Internet is both costly and unreliable.	Carry out a data centre investment attractiveness assessment.
3. Trade Logistics and Trade Facilitation	
The challenging transport scene combined with a small population makes logistics uncompetitive, prompting the deployment of innovative solutions by local entrepreneurs.	Support Bhutan Post “last mile” address localization projects outside Thimphu.
4. Payment Solutions	
Financial inclusion is a key Government priority and has enabled the development of mobile payment solutions and an e-payment gateway (planned for 2017).	Implement national e-payment gateway and support roll-out with merchants.
5. Legal and Regulatory Framework	
The absence of a robust enabling environment has allowed an embryo of private initiatives. The financial/payment regulations are in place to allow for mobile payment solutions.	Review compatibility of ICT-related regulations in different sectors to ensure they are in-line with expected outputs of ICT master plan and other ICT development strategies.
6.e-Commerce Skills Development	
Universities progressively inserted ICT-related topics in curriculum, and the Bhutan Tech Park provides a useful platform for more skills and knowledge into start-ups, yet clearly insufficient regarding needs and potential.	Set up an ICT Academy – Industry Council.
7. Access to Financing	
Finance remains a key constraint to private investment and MSME growth in Bhutan. There is no special facility to provide much-needed finance to fuel e-Commerce sector growth.	Develop training programme for BICTTA members on preparing business plans and accounting books to gain access to finance.

Source: Bhutan Rapid eTrade Readiness Assessment Report (UNCTAD)

Table 7: The way forward: Action matrix

(1) E-Commerce readiness assessment and strategy formulation

Activity	Expected output
1. Development of a national e-Commerce strategy, aligned with ICT Roadmap, BICMA Act and	Provide a roadmap for e-Commerce development ensuring coherence and alignment of actions among

contributing to revised EDP and 12th FYP.	public, private sectors and development partners (DP).
2.Ensuree-Commerce features prominently in future EDP and DTIS, MTP updates, to maximize its visibility and role in economic development and diversification	ICT is mainstreamed in national development plans and resources are budgeted from Government and DPs accordingly.
3. Transition ICT Roadmap into National ICT Master plan to feed into 12th FYP.	The various ICT master plans (education, health, tourism, Government) provide the foundation for developing a national level ICT Master plan. The National ICT Master plan will encapsulate the various sectors' ICT aspirations to form an overarching strategic ICT plan.

(2) ICT Infrastructure and Services

Activity	Expected Output
Strengthening Bhutan ICT and Training Association (BICTTA), increase acceptance and recognize value of services.	Create a single voice for the promotion of the sector and dialogue with the Government.
Conduct Market-Based Assessment of ICT Industry.	Identify skills required in the market that have potential for growth in the future.
Brand Bhutan ICT Sector.	Raise the profile of the sector and position the country as a competitive ICT FDI destination. The programme is expected to help promote Bhutan's ICT sector and encourage more FDI flows into the country.
Carry out a data centre investment attractiveness assessment.	The attractiveness assessment study will ascertain the country's readiness to attract FDI to data centers in terms of skills requirements, infrastructure needs, business demand, legal and policy environment, fiscal schemes, linkages with hydro-power plants and building standards.
Broaden and increase focus and outreach of the annual National ICT Champions Award.	Foster innovation and creativity by recognizing and rewarding outstanding ICT solutions which are developed locally. It also encourages development of local ICT talents and enterprises to create innovative ICT solutions.
Conduct International ICT Events.	Increase knowledge and recognition of the quality of Bhutan ICT industry worldwide.

(3) Trade logistics and trade facilitation

Activity	Expected Output
Support Bhutan Post "last mile" address localization projects outside Thimphu.	Better delivery options will increase the interest for investing in online portals and complete delivery solutions.
Improve Bhutan Customs capacity to clear small parcel shipments from beyond SAARC region.	Bhutanese customs are trained in risk management for better clearing of increased number of small shipments.

(4) Payment solutions

Activity	Expected output
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Implement national e-payment gateway and support roll-out with merchants.	The National e-Payment Gateway will provide an operational component of the eGovernance infrastructure and e-Commerce facilities that allow secure online payments. Enabling the gateway will increase the adoption of e-Commerce in the Tourism industry along with electronic payments, particularly Internet-enabled payments, which are easy and efficient.
Support the development of MoEA's strategic e-Commerce framework.	This framework will put in place regulations to govern and facilitate e-Commerce in Bhutan.
Develop e-money training programmes for e-Money providers.	Increase use of e-money in Bhutan following passing of e-money regulations. e-money institutes like (b-ngul and Chharo). They can also function without PG

(5) Legal and regulatory framework

Activity	Expected output
Support MoEA's pro-business stance by developing e-payment modules on the one-stop window platform.	Service users nationwide do not need to move to district or Gewog to physically pay for services provided by MoEA.
Review compatibility of ICT-related regulations in different sectors to ensure they are in line with expected outputs of ICT Masterplan and other ICT development strategies.	Increase coherence among lead agencies on ICT-related regulations.
Strengthen collaboration among Government institutions (GNHC, MoF, MoIC, MoEA) for e-governance to allow effective governance of ICT projects across the government.	Projects approved by RGoB have been screened and will not duplicate each other or on-going projects and programmes.
Revise e-Commerce services classification in MoEA business licensing and registration platforms to better reflect the specific characteristics of e-Commerce businesses	Specific licenses cater issued by MoEA for the special needs of the ICT industry.
Revise e-Commerce services classification in MoEA business licensing and registration platforms to better reflect the specific characteristics of e-Commerce businesses	Specific licenses cater issued by MoEA for the special needs of the ICT industry.
Support e-Commerce law drafting.	Increased confidence of e-Commerce players to invest in Bhutan, framework law to bring coherence to provisions in other existing laws.
Initiate drafting of the ICT sector regulation where the legislation, executive orders and administrative rules are issued by the government (to be inspired by best regulatory practices in the world).	The sector is government-regulated for a transition period, ensuring fair play and harmonious development, before being co-regulated with the private sector.
Review of ICT taxation laws and subsidy policies.	Taxation laws and policies play an important role in determining the usage of ICT and attracting FDI to the country. The review will help measure the effectiveness of taxation measures introduced by RGoB for ICT-related products and services.

(6) E-Commerce skills development

Activity	Expected output
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Enhance existing Job Portal with mobile application. The job portal is a central repository of employers and jobseekers that provides timely information on skills requirement and numbers.	The existing Job Portal is enhanced to address its current issues, improve its adoption by making it available as mobile applications for at least two major mobile platforms and drive greater adoption by promotion and awareness.
Increase sustainability and appeal of Thimphu Tech Park Ltd.	Facilitate the growth of ICT start-ups by providing access to its facilities, collaborating with technology leaders and experts (both from within and outside) to guide start-ups and eventually helping to graduate the start-ups into bigger business.
Setup ICT Academy – Industry Council	The ICT skill gap is reduced by improving the quality and usefulness of ICT education delivered in universities and colleges making ICT graduates immediately employable.
Structured Internship Programme	Promising graduates acquire state of the art knowledge and skills from leading national and international firms, increasing their employability.
e-Commerce awareness programme	e-Commerce adoption is facilitated by increasing knowledge and skills fore-Commerce and changing attitudes towards online portals.
Establish Center of Excellence (CoE) for Mobile Apps and Services.	Standards, governance and security policies relevant to mobility should be better defined, technology expertise is provided by authoring best practices.

(7) Access to financing

Activity	Expected output
Introduction of ICT Innovation Grants and Schemes (existing schemes are focused mainly on the development of skills either for business start-up or employment generation, leaving out the room for innovation to grow).	Stimulate innovation in individuals or organizations, which will have social impact or commercially viability.
Develop training programme for BICTTA members on preparing business plans and accounting books to gain access to finance.	Increased approval of loan applications of ICT companies by commercial banks and other financial institutions.
Explore alternate funding models such as PPP (Public-private partnership) funding model or subscription model for applicable ICT projects.	Diversify source of funding for ICT projects leading to an increasing number of bankable projects.

Source: For tables 1-6, Bhutan Rapid eTrade Readiness Assessment Report (UNCTAD, 2017)

Chapter 2. Legal Framework and Enforcement Mechanism in Bhutan for Electronic Commerce

Introduction

There is no single legislation on electronic commerce in Bhutan. Instead, the Royal Government of Bhutan has enacted various laws and regulations to govern information technology and information technology-enabled services sectors. The main relevant legislation in this regard is the Information, Communications and Media Act of Bhutan, 2018 (ICM Act). The ICM Act consists of provisions on electronic governance, electronic commerce, electronic signatures, protection of privacy, domain names, internet service providers etc. These provisions provide the Government with certain powers to regulate the ICM-related activities and sectors in the country.

In addition, the Consumer Protection Act (CPA), 2012 and Consumer Protection Rules and Regulation, 2015 (CPRR) have been enacted by the Royal Government of Bhutan to protect economic interest and safety of consumers, and ensure better consumer products and services, facilitate quicker redressal mechanism, to avoid economic harm and adverse consequences in the course of acquiring and using goods and services made available in the market. The CPA and CPRR detail duties of business entities namely Manufacturers, Suppliers and Service Providers of goods & services, like risk assessment and compliance with safety standards, product labelling, display correct information including the price tag, refund to consumers on deficiency of services etc. It establishes provisions of statutory information related to safety of goods and services and rights of consumers vis-a-vis the duties of business entities. Establishment of Consumer Redressal Forums at various levels has facilitated consumer protection and grievance redressal.

The Copyright Act of Bhutan protects literary and artistic works of the proprietors and regulates reproduction of the same only for information purposes. The relevant issue that stands out is whether copyrighted work and their broadcasting or reproduction or publishing over the internet falls within the scope of the Copyright Act of Bhutan. As on July 2019, the Copyright Act is being revised by the Department of Intellectual Property. The Industrial Property Act also regulates IPR by covering inventions, patents, trademarks (including domain names), and industrial designs. The Online IPR Registry is maintained by the Department of Intellectual Property at www.ipbhutan.gov.bt. Interestingly, authorized agents of foreign companies can also file complaints about violation of their IPRs in Bhutan.

The Foreign Exchange Regulations, 2013 (FER) is an important legislation enacted by the Royal Government of Bhutan to regulate inflow and outflow of currency, gold, silver and other forms of money transfers. Current transactions and international money transfer services are regulated by the FER Act so as to ensure cross-border transactions are traceable and accounted for by the Government.

The Royal Government of Bhutan has proposed the Trade and Investment Bill, 2018 to regulate cross-border trade in merchandise goods as well as services. The Bill also lays down provisions that provide a basis to impose conditions and also facilitate foreign investments in Bhutan. This Bill is important with a view that the sale and purchase of goods over e-Commerce platforms include import of physical goods, making the Bill directly regulating the delivery of goods to the consumers in case these goods are imported. Online services provided by foreign internet service providers also fall within the scope of the Bill. Though there is no express mention of e-Commerce services sector in the Bill, the provisions related to regulation and facilitation of foreign investments would surely cover investments in e-Commerce

services sector as well. Therefore, the Trade and Investment Bill, 2018 is a welcome attempt by the Royal Government of Bhutan to regulate e-Commerce services sector through a single legislation.

The following sections of this Chapter sets out relevant provisions or elements of the abovementioned legislations which have a direct or indirect effect on the e-Commerce landscape of Bhutan.

2.1 Information, Communications and Media Act of Bhutan, 2018

The Information, Communications and Media Act of Bhutan, 2018 (ICM Act) applies to any kind of information in the form of a data message used in the context of commercial and non-commercial activities to include domestic and international dealings, transactions, arrangements, contracts and exchanges and storage of information. The Ministry of Information and Communication (Ministry) is the lead government agency under the ICM Act.

2.1.1. Relevant provisions of the ICM Act

Electronic Governance

Under the ICM Act, the Ministry is mandated to establish and promote Government-wide initiatives to encourage and facilitate the development and enhancement of e-governance services. Governing and managing the implementation of e-Government program is entrusted with the e-Government Governance Council, which should comprise of the following hierarchy:

- (1) Cabinet;
- (2) E-Government Council consisting of government secretaries and secretaries of relevant autonomous agencies;
- (3) E-Government executive committee;
- (4) E-Government review committee; and
- (5) Private sector ICT advisory panel.

All the governmental agencies have been entrusted with the responsibility to use ICT facilities for their day-to-day functioning and making e-governance accessible to the general public. To compliment this, the Ministry is required to work with all the agencies to maintain an integrated Internet-based system of providing the public with access to Government information and services. Each governmental agency must submit an e-governance status report to the Ministry, at specified times and in the form and manner as prescribed by the Ministry.

Electronic Commerce

The Chapter on Electronic Commerce under the ICM Act applies to *any kind of information in the form of a data message used in the context of commercial and non-commercial activities to include domestic and international dealings, transactions, arrangements, contracts and exchanges and storage of information*. Where any other law requires information to be presented or retained in its original form, that requirement is met by a data message if:

- (1) There exists a reliable assurance as to the integrity of the information from the time when it was first generated in its final form or communicated in a form which can be demonstrated to represent accurately the information originally generated, or communicated as a data message; and
- (2) That information is capable of being displayed or produced to the person to whom it is to be presented.

In addition, data messages can be used to express an offer and an acceptance necessary for formation of a contract. Such contracts would not be denied validity or enforceability under the ICM Act on the sole ground that a legal stamp has not been affixed or has not been attested by witnesses. The provision adds that if the originator has stated that the data message is conditional on receipt of the acknowledgement, the data message is treated as though it has never been sent, until the acknowledgement is received.

Electronic Signature

Provisions on e-signatures apply to electronic signatures, which meet the requirements of a physical signature under any law of Bhutan. An electronic signature, for the purpose of this Act, is required to have the following minimum features:

- (1) The signature creation data are, within the context in which they are used, linked to the signatory and to no other person;
- (2) The signature creation data were, at the time of signing, under the control of the signatory and of no other person;
- (3) Any alteration to the electronic signature, made after the time of signing, is detectable; and
- (4) Where the purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, any alteration made to that information after the time of signing is detectable.

In this regard, the ICM grants the Ministry powers to create Rules and Regulations to specify:

- (1) The rights and obligations of certification products and services providers;
- (2) The manner in which the Controller must administer and supervise compliance with the obligations;
- (3) The procedure pertaining to the granting, suspension and revocation of accreditation;
- (4) Fees payable;
- (5) Security requirements;
- (6) Accreditation of certificate issued outside Bhutan; and
- (7) Any other relevant matter which is necessary for the implementation of provisions on e-signatures.

A certificate issued outside Bhutan has the same legal effect in Bhutan as a certificate issued in the country, if it meets the requirements of the ICM Act and Rules and Regulations made thereunder. Where, parties agree, as between themselves, to the use of certain types of electronic signatures or certificates, such agreements are recognized as sufficient for the purposes of cross-border recognition.

Protection of Online or Offline Privacy

An ICT and Media facility or service provider and vendor (ICT entities) is required to respect and protect the privacy of personal information, including sensitive personal information which they receive from the users or consumers.

The privacy policy of an ICT and Media facility is mandated to include the following details:

- (1) Various types and sources of information being received, collected and maintained online, the purposes for which such information is collected, how the information may be used, and to whom the information may be disclosed;

- (2) Options available to users or consumers regarding the collection, use and disclosure of the personal information, how they may exercise and, where appropriate, change these options, and the implications of each of the options;
- (3) How users or consumers may review and, when necessary, have such information amended or removed; and
- (4) When the website uses “cookies,” or any spyware, how and why they are used and the consequences, if any, of the refusal by any user or consumer to accept a cookie or spyware.

According to the ICM Act, the information collected (as above) must be stored and used for the intended purpose only and may be removed or withdrawn upon the request of the users. An ICT entity is required to maintain effective controls to protect the integrity and confidentiality of payment and other personal information, including sensitive personal information that user or consumer may provide. An e-mail message which an ICT entity may send should compulsorily and prominently display a return e-mail address and provide in plain language, a simple procedure by which users or consumers can notify the concerned ICT entity that they do not wish to receive such messages in the future.

Domain Names

The Minister of Information Technology can designate a relevant agency to be known as the *Bhutan Network Information Centre* to register domain names and act as registrar of domain names in Bhutan. The Centre would ensure effective protection of the registered domain names both at national and international levels. The Bhutan Network Information Centre is required to:

- (1) Administer and manage the domain name with the country code ‘.bt’;
- (2) Ensure compliance with international best practice in the administration of domain name;
- (3) Issue license and regulate registries; and
- (4) Deal with any incidental matter.

Internet Service Providers, their operations and liability

According to the ICM Act, an internet service provider (ISP) is not liable for merely storing content produced or created by any third-party, and which may be made available for public access, provided that: (1) They have no knowledge of any illegality in relation to such content;

- (2) They are not aware of any facts or circumstances from which such illegality can be deciphered or inferred;
- (3) Upon obtaining such knowledge or awareness, they act expeditiously to remove the content in question or to disable public access to it; or
- (4) They do not possess the technical knowledge or ability, or cannot reasonably be expected having regard to all the circumstances, to block public access to such content.

In addition, there is no liability on an ISP for any content produced or created by a third-party which is merely transmitted or routed through the facility or system of the ISP for the purpose of enabling the public to access such content over the internet, provided the internet service provider does not:

- (1) Initiate the transmission;
- (2) Select the receiver of the transmission; and
- (3) Select or modify the information contained in the transmission.

Cyber Security

All forms of personal rights and security accorded to the citizens of Bhutan are protected in the cyber world. Under the ICM Act, a person must not intentionally, or without the authority, interfere with data

so as to cause the data to be modified, destroyed or otherwise rendered ineffective. The Government is required to, by directive, establish an agency to be called the *Bhutan Computer Emergency Response Team* (Bt-CERT) to serve as the national agency to coordinate cyber security activities and be a central point of contact on all cyber security matters pertinent to national security in the country. The Bt-CERT can establish policies and procedures required to implement its functions under the ICM Act.

As required, Department of Information Technology has established the Bt-CERT to protect public infrastructure from threats of cyber-attacks. However, it is suggested that there is a lack of technology experts in the team. Pro-active actions like engaging with ethical hackers to improve security systems are proposed to be undertaken by Bt-CERT.

Data Protection

A person must obtain the express written permission of the subject for the collection; and must not disclose any of the personal information held by it to a third party and collate or process any personal information, unless permitted or required to do so by law. The person possessing, dealing or handling any personal data, including sensitive personal data or information is required to delete or destroy all personal information which has become obsolete.

2.1.2. Recommendations/Suggestions

The Information, Communication and Media Act of Bhutan, 2018 is a comprehensive legislation with a broad scope covering electronic governance, electronic commerce, e-signatures, domain name and most importantly, data protection. However, there are certain provisions under the ICM Act which would require a revision. The Chapter on Electronic Commerce covers data messages and allows for their legal validity and retention, and also permits use of data messages for formation of valid contracts. However, the Chapter falls short of covering the important aspects of Electronic Commerce, like regulation of B2B or B2C businesses which operate over the internet. The Chapter could also include provisions on storage, processing and monetization of data. It is suggested that distribution services, platform liability, responsibilities of technology companies involved in e-Commerce and websites and mobile applications must be brought within the scope of ICM Act so that the entire ecosystem of e-Commerce is governed by the ICM Act.

In addition, though the DIT has established Bt-CERT (as required by the ICM Act) to ensure cyber security, it consists of representatives from the government and these officials do not have the technological prowess to respond to cyber security situations. It is, therefore, suggested that technology experts and investigative ethical hackers must be engaged by Bt-CERT to track down and counter any threat to cyber security.

Lastly, it is also suggested that while there is a limited liability on ISPs for any information stored on their system/website, they must be mandated to remove the content/information promptly on request from the owner/generator of that information or content.

2.2 Consumer Protection Act, 2012

The CPA applies to all offering, selling and marketing of goods and services. In addition, it applies to all goods supplied and services provided in Bhutan irrespective of the residence and location of the supplier and the service provider.

2.2.1. Relevant Provisions of the CPA and CPRR

The CPA addresses the concerns of the consumers of goods and services and grants certain rights to the consumers and duties/responsibilities of the Business entities dealing in goods and services.

Rights of Consumers

The CPA provides the following rights to the consumers:

- (1) Protection of their lives, health and safety in the consumption of goods and services;
- (2) True, sufficient, clear and timely consumer education including information on goods and services offered, as well as on prices, characteristics, quality and risks that may be encountered in the consumption of goods and services;
- (3) Fair, non-discriminatory and equitable treatment by businesses which will include fair terms of contract and sale;
- (4) Be assured of, wherever possible, access to a variety of products, technologies and services at competitive prices;
- (5) Get redress against unfair trade practices and unscrupulous exploitation of consumers;
- (6) Form consumer associations;
- (7) A physical environment that will enhance the quality of life for present and future generations; and
- (8) Basic goods and services, which guarantee dignified living.

Duties of Manufacturers

While the consumers have been provided with certain rights, the manufacturers of goods are required to undertake certain duties with respect to protection of these rights of the consumers:

- (1) Take appropriate action necessary to avoid risks to the consumer;
- (2) Clearly comprehend the manufactured product in terms of its nature, type, quality, and other inherent characteristics;
- (3) Assess the risk inherent in a product throughout the normal or reasonably foreseeable period of its use, where such risks are not immediately obvious without adequate warnings and take precautions against those risks;
- (4) A manufacturer shall, voluntarily or on directives of the relevant agencies, recall the goods circulated in the market, at their own expenses, in the event goods so circulated are of risk or foreseen to be of risk to the consumers;
- (5) A manufacturer shall comply with safety standards as prescribed by relevant agencies when goods are manufactured or distributed; and
- (6) A manufacturer shall not require the consumer to pay a price higher than the displayed price of the goods.

Duties of Service Providers

When the sale-purchase of services takes place, the service providers too, like the manufacturers, have certain duties under the CPA to protect the consumers' rights:

- (1) A service provider shall clearly indicate or show fees of the services offered;
- (2) A service provider shall describe the characteristics of the services including its duration as well as the costs of spare parts, materials and labour;
- (3) Refund the consumer in case of deficiency in the service or loss of goods or damage to the goods rendering it inappropriate for a particular purpose in whole or in part; and
- (4) Be liable for deduction or payment of 0.5% per day up to a maximum of 10% of the total amount in case of failure to provide the services within the stipulated time as agreed.

Misleading and False Representation

The CPA provides strict norms and requirements to ensure that the information given to the consumers about products (goods or services) is not misleading and the consumers are not aggrieved with false, incomplete or misrepresented facts or information about the products.

- (1) A person shall not mislead the consumers on the price of the goods and services;
- (2) Goods displayed for sale and, wherever applicable, services shall have the price affixed conspicuously;
- (3) No person shall offer any gift, prize or other free item with the purchase of any goods or services, whether or not contingent on the purchase of other goods or services;
- (4) No person shall demand for or accept any payment or other consideration for goods or services, if at the time of the demand or acceptance that person does not intend to supply the goods or services;
- (5) No person shall in connection with the sale or grant or possible sale or grant of an interest in land and building make a false or misleading representation;
- (6) Misleading advertising; and
- (7) The supplier and manufacturer shall not discriminate consumers in the supply of goods and services.

Safety of Goods and Services

Consumer health and life are of paramount importance when it comes to consumer interests. The CPA, therefore, sets out mechanisms to ensure safety of goods and services:

- (1) The Consumer Board, in consultation with the relevant agencies/organizations may prescribe safety standards. The Board, in consultation with the relevant agencies, may adopt standards which are internationally recognized such as CODEX, International Standards for Phytosanitary Measures (International Plant Protection Organization), terrestrial and aquatic animal health codes of the World Organization for Animal Health (OIE) to assure the sanitary safety of international trade in terrestrial animals and aquatic animals, and their products, International Organization for Standardization (ISO), International Electro Technical Commission (IEC), etc. or regional standards, wherever applicable, for compliance by service providers, manufacturers and suppliers.
- (2) The Consumer Board may, by notification, declare any good or any class of goods to be prohibited goods where goods or a class of goods have caused or are likely to cause injury to any person or property or is otherwise unsafe.

Guarantee in Respect of Supply of Goods

- (1) Where goods are supplied to a consumer, there shall be an implied guarantee that the supplier has a right to sell the goods;
- (2) Implied guarantee of Acceptable Quality;
- (3) Implied guarantee that the goods are fit for any particular purpose;
- (4) Implied guarantee that the consumer shall not be liable to pay to the supplier more than the reasonable price of the goods; and
- (5) Where goods are supplied to a consumer, there shall be implied a guarantee that the manufacturer and the supplier shall provide for the repair of the goods and the supply of spare parts. It shall not apply where reasonable action has been taken to notify the consumer.

Rights against Suppliers

Consumers have been granted rights to grievance redressal and remedy towards the suppliers of goods in respect to the above guarantees:

- (1) Consumers have a Right of Redress against suppliers;
- (2) A supplier shall remedy a failure of any goods to comply with a guarantee;
- (3) The consumer may reject the goods by notifying the supplier of the decision to reject the goods and of the ground or grounds for the rejection; or
- (4) A refund of any money paid or other consideration provided by the consumer in respect of the rejected goods.

Guarantees in Respect of Supply of Services

In line with the guarantees of suppliers of goods, the CPA also enumerates guarantees to consumers from service providers:

- (1) Where services are provided to a consumer, there shall be implied a guarantee that the services will be completed within a reasonable time;
- (2) Implied Guarantee of Reasonable Care and Skill; and
- (3) Implied Guarantee of Fitness for Particular Purpose.

Rights against Service Providers in Respect of the Guarantee

- (1) A consumer shall have a right of redress against a service provider, if the services or product resulting from the services fail to comply with any of the implied guarantees; and
- (2) Options against Service Provider are available to consumers where services do not comply with Guarantees.

Consumer Board

The Consumer Board is required to be established by this Act. The Board shall consist of the following members:

- (1) Chairperson, who shall be a Secretary from the relevant Ministry;
- (2) One member each from different relevant ministries subject to a maximum of two;
- (3) Two representatives of Civil Society Organizations;
- (4) Two representatives of the general public, who shall be senior citizens or experts;
- (5) Head of the Office of Consumer Protection who shall be the ex-officio Secretary to the Board.

The Board is the highest body in the country dealing with consumer affairs and policy issues, and shall be empowered to:

- (1) Formulate policy guidelines concerning the interests of consumers in the country and monitor its implementation;
- (2) Establish committees to deal with specific issues in relation to consumer policy and guidelines;
- (3) Consider all matters of concern to consumers and make recommendations to relevant agencies;
- (4) Direct the Office of Consumer Protection on matters affecting the interests of consumers, and protect and promote the interests of the consumers of goods and services made available to them through trade and commerce;
- (5) Review the implementation of policies and programmes by the Office of Consumer Protection;
- (6) Advise the Office of Consumer Protection on the enforcement of this Act;
- (7) Advise the Office of Consumer Protection on the promotion of consumer protection and awareness of consumer issues;

- (8) Recommend to the Government for approval the remuneration of Board members, dispute settlement committee members, any other committees and functionaries of the institutions under this Act; and
- (9) Any other matter which may be referred to it by the Office of Consumer Protection.

Consumer Protection Forums and Dispute Settlement forum

The CPA provides for establishment of the Office of Consumer Protection (OCP). The OCP shall:

- (1) Enforce the provisions of the CPA;
- (2) Appoint Consumer Advocates in accordance with the requirements for enforcement of the CPA;
- (3) Receive complaints from consumers and initiate enquiries;
- (4) Investigate any trade practices detrimental to consumers and refer its findings to the Board;
- (5) Disseminate information and educate consumers on provisions of this Act;
- (6) Advise and educate consumers about goods and services;
- (7) Carry out research on consumer issues;
- (8) Be the Secretariat to the Consumer Board;
- (9) Promote the development of policy on sustainable consumption of goods and services;
- (10) Make all information available to the public pertaining to complaints filed and actions taken; and
- (11) Perform any other functions as directed by the Board.

In addition, the Dispute Settlement Committees are created under the CPA, consisting of three members at Regional or Dzongkhag or Municipal levels as appropriate. Any consumer dispute which is of a criminal nature is brought before the Court of law for prosecution according to the laws. Any complaint on goods and services shall be lodged with the Gup, the Consumer Advocate or Office of Consumer Protection.

Administrative Penalties

If the Office of Consumer Protection or consumer advocate or authorized officer in the Regional Trade and Industry Office is of the opinion that a service provider, manufacturer or supplier has violated section 6-18 (misleading and false representation) of the Act, the business entity shall pay a fine equivalent to the value of the goods or services in question or rectify the false and misleading representation within 14 (fourteen) days. Failure to pay the fine or rectify would result in paying a fine equivalent to the value of the goods or services in question and cancellation of business license in consultation with relevant licensing authority. The value of individual goods and services for Individual based trade practice violations shall be the value as determined by dispute settlement committee. And the value of goods and services for general trade practice violations shall be the value equivalent to value of goods sold or services provided through unfair practices or equivalent to value of two weeks sale proceed collected through such unfair trade practices if the value cannot be determined. Any property or financial damages to a consumer as a result of the acts of a service provider, manufacturer and supplier shall be compensated.

2.2.2. Recommendations/Suggestions

While the CPA has an extensive coverage of rights of the consumers of goods and services, duties on part of the manufacturers of goods and service providers to ensure consumer interests are addressed and the CPA establishes Consumer Board and Consumer Protection Forums for grievance redressal, an important element is absent from the legislation. The CPA must include mandating three-Commerce websites and applications to provide consumers a mechanism to register their complaints about counterfeit goods or substandard services. Amendment in the Act may take time as it requires

endorsement of the Parliament. However, in line with Section 4(e) of the CPA, the draft e-Commerce guidelines suggested that an appropriate system to resolve consumer complaint arising from all e-Commerce operators be put in place. In addition, a consumer can directly lodge complaints with the OCP under the heading of dispute settlement of e-Commerce guidelines of e-Commerce guidelines, 2019. Further Consumer Protection guidelines of e-Commerce will be completed by September, 2020.

More specifically, e-Commerce/e-retail websites must provide a means for consumers to register complaints and these websites must be mandated to inform the legal proprietor of the registered trademark (in the case of counterfeit products) and remove all information about the alleged counterfeit product from its website/application within 12 hours. In addition, e-Commerce companies must mention the name, address, contact details and BST/VAT registration number of the sellers/service suppliers on their websites/applications. This will be incorporated in the consumer protection guidelines of e-Commerce.

To ensure that only authentic products are sold to the consumers, it is recommended that e-Commerce companies mandate an undertaking of authenticity from the sellers/service suppliers and publish it on their websites/applications. This is already being encouraged by OCP in addition, the mandate that the information on goods and services should be correct, clear and sufficient and should contain information on prices, characteristics, quality and risks in consuming these products. Special emphasis should be paid to consumer health and Safety and these aspects have already been covered in e-Commerce guidelines, 2019.

2.3 Intellectual Property Protection

2.3.1. Copyright Act of the Kingdom of Bhutan, 2001

Copyright Works

Literary and artistic works (hereinafter referred to as "works") are original intellectual creations in the literary and artistic domain. Translations, adaptations, arrangements and other transformations are protected as works under the Copyright Act of Bhutan, 2001. The author of, or other owner of copyright in, a work has the exclusive right to carry out or to authorize the reproduction, translation and adaptation, arrangement or other transformation of the work. Private reproduction of a published work in a single copy, where the reproduction is made by a physical person exclusively for his own personal purposes, are permitted, without the authorization of the author of, or other owner of the copyright in, the work. Author always has right to claim authorship, have name removed, object to distortion, mutilation, modification or other derogatory action that would prejudice his honour or reputation.

The following acts are permitted, without the authorization of the author:

- (1) The reproduction in a newspaper or periodical, the broadcasting or other communication to the public, of an article published in a newspaper or periodical on current economic, political or religious topics or a broadcast work of the same character.
- (2) The reproduction and the broadcasting or other communication to the public, for the purpose of reporting current events.
- (3) The reproduction in a newspaper or periodical, the broadcasting or other communication to the public of a political speech, a lecture, address, sermon or other work of similar nature delivered in public.

- (4) the reproduction in one copy of the adaptation of a computer program is permitted, without the authorization of the author of, or other owner of copyright in, a computer program, by the lawful owner of a copy of that computer program, provided that the copy or adaptation is necessary for the use of the computer program.
- (5) The importation of a copy of a work, by a physical person, for his personal purposes.
- (6) Public display of originals or copies of works are permitted.
- (7) The economic and moral rights are protected during the life of the author and for fifty years after his death. In the case of a work of joint authorship, the economic and moral rights are protected during the life of the last surviving author and for fifty years after his death. The physical person whose name is indicated on a work in the usual manner as the author, in the absence of proof to the contrary, is presumed to be the author of the work.

Protection of Performers, Producers of Sound Recording and Broadcasting Organizations

A performer has the exclusive right to carry out or to authorize the broadcasting or other communication to the public of his performance, except where the broadcasting or the other communication is made from a fixation of the performance. A producer of a sound recording has the exclusive right to carry out or to authorize direct or indirect reproduction of the sound recording, importation of copies of the sound recording, rental or public lending of a copy of the sound recording, irrespective of the ownership of the copy rented or lent.

In case sound recording published for commercial purposes, or a reproduction of such sound recording, is used directly for broadcasting or for other communication to the public, or is publicly performed, a single equitable remuneration for the performer or performers and the producer of the sound recording shall be paid by the user to the producer.

Any infringement of a right protected under the Copyright Act, if committed wilfully, or by gross negligence, and for profit-making purposes, is punishable by imprisonment for a period of up to one year or by a fine of up to Nu. 10,00,000 or by both.

Recommendations/Suggestions

The Copyright Act came into force with a view to protect copyright of a writer/author/artist and their right on their copyrighted work. Since technology has evolved at unprecedented levels, it is suggested that the provisions of the Copyright Act are amended to respond to the storage, use, re-use, reproduction, broadcasting and protection by way to technology or in a digital form or on a digital platform. For example, the meaning of “broadcasting” must be amended to include broadcasting over the websites by a commercial entity, posting of copyrighted work on social media as well as pay-per-view, video streaming websites (Netflix, Amazon Prime) and broadcasting through live streaming platforms.

2.3.2. Traditional Medicines

Bhutan has a total trade deficit of USD 420 million (Nu 29.7 billion). Promotion of exports to its trading partners and third countries is essential to improve foreign exchange inflow and thus, Bhutan’s trade deficit. In this regard, the Framework Policy for Electronic Commerce in Bhutan is intended to promote export of goods and services through electronic means. Since the top exports from Bhutan are made up by minerals and mineral-based products, which are bulky, the focus of e-Commerce should be low-volume high value products. The products normally traded by Bhutan are not tradable over the internet and hence their export cannot be promoted through electronic commerce. For example, Bhutan’s hydropower industry accounts for over 12 percent of its GDP and 40 percent of its total exports. Trading

hydropower over the internet, though not impossible, is difficult and unprecedented for a Landlocked Least-Developed Country like Bhutan.

It is, therefore, imperative to contemplate other products, preferably indigenous to Bhutan, which should be promoted to be exported through electronic commerce. Traditional Medicines are products which could be an attractive export from Bhutan, as these medicines are indigenous to the country and involve traditional knowledge (TK) coming from the Bhutanese culture, traditions and customs. Other products like traditional herbs, powders and attire can also be exported from Bhutan through electronic commerce. Artistic and literary works, which are traditionally enshrined in the Bhutanese culture, could also find a place in the global market in the form of high-value products, thereby contributing to the foreign exchange inflows.

Whether it is medicines, literary/artistic works or attire, an element of traditional knowledge in these warrants a protection of TK (and the TK-based products) separate from the general protection IPRs. TK is the knowledge which does not belong to an individual or is developed by a corporation. TK belongs to the society, to the community and must not be treated with the same yardstick as other IPRs. Medicines are generally protected under a country's patent law, while artistic and literary works are protected under the copyright law. However, medicines and artistic/literary work based on TK warrant a greater degree of protection and protection of rights to use TK solely by the community. Countries like Kenya, Peru, Thailand, Malaysia, Ethiopia, Portugal, Azerbaijan, Zambia, Vanuatu, China, Australia, New Zealand and India have enacted legislations or created mechanisms to grant special status to TK and accord greater protection.

Recommendation/Suggestion

The legal and regulatory regime in Bhutan needs to recognize and protect TK by establishing a separate Regulator or Registry under the Department of Intellectual Property. The Regulator must operate in consultation with the local community of Bhutan and the RGoB. The protection granted to Traditional Knowledge must be longer than the general period of protection granted to patents or copyright as TK has a presence and application for a long period in time. Alternatively, if the Government of Bhutan decides to include TK within the existing IPR regime and register TK-related products under the present patent, copyright protection, certain restrictions and conditions must be laid out by the Government to ensure that products having an element of TK are not registered as patent or copyright or any other form of IPR without consultation with the local community and strict scrutiny. This is important to ensure that no individual proprietor obtains exclusive rights to monetize products created from traditional knowledge.

In attempts to increase the attractiveness and authenticity of Bhutanese products, the Department of Trade has introduced "Seal of quality and excellence" which would be certified only to authentic Bhutanese products. In addition, policy initiatives like "Made in Bhutan" and "Grown in Bhutan" are being considered by the Department of Trade. These policies could be utilized to ensure that Traditional Medicines, Traditional Artistic/Literary Works, Traditional Attire or Traditional Herbs are certified as authentic products borne out of Traditional Knowledge of Bhutan and are authentically produced within Bhutan.

2.4 Trade and Investment Bill of Bhutan, 2018

Overview

This legislation applies to trade and investment in goods and services. It mandates free and unrestricted trade and investment, except to the extent provided under this Act, and Trade and Investment must be facilitated in a transparent and efficient manner. The Ministry of Economic Affairs is the competent authority for the purpose of this Act. Other agencies may initiate or impose measures affecting trade and investment only in collaboration and consultation with the Ministry.

2.4.1. Relevant Provisions of the Trade and Investment Bill, 2018

Trade Facilitation and Logistics

The Ministry is required to prescribe registration or licensing requirements as a precondition for exports, imports and trade of goods and services domestically. It may restrict or prohibit exports of goods and services as may be necessary to ensure food security protection of national treasures of artistic, historic, antique or archaeological value. The Ministry must not impose restrictions on the imports of goods and services, except to protect foreign exchange reserves, preserve environment & natural resources and safeguard other national interests. The Ministry can also impose quantitative restriction on exports and imports of goods and services other than duties, taxes or other charges to safeguard its balance of payment interests.

The Ministry or any other relevant agency may, among others, impose following fees, charges and formalities for trade and investment activities:

- (1) Consular transactions, such as consular invoices and certificates;
- (2) Quantitative restrictions;
- (3) Licensing or registration;
- (4) Exchange control;
- (5) Statistical services;
- (6) Documents, documentation and certificates;
- (7) Analysis and inspection;
- (8) Quarantine, sanitation and fumigation; and
- (9) Any other fees or charges where necessary.

Offences and Penalty

The Trade and Investment Bill impose penalties on persons committing the following offences:

- (1) If the person secretly and illegally imports, exports, sells or distributes restricted or prohibited goods, he shall be liable to value based sentencing as per the penal Code of Bhutan or any other applicable laws in effect. Import and export of restricted/prohibited items of agriculture sector are not covered by Bhutan Penal Code unless it is of criminal in nature.
- (2) If a person forges any document with the intention to invest, import, export, domestic sale or distribution of goods or services, a person shall be guilty of offence of forgery and shall be liable in accordance with the Penal code of Bhutan.
- (3) A person shall be guilty of the offence of reporting false information, if the person knowingly reports false information to a competent authority.

- (4) A person who purposely obstructs an authorized official in the discharge of duties or fails to comply with the decisions or order of the competent authority and committee after the expiry of appeal period under this Act, shall be liable for an offence of obstruction of lawful authority
- (5) If a person unlawfully restrains trade and commerce by interfering with free competition in business and commercial transactions, the person shall be liable for offence of antitrust in accordance with the Penal Code of Bhutan.
- (6) A person engaged in export or import, sale, distribution and investment in goods or services in violation of this Act shall be liable for fines and penalties as prescribed in the Rules and Regulations under this Act.

2.4.2. Recommendations/Suggestions

The Trade and Investment Bill covers electronic commerce by virtue of covering trade in goods (including trade of physical goods which are ordered through the internet), trade in services (including services supplied through the world wide web) and investment (including investments in e-Commerce/e-retail sector, telecommunications sector and IT, ITeS sectors. The provisions of the Bill are comprehensive but the requirement imposed on business entities to take prior approval from the government for all technical marketing, management and franchise collaborations is problematic. This provision can substantially reduce the ease of doing business in Bhutan by increasing procedures, time, cost, and capital to expand or even open a new business. This requirement can especially be cumbersome for e-Commerce business entities as these are dependent primarily on technical and marketing collaborations to provide their services and generate income (because there are no profits generated by merely hosting a website or operating as a retail platform). Moreover, market collaborations, advertisement arrangements etc. fall under the commercial strategies of business entities and must be kept outside the scope of government approval.

Conclusion

The legal and regulatory framework of Bhutan is very broad and creates a general regime which would directly or indirectly govern the electronic commerce sector. However, the business models, operation of companies and their websites/applications, selling and purchase of products (goods and services) and allied services (like distribution services), advertising and promotion of products on the internet are inherent to the electronic commerce ecosystem. The existing laws are broad in their scope to be interpreted to include the abovementioned aspects of electronic commerce. Moreover to attain legal and regulatory certainty, it is proposed to include specific provisions in existing laws on these aspects. In addition, it is imperative to ensure that e-Commerce companies contribute to consumer protection and grievance redressal promptly as a majority of products sold over their websites are high volume products which may need to be stopped in cases of complaints of counterfeit products or substandard services. In conclusion, the existing laws of Bhutan need to be narrowed down to cover specific elements of electronic commerce, while continuing to provide broad regulatory powers to the government to frame rules and regulations to further the aims of the existing laws.

Chapter 3.e-Commerce in Bhutan: Challenges and Opportunities

Introduction

Today globally, e-Commerce far outstrips global merchandise trade. For example, conventional global merchandise trade in 2018 stood at USD 19.5 trillion, whereas it is estimated that in 2016 itself, the value of e-Commerce transactions totaled US\$ 27.7 trillion, of which US\$ 23.9 trillion was business-to-business (B2B) e-Commerce transactions.³ In Bhutan, e-Commerce is at a fledgling stage. While Bhutan has few B2B transactions, a majority of its transactions are B2C. So far transactions under e-Commerce in Bhutan are mainly B to C, B to G and sometimes it can be C to C. With greater usage of e-Commerce, B2B and G2B transactions would also increase in Bhutan.

For Bhutan, e-Commerce is an important means to diversify its economy, and to create an alternative means to connect it with global markets as this has been a big challenge for Bhutan. In this context, it is important to segregate e-Commerce for exports, imports and local domestic markets. The focus in this document is exports through e-Commerce modalities in the global context are constantly evolving. Therefore, regulations and policy initiatives suggested in this document are geared to encouraging export-oriented e-Commerce operators. An important aspect of the chain of activities for e-Commerce is that it may involve only trade in services or may combine trade in services and goods. Thus, as in the case of conventional trade, such e-Commerce activities need to be supported by enabling links with global supply chains, logistics, legal framework, building up domestic industry, value addition and exploring new and additional markets. For sustaining efforts from a small base to reach a larger operational scale that reduces costs, the Government would need to include incentives and subsidies to improve exports through e-commerce as an important part of the policy package. In addition, the private sector would also need to play an interactive role with its own efforts to support common activities that build synergies, and provide the relevant information to policy makers that will improve the basis for policy-making.

Development of logistic companies small and large, improving consumer services and developing courier services would necessarily form a part of the focus of a policy package to encourage exports through e-Commerce. Bhutan Post and Airlines would play a major role in this context. One of the feedbacks from consultations with stakeholders was that instead of large-scale products, niche and small-scale market which are small in size would respond more to Bhutan's limited production capabilities. This supply chain from the producer to the e-Commerce platform to the logistic company to the airlines or to the postal service to the point of delivery will need to be encouraged at each and every stage. RGoB has the potential to subsidise shipping cost to facilitate exports, by bringing them down towards the level of international costs. Likewise, efforts by Bhutan Post can also be leveraged to reduce costs of exports.

Local Markets for e-Commerce may displace small vendors and small retailers. Hence the focus of this paper has been on encouraging exports through e-Commerce, which is a good platform for small business. Solutions to some of the problems of local e-Commerce operators would need to be incorporated in the policy framework for e-Commerce. For example, DCSI can help negotiate better logistics and operations costs for small producers, and Bhutan Post introduce and encourage e-Packets which will substantially reduce operational costs and build competitiveness of Bhutanese products. Since e-Commerce can be used both for exports and imports, such efforts would help lower import expenses as well.

³WTO, World Trade Report 2018, https://www.wto.org/english/res_e/publications_e/world_trade_report18_e.pdf

This Chapter responds to point 2 of the TOR. It is entirely based on the authors' interviews and mission in Bhutan. In a sense, it is a baseline survey of the landscape of e-Commerce in Bhutan. On the whole, it appears that many small and large firms have initiated e-Commerce initiatives in Bhutan. However, there are several challenges.

3.1 Estimated value of e-Commerce transactions

Estimates of e-Commerce transactions in Bhutan are difficult both because data is not systematically collected as yet, and some transactions such as C to C sales are particularly difficult to monitor and enumerate. Nonetheless, e-Commerce transactions can be estimated in a reasonable way because the number of main users is limited at present. There are less than 50 main registered companies that provide e-Commerce, including the Government. Interviews with firms and data from the Government thus provide a good initial basis for assessing the value of e-Commerce in Bhutan.

In Bhutan, e-Commerce Portals need to be registered for sale of Made in Bhutan products. A firm needs to be registered in every zone separately which is a handicap for private firms.

Large e-Commerce firms: The Royal Monetary Authority of Bhutan provides licenses for large firms conducting e-Commerce. After March 2019 DoT has been authorized to issue licenses for e-Commerce firms. However, RMA has licensed Payment Service Providers (PSP). As per the PSP Rules and Regulation 2018, RMA can issue license only once the company has registered under the Companies Act. There are 10 such firms at present. Interviews conducted with large firms showed that e-Commerce transactions of the largest firm were about USD 50,000 per annum. Other e-Commerce firms also trade nearly this amount, though somewhat lower. This suggests that the total e-Commerce transactions of large firms are somewhat below USD 500,000 per annum.

Small e-Commerce firms: The Department of Cottage and Small Industries (DCSI) used to license small firms that conduct e-Commerce until June 2019. This responsibility has been transferred to the Department of Trade (DoT) from July 2019. At present 23 small firms are licensed, and a few applications are under process. The average annual e-Commerce transactions by these firms are about USD 3,000 per year. Once all the pending applications are approved, the annual e-Commerce of these firms would be about USD 80,000 per annum.

Both the Bhutan Post and the Royal Monetary Authority of Bhutan have established their own portals for e-Commerce.

Bhutan Post: Bhutan Post is the main carrier of goods and it has substantial coverage of almost all of Bhutan. It delivers products (logistics) only when these come through normal post (not private posts). It recently opened its own e-Commerce portal called GNHcorner.com, which it uses mostly to sell stamps. With growth in e-Commerce business, the transactions will become more diversified.

Bhutan Post informed the authors that July was a particularly heavy month for e-Commerce transactions and that other months record relatively lower amounts of e-Commerce conducted through it. e-Commerce transactions in July 2019 were around Nu 17,000, or USD 240. Thus, the upper estimate of e-Commerce through Bhutan Post would be about USD 2,800.

Royal Monetary Authority: The Royal Monetary Authority has begun its initiatives to establish major changes to enable digital transactions. It launched its gateway one-Commerce in 2018. The RMA gives importance to providing a reliable gateway fore-Commerce, but through banks. Thee-Commerce portal of RMA was launched in July, 2019 during BEFIT week. This portal will only sell made in Bhutan products certified by standard bodies like BAFRA and Bhutan Standards Body (BSB). However, initially the portal was supposed to be run by Bank of Bhutan and now it has been given to the One Gewog One Product (OGOP) centers. It has already provided a system of e-wallet to commercial banks in Bhutan. Close to 8,000 transactions of nearly Nu. 7 Million (about USD 98,000) have so far been conducted through this system by November 2019.

In addition to the above, e-Commerce takes place through small firms that conduct their business using courier services, C2C transactions, and E-procurement by the Government. Arrangements between DCSI, RMA and Bhutan Post as launched in BEFIT July 2019 need to be extended to the private sector to create a level playing field, especially for exporters.

Small unregistered firms that conduct e-Commerce: There are many unregistered firms selling through e-Commerce in Bhutan. One estimate suggests that there are about 37 informal enterprises conducting e-Commerce in Bhutan.⁴ The value of average sales is unlikely to be higher than the small firm's average transaction. Taking that as an indicator, their e-Commerce transactions are likely to be not more than USD 100,000 per annum.⁵

Consumer to Consumer e-Commerce Sales: Additionally, C to C sale runs into large numbers of transactions though the value of each transaction would be relatively small at no more than a 100 USD per transaction. Such sales are difficult to estimate. Nonetheless, a plausible estimate could be considered to assess how much the total amount of e-Commerce might be increased due to C2C transactions.

If a large number at least 50 transactions a day are considered, then the total e-Commerce through C2C could be, for instance, in the range of about USD 150,000. Taking this as a possible indicative total amount of C2C e-Commerce transactions per year, the total amount could be considered ranging between about USD 100,000 to USD 200,000. Of course, the actual total C2C sales could be more or less than this amount, but precise estimates are not possible at present. Nonetheless, this estimated amount illustrates the range that could be considered for providing an indicative total of C2C e-Commerce sales in Bhutan.

Taking account of the various forms of e-Commerce transactions in Bhutan, excluding E-procurement, the annual value of e-Commerce in Bhutan would be about USD 900,000 to USD 1 million.

E-procurement: The Royal Government of Bhutan launched an e-procurement system on 21 June 2017.⁶ Bhutan's e-Government Procurement portal (e-GP) was announced on 22 June 2017.⁷ The guidelines for e-GP are available on www.egp.gov.bt for electronic government procurement process. The piloting of

⁴Department of Revenue & Customs (DRC), Ministry of Finance, Thimphu, e-Commerce Presentation, 2018

⁵This amount is equivalent to average e-Commerce sales of USD 2,700 per annum for each enterprise.

⁶<https://www.egp.gov.bt/ViewNews.jsp?newsType=N&nid=1>

⁷For a full description of the e-gp, pl see annex 2 to this chapter.

the e-GP system began in July 2017,⁸ and was rolled out for various agencies over most of 2018.⁹ The documents required at the time of bidding include:

- Valid trade license (issued by Department of Trade);
- Valid tax clearance (Department of Revenue and Customs); and
- Standard bidding document.

All departments, ministries, districts and autonomous agencies utilize the e-GP system. The security for on-line bidding is provided by the banks. The banks can automatically update the e-GP system about the bid security of any bidder through its (Bank's) login credentials (Bank Maker and Checker). Payment method to winning bidders remains offline as of now but will go on-line in Phase III through the e-GP portal; this is expected by 2021. Bidders would need a bank account in the Bank of Bhutan for that transaction.

The value of e-procurement is potentially large, because procurement by the Government amounts to about one-fifth of GDP. In 2020, Bhutan's GDP is expected to be in the range of USD 3 billion; and, one-fifth of this would be USD 600 million.¹⁰ To the extent that procurement by the Government is being emphasized on e-procurement¹¹, the potential of electronic transactions for procurement would greatly multiply the other-Commerce activity presently being carried on.

Based on the above, considering that the e-Procurement initiative is being rolled-in, the total value of e-Commerce including government procurement is estimated to be between 900,000 and 1 million USD in 2019.

3.2e-Commerce and SMEs

About 90% of all the firms in Bhutan are cottage and small scale industries (CSI). A firm is classified as a cottage industry if its Fixed Capital is less than Nu 1 million and it employs less than 4 people. A firm is classified as a SME if its Fixed Capital is less than Nu 10 million and it employs between 5 and 14 people. Many SMEs are trading domestically using e-platforms. The DCSI started receiving applications in 2016 for a license to sell on-line. For issuing a license applicants had to fulfill two conditions:

- (a) There would be no physical processing of good or physical delivery by thee-Commerce firm.
- (b) Services would be sold only domestically and for this a domestic gateway would be involved.

If two players were involved, then the method of payment could either be through an e-gateway or by cash on the delivery of the service.

⁸ [file:///D:/MY%20DATA/Downloads/GOVERNMENT%20ORDER%20ON%20PILOTING%20OF%20ELECTRONIC%20GOVERNMENT%20PROCUREMENT%20SYSTEM%20\(e-GP\)13-07-2017%2016-00Government%20Order%20\(1\).pdf](file:///D:/MY%20DATA/Downloads/GOVERNMENT%20ORDER%20ON%20PILOTING%20OF%20ELECTRONIC%20GOVERNMENT%20PROCUREMENT%20SYSTEM%20(e-GP)13-07-2017%2016-00Government%20Order%20(1).pdf)

⁹ <file:///D:/MY%20DATA/Downloads/Notification%20for%20e-GP%20system%20Roll%20out07-03-2018%2015-36e-GP%20System%20Notification%207.03.2018.pdf>; <file:///D:/MY%20DATA/Downloads/NOTIFICATION%20ON%20e-GP%20IMPLEMENTATION03-08-2018%2010-36Notification%20July%2031%202018.pdf>; <file:///D:/MY%20DATA/Downloads/NOTIFICATION%20ON%20e-GP%20IMPLEMENTATION%20TO%20AUTONOMOUS%20AGENCIES05-09-2018%2013-12Notification%20Autonomous%20Agencies.pdf>; <file:///D:/MY%20DATA/Downloads/Notification%20on%20the%20Use%20of%20e-GP%20System%20December%20201831-07-2019%2016-17Notification%20on%20the%20use%20e-GP%20System%20DEC%202018.pdf>.

¹⁰ In 2017, GDP was about USD 2.5 billion. Rates of GDP growth expected till 2020 given in the Table on page 350 of <https://www.adb.org/sites/default/files/publication/492711/ado2019.pdf>

¹¹ <http://www.kuenselonline.com/e-procurement-will-be-made-compulsory-pm/>

The Business Licenses granted by the Department of Trade are of the following categories:

- Micro License
- Small License
- Medium License
- Large License

Business Licenses provided by the Department of Trade are separate for each Dzongkhag (district), i.e. they are not at the national level. The companies are required to register with the Department of Revenue and Customs for obtaining a Tax Payer No. (TPN) within 1 month after getting the Business License. This is used for paying Business Income Tax. The business is allowed to operate only after receiving the TPN. There are sector-specific clearances too which have to be obtained. The firms are required to maintain “.bt” domain name for domestic sale and “.com” domain name for export/import.

So far 23 licenses have been issued by the DCSI and DoT. A list of firms, their businesses and the payment methods is attached as Annex 1 to this Chapter. As Annex 1 shows, most of the firms were engaged in services like real estate, e-ticketing, hotel reservation, taxi services, tour booking, provision of on-line services such as health, education, English lessons, on-line music app, and retail. One firm also applied for a license to export authentic handicrafts.

The problems faced by the small-Commerce operators are manifold. For example, in an interview with some small-scale players, they stated that they found the clauses (requirements) for licensing very restrictive. Among the clauses, an especially difficult issue arose due to the definition of delivery. It was not clear whether a separate license would be required for the delivery of goods should a manufacturer engage in-Commerce and not as a retailer. This would need the application of 2 separate licenses which would be cumbersome and involve unnecessary license fees. One easy solution for this would be to grant the-Commerce operator both the licenses in one go after due diligence. There were supply side problems too, and in addition, there was a shortage of finance. While the investment required for services may be small, an estimate in the context of a Government project on handicrafts shows that the investment requirement would be at least USD 10,000 for a turnover of over 50,000 USD.¹² There are several schemes for Government financing, but foreign exchange regulations do not permit an individual to take more than USD 3,000 per annum. These regulations are very restrictive on e-businesses.

In the case of food and agricultural products, certification becomes a major issue in the absence of specified standards of the destination market.

3.3 Products involved in-Commerce

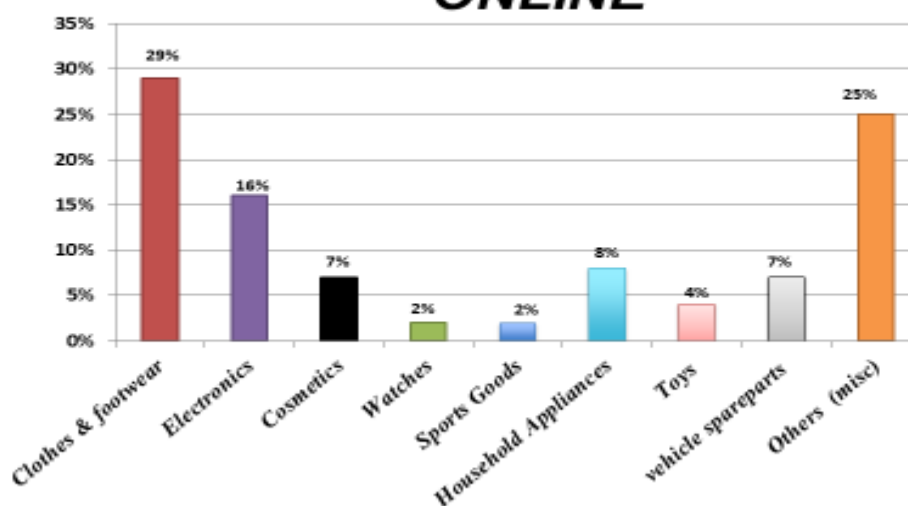
A wide variety of products are transacted through-Commerce, both for domestic sales and international trade. The major products purchased on line in Bhutan are given in Figure 3.1 below:

The restrictions applied to traditional trade also apply to-Commerce. These measures include for example, restrictions on sale of Bhutanese icons and religious symbols. Similarly, the relevant restrictions on the sale of food and agricultural products in foreign markets are also relevant. Thus, it would be important to have e-documentation or e-certificates that show for instance that the traded products meet the relevant standards on sanitary and phytosanitary measures that prevail in specific markets. This would be crucial for creating better market opportunity for products identified under the major initiatives of the Government, such as agricultural and cultural products.

¹²E-Commerce Handicraft, I-Best Strategy, Bhutan

Figure 3.1

PRODUCT CATEGORIES PURCHASED ONLINE



Source: DRC, Ministry of Finance, Thimphu

3.4 Business Model

The business model for e-Commerce in Bhutan as explained by the firms was as follows:

- Initial Investment required is between Nu 1-2 Lakhs
- Turnover by the second year would be between Nu 4-5 Lakhs
- Break-even period 2 years
- Exports in the first year Nu 70,000
- Exports by the second year expected to be 4 times imports in the second year itself.

The potential of e-Commerce could be much higher if certain systemic constraints are addressed.

E-Commerce System of a typical Bhutanese firm

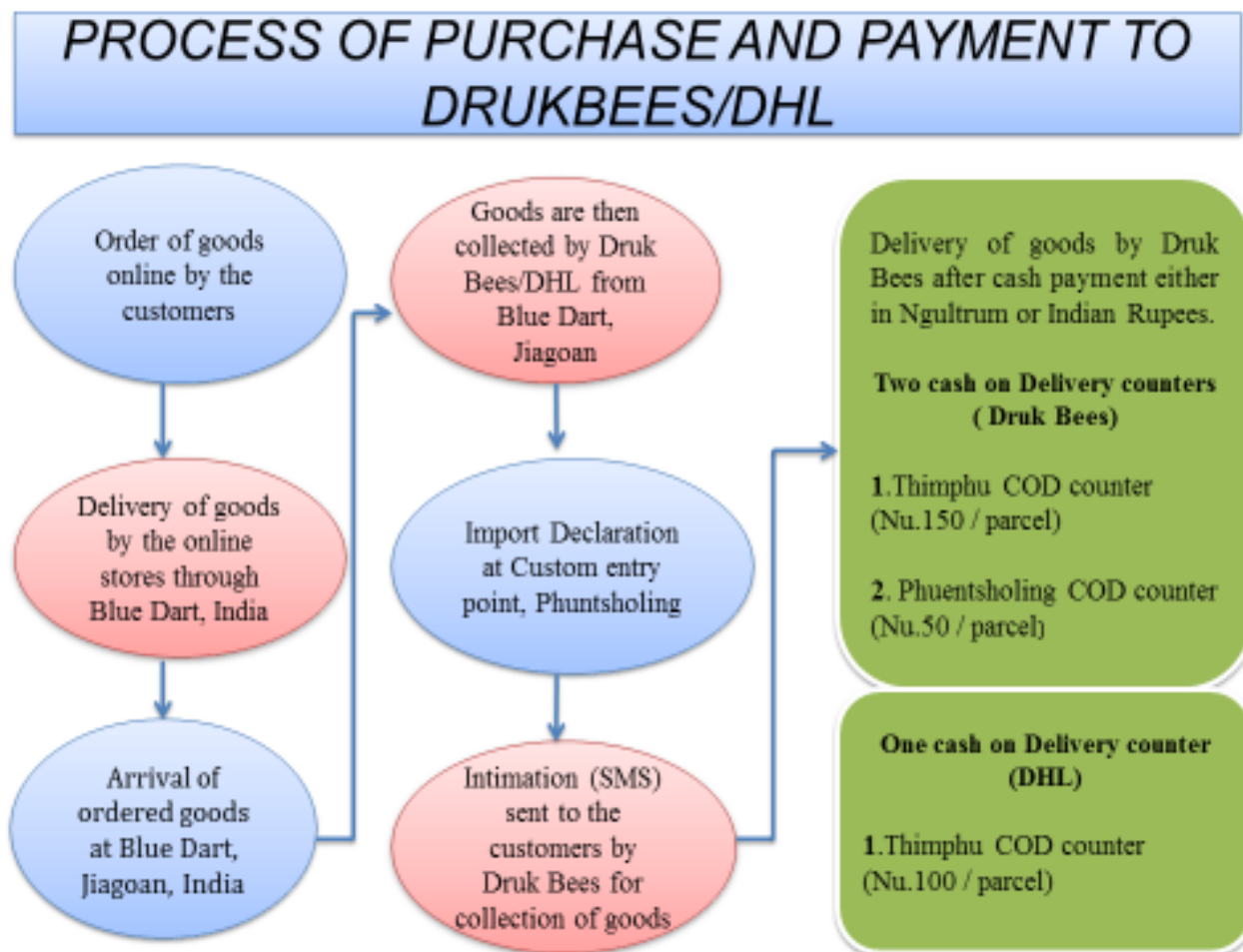
At the outset it must be clarified that logistics services companies are not the same as e-Commerce firms. For example, DrukBees is a logistics service company which accepts Cash on Delivery for Bhutanese to shop from Indian online stores and deliver at their receiving point Jaigoan, at the Phuentsholing border of Bhutan. Druksell.com on the other hand is an export oriented electronic marketplace for SMEs and other exporters to launch their products and sell in the global market. It helps businesses to market its product across the globe while shipping/ packaging is managed by

Druksell by offering different product bundles, customization, 24 hrs. consumer service coupled with distribution centres in Asia and Europe. The more recent initiative of Druksell.bt caters to local market which includes a mix of local retailers to sell their products through an electronic portal. Druksell.bt also offers an import channel with a depot at a warehouse station similar to Drukbees in Jaigoan. From neighbouring countries Drukbees offers a direct airmail service with Bhutan Post and local courier services.

DrukBees, the firm mentioned above, is another importante-Commerce firm in Bhutan which sells textiles, books, art, souvenirs, home décor, table cloths and has sizeable exports. It exports 70% of its total sales to countries such as Russia, Mongolia and the United States. It sells tea and exports home-made textiles to Korea, Thailand, Japan, Vietnam, Malaysia, Hong Kong, Spain, Germany, Austria, and Italy. It sells Shitake mushrooms to Japan and its specialty is a red rice whiskey brand K5 percent. Its first foreign investment was in Singapore of roughly USD20,000 and started with sale of tea. Around 10% of its products are imported for re-export.

DHL (and other private companies) ties up with Blue Dart in India to collect packages at the Jaigoan-Phuentsholing border and then declare the same to the Bhutan Customs at Phuentsholing at their private Customs Office Declaration (COD) counters.

Figure 3.2: Drukbees system loop



Source: DRC, Ministry of Finance, Thimphu

3.5 Countries involved in Bhutan's e-Commerce trade

The origin of e-Commerce goods is given as below. This information is based on formal channels such as Bhutan Post, DrukBees and DHL. There are a number of informal channels too where private firms use sites such as Facebook, WeChat, Instagram and other social network sites to establish contact and conduct e-Commerce transactions. Products purchased through informal channels include I-phones, gold and gold jewelry, and items such as Make-up and electronic goods. Large e-Commerce trade takes place with India but it is not easy to assess because most of border trade and transit through India is substantially unrecorded or significantly under-recorded (see next two sections). This unrecorded trade also includes e-Commerce with many other countries which arrive through the Indian border town.

Figure 3.3 shows that almost two-thirds of the recorded e-Commerce trade is accounted for by China, and about one-fourth by Singapore. The remaining one-tenth is primarily with Malaysia, Taiwan, South Korea and Hong Kong. Within this one-tenth is also e-Commerce trade with several other economies, many of which are mentioned in the discussion below.

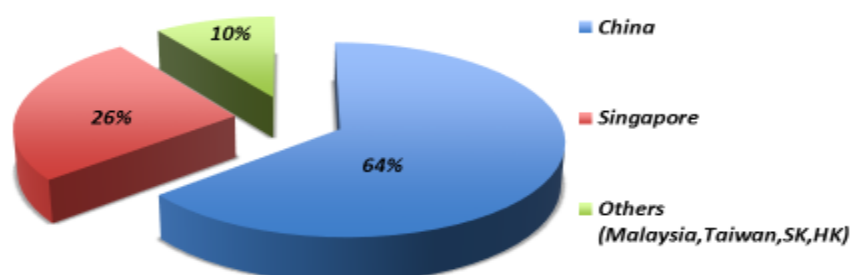
Large Volume of e-Commerce Trade is With India or Through India: E-transaction estimates above take place through formal channels. These are under-estimates of total e-Commerce interactions of Bhutan because most of e-Commerce transactions take place informally through the Phuentsholing border (see Figure 3.2 for an illustration of such transactions).

It is estimated that informal trade where goods are delivered across the border and then collected by e-Commerce private players would account for roughly 80% of the total e-Commerce transactions.¹³ The private firm Druk Bees which had an annual transaction value of USD 50,000 does most of its transactions through India. Other small firms interviewed also reported that their transactions were delivered at the border and then got across to Bhutan.

Figure 3.3

¹³DRC, 2018, op.cit

Country of origin of E-Commerce goods



Source: DRC, Ministry of Finance, Thimphu

3.6e-Commerce exports

For exports, a business license is required. This license is valid for Trade and Service in the domestic market too. However many individuals may export without a license. Export License is provided by Department of Trade after verification of Domestic Trade and Service license. Exporters may have to pay custom charges as per the customs rules and regulations.

To facilitate e-Commerce exports, important suggestions include installing integrated advanced automated system and technologies like x-ray scanners, and establishing an integrated public warehouse and integrated automated system. This would also ease and speed up the clearances of e-Commerce in the future.

DRC supports facilitating legitimate export of Bhutanese e-Commerce. For the smooth clearance of export, Bhutan has enacted new Customs Act and Customs Rules & Regulation in 2017 in line with Revised Kyoto Convention. The current Rules and Regulations are simplified and harmonized with other government agencies and private units.

However, it was reported that many individuals export without a license. The export license is provided by the Department of Trade. The activities carried out under the license are enlisted thereunder.

(a) First and foremost an income-tax clearance is required. The checks on export activities are done through the Business Income Tax filed annually. The Income Tax Department checks the invoices to ensure the activities enlisted under the Business License are carried out. If satisfied, the Income Tax Department issues a Tax Clearance Certificate, which is the basis on which the Department of Trade renews the Business License of the entity.

(b) Special Export Permits are issued in cases of export of restricted items.

(c) Except restricted products, there is no restriction on individuals to send a package to third countries. The checks and balances are through the declaration of content, value and purpose of outgoing package.

(d) There is no tracking mechanism at Customs for payment mode for imports/exports (to check whether or not the payment is made online).

(e) Gross National Happiness (GNH) Corner has been created by Bhutan Post to facilitate domestic sale as well as export of small products.

The DRC maintains the Bhutan Automated Customs System to keep track of imports and exports. However, it is not updated: the System does not reflect zero custom duty on packages valued under Nu 3,000/-.

Bhutan Post provides a 5% discount through credit provided to suppliers at the end of Financial Year for the use of Bhutan Post under the following conditions: regular shipments, certain volume, minimum Nu. 50,000/- value, and other conditions depending on the content of the package.

Imported packages are transferred to the Post Offices in their intended destination districts from Paro or Phuentsholing and then the Postal Messengers deliver the packages on bikes (only for Bhutan Post packages).

Import through-Commerce

Import of-Commerce through Post and other Courier Agents has always been challenging for Customs Authority due to reasons such as high volume and low price goods, manual Customs system, lack of advance data for risk management, lack of technologies like x-ray scanners, commercial fraud (under-valuation and mis-classification), difficulty in identifying individuals and business units.

In order to facilitate the import of goods through-Commerce, ensure security and safety and collect reasonable amount of revenue, the above challenges should be addressed. Having an integrated public warehouse and automated system in future would also ease and speed up the clearances of-Commerce

3.7 Customs Clearance

Customs clearance is done at all borders. Air shipment customs clearance is done at Thimphu. Custom duty is collected by the Customs officials at Paro (air cargo) and Phuentsholing (road cargo). Most of the land cargo, approximately 80%, is received at Phuentsholing. For products manufactured in India, zero customs duty is imposed (no percentage-based Rules of Origin (ROO)); only sales tax is levied on these products). For products from other origins, duties are levied as specified for the 97 chapters of the Customs Act; in addition, sales tax is imposed on them.

After landing and clearing of goods by the clearing and forwarding agents, consumers generally make their own arrangements for delivery. The cost of inland freight is negotiable, normal trucks that transport between Phuentsholing and Thimphu charge Nu. 7,000-8,000, while large truck charge about Nu.10,000.00.

Bhutan Post manages a Customs Facilitation Counter at Thimphu. It receives invoices from local exporters, and opens and checks the packages (with customs officials). Authentication and stamping are done by the DRC. It examines the invoice/ boxes on a random basis, particularly for those items that are on the restricted list.

With DHL, there is a problem of shipping goods from inside Bhutan to the ports. Price depends on the location of where goods are being shipped from and where they are being shipped to. Competition in this market is intense, but prices still continue to be high on account of difficult logistics in Bhutan. There is a need to separate goods and services because goods need logistics support more than services. One way to separate them maybe through the mechanisms of Sale Tax (similar to India's GST system).

3.8 Concerns Relating to Telecom

Bhutan has telecom bandwidth packages of 22G, 40 – 50G, to 3-5G. There are two main service providers, one public sector and one private. There are a few smaller ones but their cost base is high on account of lack of scale. There are a number of complaints of bad connectivity during peak hours. However, according to service providers, consumers do not take adequate bandwidth and hence they face problems or there are more outages in the internet for them. The latter refers to only internet leased line (ILL) and not mobile data.

ILL is sold based on Bandwidth and Mobile data is based on volume. Outages occur more frequently on ILL and not on mobile Data.

The suggestions regarding Telecom service were as follows:

1. Bandwidth costs are a fixed cost because a minimum level of the bandwidth is required to conduct business. Firms economise on their bandwidth costs and tend to take lower bandwidth than what would result in lower downtime and greater efficiency of transmission. Bhutan Sales Tax of 5% is levied on both ILL and Mobile data. The Government could incentivise uptake of relevant bandwidth by giving a tax offset on these costs.
2. Skill formation for telecom companies to deal with consumer complaints. Annual Maintenance Contract is not part of regular contracts. These should be provided to maintain networks.
3. Bhutan Infocomm and Media Authority (BICMA) regulate the Policy issued by Ministry of Information and Communications (MOIC). At present they do not set standards although one of the main functions of BICMA is precisely this¹⁴; thee-Commerce firms emphasised a need for setting standards and giving clarity to the situation.
4. Bhutan's network operative group and those who maintain outages are two different companies. Thee-Commerce firms were of the view that the latter should be provided with basic training of how to deal with outages, and the network. Service providers and maintenance companies are 2 different entities. The latter should be provided with the basic training outlined above.
5. For Leased line, the speed starts from 1mbps and the cost is Nu. 4500/ mbps. Hence, internet is very expensive. The mobile penetration data is overstated as several persons have dual SIMs.
6. The telecom companies stated that thee-Commerce firms could take two different connections so that when one does not work the other becomes operative. To reduce costs in this situation, the Government as a user has negotiated deep discounts for bandwidth with the telecom company. Thee-Commerce firms too could initiate such negotiations and seek discounts based on their usage.
7. For very small firms, there is a standard selling approved rate from BICMA, which is lower than the rate for large companies.
8. There is no FDI in this sector. The small volumes of operations lead to higher telecom prices for thee-Commerce firms. Perhaps forward-looking costs may be used as a basis for pricing in this situation where thee-Commerce companies are likely to increase their operations.

¹⁴ www.bicma.gov.bt

9. While internet coverage rates are high, it is likely that these estimates over-estimate the actual users because mobile penetration data is overstated due to dual SIMs.

3.9 Intellectual property (IP) protection

Bhutan is a signatory to the Paris Convention. e-Commerce guidelines have no clause on policies relating to IP or Brand recognition. It has guidelines on consumer protection. Further, patents, designs and other forms of IP are not enforced anywhere. While the guidelines on e-Commerce talk about infringement of intellectual property, e.g., the Industrial Property Act, 2001 and Copyright Act of Bhutan, 2001, these guidelines do not take account of the specific infringements possible under the e-Commerce framework. Concerns of e-Commerce operators in the context of IP include the issue of brand infringement and also the requirements for data localization. Solutions to these aspects should be specifically incorporated in the e-Commerce Policy. Further, for regulating IPR infringement, customs officers should be empowered and trained to detect infringements during entry and exit of goods.

Diversification of Exports, Branding and Certification related issues

Bhutan is a signatory member to the Codex Alimentarius Commission since 1999 and BAFRA functions as the National Codex Contact Point. The Food Act of Bhutan 2005 and its Rules and Regulation 2017 are formulated on the basis of Codex.

The SPS certificates are issued for exports of food and agriculture related commodities based on the requirements of the importing country. Phytosanitary certification is issued for major cash crops based on the technical standards developed by the respective technical departments with consideration to the applicable international standards for phytosanitary measures. For specific high value cash crops, the existing standards can be used. The Statement of Authenticity is given by the BAFRA, such as for food exported to Australia. Fresh apples are exported to Bangladesh also with SPS certificate issued by BAFRA.

Bhutan wants to diversify exports to include cordyceps, mushrooms, turmeric, ginger, and Yak dairy products. First, it wishes to identify possible markets and then get into certification for major markets. e-Commerce could be a means of providing these essential market linkages. Bhutan Economic Forum for Innovative Transformation (BEFIT) has some schemes of product development and identification of new products could be dovetailed to existing schemes.

The DCSI has also identified a list of products to which it will provide complete support for exports. e-Commerce firms could also link up to this government initiative and help advertise these products for export through their portals. A list of the products is provided in the Annex.

The target is to identify and promote high-end products. It is noteworthy that the Handicrafts Association of Bhutan (HAB) sells mostly imported crafts. But there is a special craft bazaar which sells authentic Bhutanese products with a seal of quality and excellence by the Department of Trade. There is a potential market outside as well for these products.

There is a move towards branding Made in Bhutan and Grown in Bhutan brand and its advocacy. This will be an umbrella brand initiative which will cover all sectors. Thus, assistance would be required for all sectors, similar to the specific strategies that are being developed for handicrafts.

Certification: Firms face difficulties in obtaining certification. Further, this process results in cost increases because certificates need to be renewed every 6 months. International standards and

compatibility of standards of Bhutanese exports with either international standards or standards existing in the importing country should be promoted.

Drug Regulatory Authority (DRA)

For exports and imports of tea and medicines, there are additional packaging and labelling regulations laid down by the DRA.

Bhutan Agriculture and Food Regulatory Authority (BAFRA)

A pesticide is necessary in agriculture production as it reduces loss from weeds, diseases and insect pests. But at the same time, its indiscriminate use poses risk to humans and other life forms and can have undesirable side effects to the environment. Strategically the government has mandated BAFRA to ensure food safety and regulate and promote the quality of agricultural inputs. BAFRA regulates import and sale of pesticides and chemical fertilisers through import permitting system and performs regular surveillance. Furthermore, the National Plant Protection Centre and National Seed Centre are the sole authorized agencies for import of pesticides and chemical fertilisers respectively, making its use and availability more controlled. This complements promotion of exports of organic food for which there is a market both in SAARC and outside it. The above agencies and Agricultural extension services need to sensitize the farmers on the ill effects of using such agricultural inputs and assist with record keeping exercises.

3.10 Consumer Protection

Consumer protection covers two types of issues. One is Consumer Protection Guidelines relating to e-Commerce which go beyond conventional trade. The other is the consumer protection issues that apply to conventional trade and are relevant also to e-Commerce.

The RMA is examining the Consumer Protection Guidelines issued by the Office of Consumer Protection (OCP) on whether they are adequate for e-Commerce transactions and, if not, then how they should be amended. This process is expected to be complete in 2019. OCP provided feedback regarding setting up consumer grievance redressal mechanism in financial institutes for inclusion in the guideline on Financial Consumer Protection, 2019 being spearheaded by RMA.

Office of Consumer Protection

In e-Commerce, a major concern on consumer protection is that of counterfeit products or substandard goods. While Bhutan is a member of the Cloud Security Alliance (CSA), there are no mechanisms in place to address this problem. The CSA believes in educating consumers regarding their rights, responsibilities with reference to purchase and use of products. There is a Consumer Toll Free number (1214) for registration of complaints relating to suspicion or unfair trade practices. Consumers can call and seek advice relating to duties and responsibilities of business entities or what services are expected. Very recently, there has been a case reported to OCP regarding the operation of Pyramid Scheme Business by MagneSSa Bhutan and Oriens Bhutan. As per rule 38 (xiii) of CPRR 2015 it states that, *“Establishing, operating or promoting a pyramid promotional scheme where a consumer receives compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products”* is deemed unfair trade practice.

The mode of operation of business of MagneSSa Bhutan and Oriens Bhutan requires a consumer to register as a member by purchasing products worth Nu. 38,500/- and Nu.6,000/- respectively and then introduce new members to receive compensation in the form of rewards and other incentives which

rises with the increase of down-line members. Moreover, the reward from the scheme is primarily dependent on introduction of new members, where only the higher rung or earlier members benefit from the contribution made by the down line members rather than sale or consumption of products. Therefore, the mode of operation of business by MagneSSa Bhutan and Oriens Bhutan constitutes pyramid promotional scheme that would be tantamount to unfair trade practices.

Section 6 of the Consumer Protection Act of Bhutan, 2012 prohibits businesses from making misleading representations in relation to the goods and services. It is illegal for a business to engage in conduct that misleads or deceives or is likely to mislead or deceive consumers about goods and services.

Section 16 of Consumer Protection Act, 2012 states that no person shall advertise supply of goods and services at a specified price, which that person does not intend to supply or provide. The notification stated that these pyramid schemes are dealing in the sale of various health supplements, which pose risk to the health of people who consume these products without prescription.¹⁵ Online fraud which targets vulnerable consumers is also a risk and concern for the government.

Strategies and Recommendations:

- Educating people to refrain from such schemes and advocacy regarding online shopping.
- Competition Policy that is being developed would provide legal teeth to CSA to regulate. It should keep in mind the issues arising due to digital trade.

Cyber security related consumer issues

1. BT-CERT (Bhutan Computer Emergency Response Team) has been created but as yet it does not have any technology experts in the team. The present team comprises of bureaucrats from the Department of Information Technology & Telecom (BITT).
2. It is intended to protect public infrastructure from threats of cyber-attacks, etc.
3. Pro-active actions like engaging with ethical hackers to improve security systems are also proposed.

3.11 Experience and Concerns of e-Commerce Firms in Bhutan

Limitations imposed by Forex Restrictions: Green Mart began its e-Commerce transactions in 2013, starting with the sale of alcohol. This sale was based on a mechanism of cash on delivery. It reached out to consumers through its web portal at Shop BT Products and provided deep discounts. The firm provided a registered telephone number at the web site and home delivery services were also arranged. Their web site was linked to an Indian portal Naptol.com which was made accessible to the consumers to order products. The firm later changed its operations and sold off its store as inventory management proved difficult. Currently, it provides software, music and other such products on-line both to the Bhutanese and to clients abroad. Green Mart has found the stipulated foreign exchange limit of USD 1,500-3,000 per year given to Bhutanese, too restrictive. It leases a Server in Texas to advertise its on-line services and products and owners have used loans from friends who live outside Bhutan to pay server fees. The money earned outside Bhutan which accounts for 20-40% of its revenue is used to meet forex costs outside Bhutan. The firm's total turnover is roughly Nu. 10 million including exports of roughly USD 20,000-40,000. The restriction on foreign exchange transactions limit both the ability of firms to efficiently or effectively function in markets abroad as well as incentives to earn larger amounts

¹⁵<http://www.kuenselonline.com/pyramid-schemes-lure-thousands/>

of foreign exchange which could be earned if such restrictions were not imposed. Thus, forex earnings are potentially lost to Bhutan because of restrictive forex rules. However, there are tax exemptions for hard currency earners.

Low profit margins compared to other computer-related business: Green Mart has now moved to the area of software development as its core business because of the relatively high profit margin of upto about 30%. The company shifted to software development because the margins in retail activity including e-Commerce are much lower. The firm has also increased its margins by selling on-line other high value products such as art.

Inadequate legal framework for e-Commerce and IP: Another company, Druksell is a part of the Bhutan Association of Entrepreneurs of small-scale industries since 2010. Its concern is that because of a lack of a legal framework there was a brand infringement of its logo by a firm in Singapore, which adversely affects its sale through e-Commerce. The firm in Singapore is selling through a brand called Bhutan Natural and Bhutan Druksell by creating a portal called Druksell.com whereas Bhutan had a brand called Druksell.Bt. This was creating a lot of confusion for consumers as its effects were felt in the sale of Bhutanese textiles, books, art, farm products, souvenirs and such like. Bhutan government could encourage its business entities to register their brand and domain names with the Department of Intellectual Property (DoIP)

Conditions that create unfair competition between private and public firms: All Government agencies can easily get into e-Commerce and use G2G, or G2C. For example, Bhutan Post is selling Postal products using all forms of e-Commerce. The private sector e-Commerce companies feel they faced a non-level playing field when competing with both Bhutan Post and the Royal Monetary Authority (RMA) of Bhutan. Both these agencies have established their own portal for e-Commerce. A concern was that these entities are Government organizations with deep pockets and hence the private sector was put at a disadvantage.¹⁶

The RMA has, however, claimed that the logistics cost of a national e-Commerce Portal would be very high and beyond the reach of small players. The products placed on its portal will only be those which promote Brand Bhutan. These products will include concepts of Corporate Social Responsibility and Corporate Social Investment. Goods procured for this site will need a “CSI – Geocom” project Brand recognition. DCSI and MOEA could facilitate participation in value chains by bringing together producers and exporters. Information on e-Commerce can be provided by DCSI on its website towards encouraging entrepreneurship culture in the country.

Bhutan Post is the main carrier of goods and it has substantial coverage of almost all of Bhutan. It delivers products (logistics) only when these come through normal post (not private posts). It recently opened its own e-Commerce portal called GNH corner.com. It mostly uses this portal to sell stamps. The concern of the private sector is that if Bhutan Post expands its activities into more regular areas of e-Commerce that would create conditions of anti-competitive transactions by the Government agency.

¹⁶ However, RMA claimed that they would only be trading in high value products through their e-Commerce portal. Any private firm which met their high standards on branding and value could use their portal. This project had the blessing of a VVIP who was sponsoring a range of branded high value product. Similarly, Bhutan Post also claimed that they were using their portal mostly for postal products but any private firm which met their credentials could use their portal.

Third party insurance: Third party insurance was not provided either by the Government or the private sector. Hence, the Bhutanese private sector was forced to use foreign insurance firms whose rates were high for third party insurance. FDI should also be encouraged in insurance, distribution and logistics.

An important issue arises with respect to insurance of trade transactions. Conventional trade has not led to a major emphasis on this, but fore-Commerce this may become an important matter, especially for high value products exported through this means. At the moment, the RMA has no outstanding export related foreign insurance claims. In any case, in their opinion, such claims would go to Bank of Bhutan or the affiliated national banks. At this point of time, there is no difference in the credit limits to normal consumers and toe-Commerce players.

The higher costs, including those for insurance, could be mitigated through special incentives. According to the firm's interviewed, there were no incentives as such for the Bhutanese private sector to encourage-Commerce. An exception is Bhutan Post which provides a 5% rebate on postal charges fore-Commerce transactions. The private sector felt that this was largely insufficient, and was not accessible to producers who used other carriers. Further, in case there were delays in delivery it was not the logistic company but thee-Commerce company which is held responsible.

The RMA is open to considering the issue of insurance fore-Commerce, including whether the insurance should be relevant for transactions above a specified limit in terms of USD. Recommendations by the authors on this issue will be made in the last chapter.

Taxation and Payment Mechanisms

No tax exemptions for exports: Sales tax and income tax are filed on yearly basis. There are no exemptions of these taxes for exports.

Inadequate E-payment mechanisms: According to thee-Commerce firms, the existing e-payment mechanisms were inadequate. Credit cards in most cases did not work and several start-ups had failed due to the inadequacy of on line payment mechanisms. So far, there had been no default in payments, though most firms use the cash on delivery payment mechanism. Most firms have a timeline for product return of 14 days when a 100% refund is provided to the consumer. There should be no jurisdictional issues for cash on delivery. Agencies dealing with on-line payment could also engage in cash on delivery. The jurisdictional issues are only important for exports payments which can only be done on-line. So far, only 1-2% of the products ordered have had to be returned. Verification of the returned product takes three days, after which a refund is provided to the producer. Firms prefer to return money and not sell the product again. They prefer to retire the product rather than build warehouse facilities for storing the products which are returned.

Robustness of Payment Mechanisms: Individual banks have systems to prevent credit fraud. Cases of credit fraud are very few. Every bank is given a working balance of USD, and it operates within this balance. Every individual can be given a maximum of Nu 150,000 on his credit card for domestic purchases (about USD 2,100). For foreign purchases, the limit is USD1,500. However, if the person travels abroad, the limit is USD3,000.

Lack of adequate credit: Most firms interviewed complained about the lack of credit to do their-Commerce. They complained that they had to bank their earnings outside the country as forex was not available for buying inputs. Easier conditions for credit and foreign exchange could be made available. They suggested that availability of foreign exchange could be linked with their earnings and credit could

be advanced to them on the basis of their export earnings as is done in case of large industries. This would facilitate exports and not force them to use accounts outside the country. Since most of the trade is with India and in Indian Rupees, there is no element of foreign exchange in the transactions. The Bank of Bhutan (BoB) has a French Payment Gateway to provide them with the services of International Payment Gateway (IPG). Private entrepreneurs patch their gateways with the IPG of the Bank.

The BoB provides a credit limit of USD 1400-1500 dependent on the salary slip of the individual. Due to low credit limit, entities are unable to undertake multiple transactions in USD. The Financial Intelligence Unit of the Department of Finance blocks the credit cards if many transactions are undertaken.

Other Credit-Related Problems: Imposition of credit limits and other policies that increase cost burden

1. Limit of USD 3,000 per year.
2. Fees charged are very high, time for payment very short.
3. Interest penalty very high.
4. Transaction costs for credit card at 3.5%.
5. Point of sales for ATMs very few. Often runs out of cash or is dysfunctional.
6. Few individuals have a bank account. Thus consumers do not prefer online payment systems.
7. Due to credit deficit, enterprises pay approximately 30% premium on payment in dollars to Google, Facebook etc. for Consumer Acquisition Cost.

Bhutan needs to incentivize the use of credits for export promotion and foreign exchange (through scheme like India's MEIS)¹⁷. For online buying and selling under e-Commerce with cash, there is no record with the banks. It is only for on-line buying with credit cards or bank to bank transfer that banks have a record.

The RMA also formed the National Payments Council around two years ago. There is a feasibility study on e-Commerce Modalities which the RMA has commissioned. It is in the process of drafting a National Payments Strategy. It suggested that the all operators enjoy a level playing field, whether for domestic markets, exports or imports. However, as the aim is to promote exports, cash on delivery should probably work in the domestic markets. Exports will need to be incentivized by other means.

Cumbersome process for getting export license: The process of obtaining an export license could be eased and linked to previous foreign exchange earnings. The Government must subsidize e-Commerce through export facilitation, warehousing, support through the entire supply chain, e.g. in the export of herbal medicines through IP protection, exempt exports from taxes.

Branding is important: e-Commerce products branded and accepted by Australia, U.S. and other advanced countries require strategic inputs and linking with institutional mechanisms that promote branded products. The existing strategy needs to be examined on how to combine the existing valued resources such as tourism, national heritage and specialised products, and create a more integrated foundation for focus and additional support for sales promotion.

¹⁷MEIS in India was introduced in the Foreign Trade Policy (FTP) for the period 2015-2020. The MEIS was launched as an incentive scheme for the export of goods. The rewards are given by way of duty credit scrips to exporters. The MEIS is notified by the DGFT (Directorate General of Foreign Trade) and implemented by the Ministry of Commerce and Industry. <https://clearfax.in/s/merchandise-exports-india-scheme-meis>

Conclusions

The previous sections have shown that Bhutan has launched its e-Commerce activity successfully, but there are several limitations that need to be addressed. The first and foremost is the geographical terrain of Bhutan where logistics becomes a major handicap. According to private firms, the Bhutanese Government should invest in logistics and distribution services to level the playing field for the private sector. A beginning could be made by subsidizing the postal service for e-Commerce and private logistics companies, as postal charges and logistics cost in Bhutan are high. The airlines, especially Druk Air works as a cargo agency. Given Bhutan's difficult terrain it would be useful to expand air cargo services to ensure timely and quality delivery. In addition, warehousing facilities should be provided by the Government near the airports if air cargo is the chosen means of e-Commerce delivery.

The second most important challenge identified by the consultants relates to payment mechanism and incentives to promote e-Commerce. An important issue under consideration is the types of incentives that would help promote e-Commerce in Bhutan. The RMA has expressed the view that basing incentives only on output or exports would not be realistic. It should instead be based on the investment-output and employment multiplier. It should also be based on incentives which promote neutrality of foreign exchange earnings, as Bhutan is a trade deficit country and cannot take on additional burdens of foreign exchange.

Thirdly, there is a need to improve telecom and internet services. The main issue relates to pricing and bandwidth packages. The Government should subsidize this service as a fixed cost initially and as part of working capital subsequently.

Fourthly, consumer protection both in terms of product return and in terms of cyber security needs to be addressed. In this context, intellectual property protection is also an important issue.

Other Problem faced by e-Commerce Platform owners and their suggestions to address them:

- Postal delivery charges high. They should be reduced.
- People often prefer to pick up their parcels from the border town itself, creating a need for additional processes outside Bhutan. The process of delivery should be made easier so that door to door delivery may take place.
- e-Commerce companies do not have any special deal or package pricing for logistics. This is a gap which needs to be addressed to improve cost effectiveness and efficiency of delivery.
- Bhutan Post should tie up with Google marketing, to expand and facilitate the scope of operations
- Bhutan Post portal should host information/advertisement for private vendors to enable them to increase sales of their own brand
- *Co-operative farms*: Need to expand awareness among them about branding and developing their own portals for e-Commerce. Bhutan Post could take this as a development project.
- *Video marketing*: This is in its infancy. It needs to be encouraged with training, collaborative arrangements and other relevant institutional support.
- Farmer's do not have good access to technology. Awareness and training programmes should address this gap.
- Most registered SMEs find it difficult to get loans from banks. The SMEs conducting e-Commerce should have easier access to loans once they have been registered with the Department of Cottage and Small industries

Annex 3

Table 1 Approved by DCSI for Licensing

Sr. No.	Activity Name	ISIC CODE	Activity Detail	Location/Geo/Dzo
1.	e-Commerce Business	72909	e-ticketing and room reservation	Chubachu, Thimphu
2.	e-Commerce business	72909		Kabretar, Phuentsholing
3.	e-Commerce business (cash on delivery)	72909	Providing Platform for seller and Buyer	Thimphu
4.	E-Commerce business (cash on delivery)	72909	Providing platform for seller and buyer	Chubachu, Thimphu
5.	e-Commerce business (cash on delivery)	72909	Providing Platform for seller and Buyer	Changzamtog
6.	e-Commerce business (cash on delivery)	72909	Providing Platform for seller & Buyer (Construction building materials)	Motithang, Thimphu
7.	e-Commerce business (involving payment gateway of RMA)	72910	Providing Platform for seller and Buyer	Thimthrom, Thimphu
8.	e-Commerce business (involving payment gateway of RMA)	72910	Providing Platform for seller and Buyer	Thimphu
9.	E-Commerce business (involving payment gateway of RMA_)	79709	Providing Platform for seller and Buyer	Thimphu
10.	e-Commerce business (involving payment gateway of RMA)	72909	Providing Platform for seller and Buyer	Thimthrom, Thimphu
11.	e-Commerce business (involving payment gateway of RMA)	72910	Providing Platform for seller and Buyer	Babesa, Thimphu
12.	e-Commerce business	72909	Online land and property transaction service	Babesa, Thimphu
13.	e-Commerce business	72200	Online cab reservation application development	Changzamtog, Thimphu
14.	e-Commerce business	72911	Online property arrangement	Olakha, Thimphu
15.	e-Commerce	72100	Online Tax-Hao;omg Application and Service	Bahesa, Thimphu
16.	e-Commerce Business (using payment gateway integration of RMA)	63040	Online tour booking and room reservation	Kichu, Paro
17.	e-Commerce involving	63040	e-ticketing business	Thimphu

	payment gateway of RMA			
18.	e-Commerce involving payment gateway of RMA	63040	e-booking services	Phuentsholing

Source: DCSI 2019

Table 2 PENDING PROPOSALS

Sr. No.	Date Received	Activity
1	15/10/2018	Online English lesson service in Bhutan
2	19/3/2019	E-Commerce business
3	25/3/2019	e-Commerce exporting platform (selling authentic Bhutanese products)
4	29/3/2019	Online Music App Company
5	30/3/2019	Platform development and marketing products
6	8/4/2019	e-Commerce business (trading)
7	17/5/2019	Online Platform for services providers (service in health, education, travel, hotels, etc.

Source: DCSI 2019

Chapter 4. Risk Management undere-Commerce

Introduction

Worldwide, e-Commerce is gaining traction. Bhutan is on the threshold of significantly joining this multi-billion-dollar industry that has given rise to some of the richest men in the world. An e-Commerce policy has the potential to be a cornerstone for trade and development of Bhutan. Unlike traditional models of business where the assets were physical, e-Commerce is being conducted in the virtual world where technology and innovation walk hand in hand with cyber risk and data security. Business interruption is not only caused by fire, flood and earthquake which are measurable and visible but also by loss of internet connectivity, cyber-attack caused by malware and phishing. Effective management of various risks involved in achieving this is important for the prosperity and longevity of an e-Commerce enterprise. The scaling up of e-Commerce in Bhutan requires an enabling environment both for policies and processes. An important element is building trust and confidence of all the relevant stakeholders, ranging from the government to the citizens. The development of risk protection and risk mitigation policies, form an important part of the e-commerce policy, and serve to build resilience and trust in the system.

An illustration can be given using AS/NZS 4360,¹⁸ which is an internationally accepted Risk Management Standard. This Standard provides a genetic structure for established and important Risk Management processes. An example of framework of assessing risks is provided by the Risk Assessment Matrix below.

Figure 4.1 AS/NZS Risk Management Standard

RISK ASSESSMENT MATRIX				
SEVERITY \ PROBABILITY	Catastrophic (1)	Critical (2)	Marginal (3)	Negligible (4)
Frequent (A)	High	High	Serious	Medium
Probable (B)	High	High	Serious	Medium
Occasional (C)	High	Serious	Medium	Low
Remote (D)	Serious	Medium	Medium	Low
Improbable (E)	Medium	Medium	Medium	Low
Eliminated (F)	Eliminated			

¹⁸http://www.epsonet.eu/mediapool/72/723588/data/2017/AS_NZS_4360-1999_Risk_management.pdf

To begin with, it is necessary to understand the unique characteristics of Bhutan and identify the risks underlying the implementation of a successful e-Commerce regime. Risk Management is a function of Risk Identification, Risk Assessment, Risk Management and Risk Monitoring. The different kinds of risks and their mitigation strategies have been identified in the sections below.

4.1 Technological Risk

Bhutan is technologically ready to embark on an e-Commerce regime. A Bhutan Rapid e-Trade Assessment Report¹⁹ was done by UNCTAD in 2017. An External Consultant (KPMG) was also contracted to submit an e-Readiness Report. Various Payment gateways such as RMA payment Gateway (RMAPG), Pay Bhutan, Mobile Bank of Bhutan app (mBoB) are already in place. The Department of Telecommunications is ready to promote startups.²⁰ The Digital infrastructure is ready. Optical Fiber cables are laid all across the country. The IT infrastructure is tax free for import. As the cost of laying of cables is very high, Government is subsidizing the cost.

Risk identification and risk assessment

Some cases of online child abuse have been observed^{21, 22}. A recent event of Data Piracy in Bank of Bhutan (BoB) regarding pyramid Scheme²³ was observed wherein a lot of Data was shared. There are no Data mining and Data Security regulation. This is likely to cause a problem if measures to prevent loss due to absence of such regulation are not initiated. Unfortunately, presently there is no system to monitor or control this risk. Presently, E-Governance Policy is silent on the issue Bitcoins and Cryptocurrency.²⁴ Bitcoins and Cryptocurrency are digital currency which are created and held electronically and can be transferred over the web. Such currencies are not backed by any government or Bank. This brings instant gratification to its users and has the potential to spread rapidly. According to a study by Stanford,²⁵ if the hard drive crashes or is infected by a virus, the bitcoins may be lost forever. Secondly, there is no buyer protection, if the seller doesn't send the promised goods, there's nothing that can be done to reverse the transaction. In terms of Figure 4.1 this risk would be classified as a high risk in the case of Bhutan.

Suggested Mitigation Strategies

To ensure protection of public information professional hackers are hired. Presently there are 4 specialists under Department of Information Technology (DIT). Plans are afoot to include IT

¹⁹https://unctad.org/en/PublicationsLibrary/dtlstict2017d1_en.pdf

²⁰**Initiatives for the development of e-Commerce**

1. Trade and Investment Bill of Bhutan
2. Bhutan ICT Roadmap 2011 (Revised 2015).
3. E-Government Master Plan 2014: G2C and G2B services;
4. ICT Industry Development Plan (2016-2020)-iDzodrak;
5. E-payment gateway
6. Rapid e-Trade Readiness Assessment
7. Economic Development Policy, 2016
8. Cottage & Small Industry Policy, 2019
9. Guidelines one-Commerce, 2019

²¹ RESEARCH ON VIOLENCE AGAINST CHILDREN IN BHUTAN - <https://www.unicef.org/bhutan/media/341/file>

²² Sexual Exploitation of Children in Bhutan Submission for the Universal Periodic Review of the human rights situation in Bhutan Submitted by RENEW and ECPAT International Bangkok, Thailand on 4th October 2018 to the Human Rights Council 33th Session (April/May 2019) UPR third cycle 2017 – 2021

²³<https://thebhutanese.bt/more-than-600-bhutanese-youth-trapped-in-a-ponzi-scheme-in-siliguri/>4. Bhutan ICT Roadmap 2011 (Revised 2015)

²⁴<https://cryptonews.com/guides/countries-in-which-bitcoin-is-banned-or-legal.htm>

²⁵<https://cs.stanford.edu/people/eroberts/cs201/projects/2010-11/DigitalCurrencies/disadvantages/index.html>

professionals rather than Govt. Officials. Data protection regulations are being drafted. Express guidelines for bitcoins and crypto currency are needed. Silence is not the answer.

4.2 Operational Risk

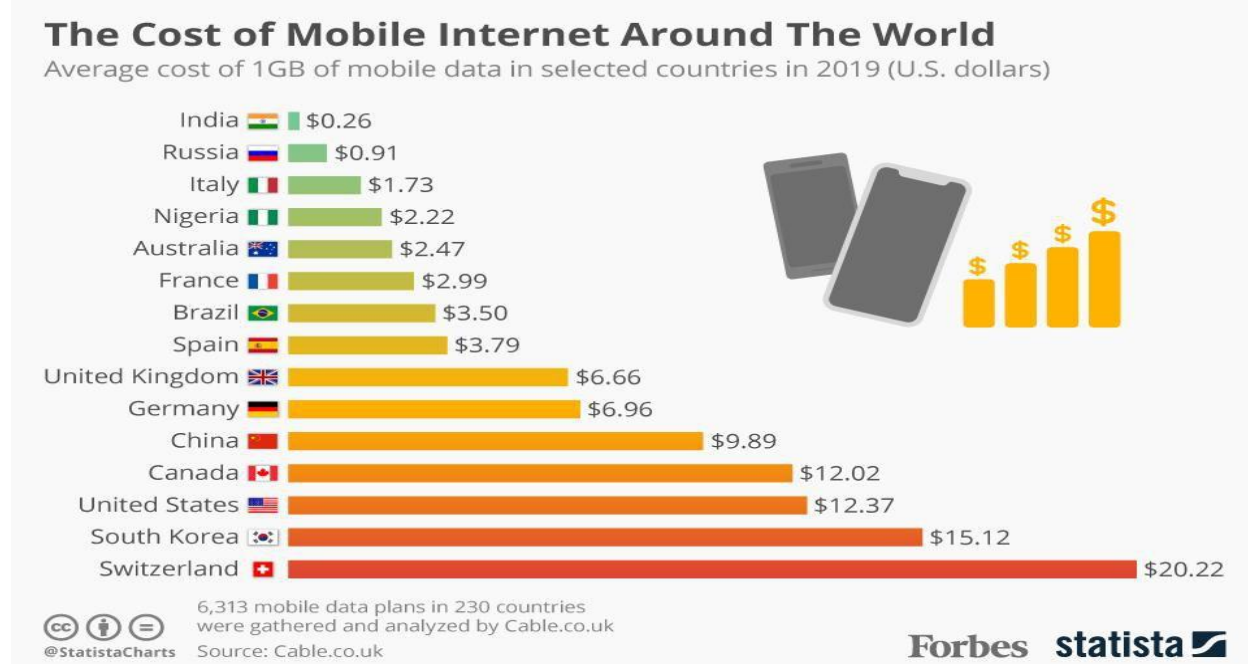
A pleasant online shopping experience is important for the popularity of a website. Online experience of e-Commerce project is a function of usability, mobile friendliness and performance. This includes browsing experience and buyer experience. This means ensuring good quality, high speed internet, with adequate bandwidth.

Risk Identification and assessment

Poor internet connectivity leads to lot of time lag in opening the site. This can be a mood changer for the client. It can reduce footfalls for the site. Second important aspect of online experience is seamless and hassle-free transaction. The entire experience of opening of the website, search for the desired products, making payment should be efficient and glitch free.

Although internet penetration is 76 % in Bhutan, the cost of internet is presently very high (see point 2.7 in Chapter 2). According to a recent study by Forbes²⁶, the cost of mobile internet across the world ranges from 0.26 dollars in India to 20.22 USD in Switzerland.²⁷

Figure 4.2



Source: Forbes Statista as shown in footnote below

As per BICMA, the cost of Internet leased line in Bhutan for 6mbps is Nu. 25,125 which is roughly 350 USD. It is a major impediment in the growth of e-Commerce in the country. Unless the price is

²⁶ <https://www.forbes.com/sites/niallmccarthy/2019/03/05/the-cost-of-mobile-internet-around-the-world-infographic/#4622cc26226eEng.pdf>

²⁷ For Bhutan, illustrative prices can be seen for instance in <https://isp.today/en/list-of-all-services/BHUTAN>

significantly reduced, this can dissuade new businesses from entering the market and also for the consumers to access the market. It is to be noted that leased line prices have been brought down significantly to Nu 1,325 per mbps in 2019.²⁸

Presently only 0.3% of the population in Bhutan have credit cards, only 64.47% of the population have bank accounts, and only 0.8% use online transactions (Refer Ch.1, table1.3). These are other impediments to the growth of a long-term e-Commerce strategy. Further a lot of retailers do not accept credit cards or charge 3.5% on them, thus increasing the cost of transactions. Most consumers use the mechanism of cash on delivery instead of credit cards. However, e-Commerce has grown exponentially on the back of credit cards, hence it is important for Bhutan to increase the usage of credit cards.

In addition, outages in internet and unstable connections are high in Bhutan. This forms a major risk as ordering on-line requires guaranteed stable internet. In terms of the matrix in Figure 4.1, this could be classified as high risk as it could compromise the security of the consumer.

Suggested Mitigation Strategies

For an e-Commerce enterprise to grow, it is necessary that consumers have access to affordable and reliable internet. Access to bank and credit card needs to improve. This is only possible if consumers have confidence in the robustness of the IT system. Introduction of mobile banking, hand held devices and payment apps such as Unified Payment Interface (UPI), Bharat Interface for Money (BHIM) or Pay through Mobile (Paytm) may be used for easy access and transfer of money.

4.3 Product Risk

Risk identification and Assessment

For an online e-Commerce to develop, it is important to have trust between its various stakeholders – the manufacturers/sellers, e-Commerce platform owners and the consumers/consumers. The reputation of e-Commerce platform owners depends upon the quality of products it sells. So, it is essential to ensure quality. Wrong products are sometimes delivered, when the product delivered is not the same as that claimed on the e-Commerce platform. Spurious product such as contaminated or counterfeit products or secondhand or used product may be delivered, which shakes consumer confidence in the site and is an important element of risk that needs to be controlled. This risk would be classified a low risk in Bhutan as the product return rate is very low.

Suggested Mitigation Strategies

- Periodical verification of the manufacturers/ suppliers
- Periodical black listing of manufacturers with dubious reputation
- Double checking of the products being shipped
- Having control over the product being shipped, by maintaining an inventory of its own – By maintaining a warehouse of its own, an e-Commerce website can control the quality of the product as well as its timely delivery.

4.4 Online Security Risk

Risk Identification and Assessment

Online security is a very important aspect of a successful e-Commerce enterprise. Trust in the online website is essential pre-requisite for functioning of e-Commerce business. Consumers are highly wary of

²⁸ Reported in an interview with BICMA

unknown, insecure websites. There are risks of phishing wherein a harmless e-mail is sent from a trusted source to solicit sensitive information. Hacking wherein website/ social media page is hacked by a hacker with malafide intention to create trouble or to blackmail. Another important issue is Credit card fraud where Credit card details are stolen to defraud consumers. Instances of Data piracy are also reported when consumer and other useful data is stolen by using malware or hacking. Chances of data theft and data piracy are high in sites with just http instead of https. The former (http) are unsecured sites. This risk would be classified as a high risk.

Suggested Mitigation Strategies

Online security concerns are presently being addressed by making specific provisions in Consumer Protection Act, 2019, by holding Cyber awareness / wellness workshops, by paid e-mail system. Under this system www.bhutanhosting.com provides professional e-mail solutions for businesses. They promise to provide inbuilt anti-virus protection. For Bhutan government officials, there's an Information and Security Guideline, 2015. Bhutan government is in the process of developing cyber rules to combat cyber security risks²⁹.

Cyber risks are reduced if users have strong passwords. Systems to have strong passwords should be incorporated. Having a non-storable Card Verification Value (CVV) is also effective for credit cards. This number is to be found behind the credit card. One-time Password (OTP) is another method to ensure security and safety of digital transaction. Retinal/Thumb Scans also add to the security of payment.

Sites need to obtain Secure Sockets Layer (SSL), a global standard security technology that enables encrypted communication between a web browser and a web server. It is utilized by online businesses and individuals to decrease the risk of sensitive information (e.g., credit card numbers, usernames, passwords, emails, etc.) from being stolen or tampered with by hackers and identity thieves. In essence, SSL allows for a private "conversation" just between the two intended parties. To create this secure connection, an SSL certificate (also referred to as a "digital certificate") is installed on a web server and serves two functions:

- Authenticates the identity of the website (this guarantees visitors that they're not on a bogus site)
- It encrypts the data that's being transmitted

4.5 Platform owners Risk

Since Postal delivery charges are very high³⁰ and local delivery mechanisms are not available, a lot of people prefer to pick up their parcels. Due to difficulty in establishing and maintaining e-Commerce platform several vendors prefer to sell their wares through Google marketing (Facebook, Instagram); video marketing is also in vogue. Unfiltered product selling through Facebook, WhatsApp is cutting into country's income as these sales are unregistered, mostly person to person or Company to Person. Chances of companies paying taxes on such transactions are low. This would be classified as a medium risk.

Identification and Assessment of risk

Due to problems in inventory management, quality control, vendors prefer to sell their own brand. The concept of Multi brand retail is not available in Bhutan. In particular farmers' have poor access to

²⁹https://www.sbs.ox.ac.uk/cybersecurity-capacity/system/files/CMM_Review_Report_Bhutan_September_2015.pdf

³⁰<http://www.bhutanpost.bt/wp-content/uploads/2017/documents/postage%20rate.pdf>

technology. Hence Bhutan is not able to cash in on its organic, natural products. Another problem is that Credit facility for private sector is limited. Presently, there's an international credit card limit of USD 1,500.

Platform owners need certification from various agencies for their products. For example, BAFRA certifies packaged drinking water and juices, plants and plant products. It adheres to minimum food hygiene requirement, ISO 3065. It is also a reference point signatory to Codex.³¹ Bhutan has a separate agency for certification of forest produce (Forest Regulatory Authority).

Another problem faced by e-Commerce owners, though to a lesser degree than conventional brick and mortar businesses is the risk of Inventory Management. Consumers expect a time-bound delivery system. A timely delivery is possible only if its inventory is managed well. A manufacturer/ wholesaler/ retailer does not want unnecessary materials in their warehouse nor have a shortage of goods which will result in delays. If the inventory is short the consumer will be dissatisfied by delay in delivery, and if the inventory is large, there's a problem of spoilage of goods. This would be classified as a medium risk.

Suggested Mitigation Strategies

Periodical verification of the manufacturers/ suppliers should be made and recalcitrant manufacturers and those with dubious reputation or those having maximum product recall should be black listed. Sometimes platform owners in order to have control over the product being shipped or to increase consumer satisfaction maintain inventory of their own

'Just in Time' delivery system needs to be adopted. Here's is a list of best practices to handle such issues: 1.E-Commerce owners or its suppliers can use inventory management software such as sortly, capterra, etc. that are readily available at reasonable price.

2.They can Collaborate with a professional drop shipping service

3.They can use barcode scanner to expedite and streamline processes

4. For wrong product delivery, it is advisable to politely acknowledge mistake and process the refund

4.5 Intellectual Property Infringement risk

Risk Identification and assessment

Website and company logos, business mottos, product images are e-Commerce intellectual properties. Copying or using a similar design is a major commercial risk and are known as violations of the owners' rights. Although Bhutan has an IP, Patent, Copyright Act, 2001, its products not branded as "made in Bhutan". The Certificate of Origin Certificate is also not available, thus denying it of possible revenue. Regarding Royalties, Bhutan has a blanket approach to protect its consumer and provide intellectual property protection. The risk would be classified as medium as there has already been an infringement as shown in Chapter 3, though the frequency of infringement is not high.

Suggested Mitigation Strategies

A strong and proactive approach in safeguarding IP is expected from e-Commerce entrepreneurs. Branding of its product and certificate of Origin are very important in creating brand value and product differentiation. Patents, Trademark, copyright are methods to protect the intellectual Property of e-Commerce platform users. Use of Trademarks, watermark, dating the products, getting Geographical Indication (GI) Certification is some other measures that may be employed to mitigate the risk of

³¹ The Codex Alimentarius (Latin, meaning Food Law or Code) is the result of a collection of internationally adopted food standards, guidelines, codes of practice and other recommendations.

intellectual Property infringement. The IP, Patent, Copyright Act, 2001 needs to be updated to include e-Commerce products and services.

4.6 Consumer Satisfaction Risk

If consumer service team has the wrong tone and voice for interacting with prospective clients, then the chances of losing business is very high. This has not occurred in Bhutan as yet, so the risk would be low.

Suggested Mitigation Strategies

Focus should be on exceeding consumer expectations and gracefully responding to their queries. Personalization can take consumer experiences to the next best level. Consumer communication can get easier with chatbots.³²

4.7 Online Payment Risk

Identification and assessment of risk

E-Commerce platform necessitates use of digital payment systems. There are several risks associated with digital payments such as online fraud, credit card fraud, cloning of credit card/debit card, hacking of personal information and using it to defraud the user. There is also a problem of identification of money that has been deducted from the consumers' account but has not been credited in the account of the seller (Refer to Chapter 3).

A risk assessment of various ICT risks in European Union Enterprise is shown in Figure 4.3 below. This issue could fall into the high-risk category till adequate payment systems are put in place in Bhutan. Steps in this direction have been taken and risk mitigation strategies been implemented to reduce these risks. Expansion of e-Commerce would require additional capacity and options.

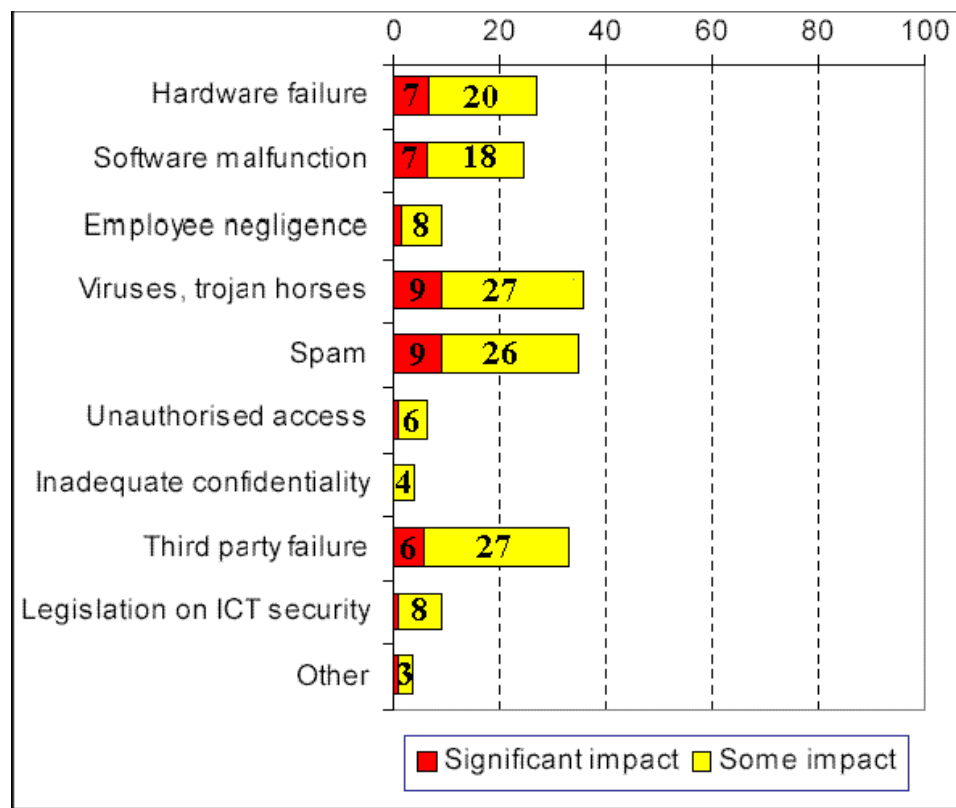
Suggested Mitigation Strategies

Use of chip in Credit card / Debit card is important to prevent frauds. Use of One Time Password (OTP) also helps prevent financial loss due to Credit/ Debit card/ Internet Banking fraud. Use of Personal Identification Number (PIN), with periodic changes in PIN, is also helpful.

E-Commerce platform owners need to ensure that they do not charge their prospective clients until they are confident that all the ordered items are shipped. Department of DOIT has suggested that an escrow account be maintained until the end of product return validity date.

³² A **chatbot** is an artificial intelligence (AI) software that can simulate a conversation (or a chat) with a user in natural language through messaging applications, websites, mobile apps or through the telephone. https://www.google.com/search?q=chatbots&oq=chatbots&aqs=chrome..69i57j0l5.7592j0j8&sourceid=chrome&es_sm=93&ie=UTF-8

Figure 4.3 European Risk Assessment



Source: ICT security incidents in European Enterprises [Source: e-Business W@tch]

4.8. Consumer Disputes and Product Return

Risk Identification and assessment

Consumer disputes are the biggest threat to thee-Commerce enterprise. A satisfied consumer is likely to recommend the portal, thereby providing free publicity whereas dissatisfied consumer can spoil the hard-earned reputation of an enterprise. Managing product-return is an important risk mitigation strategy for consumer satisfaction. Major causes of disputes are usually non- delivery of product, wrong delivery of the product where either the product is delivered to a wrong address or a wrong product is delivered or product did not meet client expectation. These risks would come in the low to medium category in Bhutan as postal addresses are not well marked and sometimes addresses are difficult to find.

Suggested Mitigation Strategies

It's important to swiftly respond to chargeback notices, politely communicate and fine-tune refund policy. Warehousing Control, Stringent quality check can mitigate the risk of shipment of wrong products. Care should be taken, perhaps through double checking of the shipments to minimize the incidence of clerical errors in shipping. The entities in supply chain need to be more consumers focused. Government should have stringent Conflict-resolution mechanism such as Micro Credit Regulatory Authority (MCRA), which monitors and safeguards the interest of small and medium industries from the ills of high interest rates charged, or other exploitation or misrepresentation by Micro Finance Institutions.

4.9. Financial Risk

Risk Identification and Assessment

Various Financial Risks such as the following are associated with e-Commerce: -

1. Since e-Commerce platforms or their suppliers need to maintain inventory, they are susceptible to Financial Loss. This can be caused by **Theft** either in warehouse or in transit. They may be subject to financial loss due to Receipt of counterfeit negotiable instruments (such as currency, Demand Draft, Cheques etc which are guaranteed by government) or due to forgery or alteration of negotiable instruments.
2. Financial Loss can also be due to Loss of money, securities or other property (e.g. stock) caused by the **dishonesty of Employees or of Third Parties**
3. **Theft Loss** may be caused as a consequence of having transferred funds or property to wrong consumers or wrong account.
4. Financial Loss can also be caused by **fraudulent input of data** into a computer system or through a network into a computer system.
5. **E-communication Risk** occurring due to a consumer having transferred funds or property or given any value on the faith of any fraudulent communication for which loss the enterprise may be held legally liable.
6. **E-Threat Risk**— Instances of cyberbullying, ransomware is high. An e-Commerce enterprise is susceptible to such losses.
7. **E-Vandalism Risk** – Deliberate destruction of a site is another threat affecting e-Commerce enterprise
8. **E-Business interruption Risk**– Any act of vandalism, threat, hacking of site can result in business interruption; this includes the Extra Expenses that may be incurred to keep the business afloat.
9. **Privacy Notification Expenses**, including the cost of credit monitoring services or similar services for affected consumers.
10. **Crisis management Expenses** such as the cost of public relations consultants lead to monetary loss
11. **Reward Expenses**, that is, sometimes company declares rewards for information regarding fraud such informant costs is another type of financial loss.
12. **Disclosure Liability**, including consumer claims due to system security failures resulting in unauthorized access to or dissemination of private information on the Internet can cause monetary loss.
13. **Content Liability**, including claims for intellectual property, trademark and copyright infringement is another cause for concern
14. **Reputational Liability**, including claims alleging disparagement of products or services,
15. Libel, slander, defamation and invasion of privacy have huge financial implications.
16. **Conduit Liability**, including claims arising from system security failures that result in
17. harm to third-party systems can be very costly to mitigate.
18. **Impaired Access Liability**, including claims due to system security failure resulting in systems being unavailable to consumers.
19. **Defence Costs** for legal liability arising out of e-Commerce business such as can be crippling unless shared or provisioned for.

Several of these risks would be classified as high category risks. For all these risks insurance and consumer protection policies are an effective risk management tool. These policies are elaborated below.

Risk Mitigation

Existing Insurance Schemes

Most of the major reinsurers like GIC Re, Swiss Re, Munich Re are operating in Bhutan. Most of the existing insurance Companies are doing composite insurance business, that is, they provide life and

general covers. They also disburse housing loans and home loans. They are one stop shop for all financial instruments. Nearly everyone in Bhutan has life insurance although the value may vary. All loans given by the bank are insured. Nearly 30-40% of property is insured.

Major reinsurers active in Bhutan are: GIC Re (Mumbai, India), GIC-Bhutan Re (Thimpu, Bhutan), ZEP-RE (PTA Reinsurance Company in Nairobi, Kenya), Kenya Reinsurance Corporation Ltd. (Nairobi, Kenya), National Insurance Company Ltd. (Kolkata, India), Asian Reinsurance Corporation Ltd. (Bangkok, Thailand), CICA-Re (Tongo), Senegal-Re (Senegal), Sava-Re (Ljubljana, Slovenia), Uganda-Re (Uganda), Nepal-Re (Nepal), NCA-Re (Abidjan, Republic of Cote d' Ivoire), Misr Insurance Company (Egypt).

These re-insures provide coverage over and above the limit of capacity available locally. Though Cyber insurance, commercial crime insurance covers may be provided by reinsurers, they are not popular yet, transit insurance claims are paid in foreign exchange where claims are offshore

Suggestions

All Financial Losses like the ones noted above are covered under various insurance policies or are available in a single specialized policy like cyber liability policy or Commercial Crime insurance. Insurance can serve to mitigate the financial loss served by thee-Commerce enterprise. It is an important tool for Risk Transfer and Mitigation.

The potential of e-Commerce is large. According to Swiss Re, China's digital economy contributed to 35% of GDP in 2018 and it is expected that the share will grow to more than 50% by 2030. The growth of e-Commerce in China is driving consumption. Government policies support this development.

With the continued growth of the digital economy, risk protection solutions for cyber exposures will be a main growth area for insurers in China. So too will be the development of innovative solutions to cover previously uninsurable risks. Hence the scope for increase in general insurance business of the general insurance companies in Bhutan is tremendous. They need to be prepared and seize the opportunity.

4.10 Role of Consumer Protection

Consumer Protection goes hand in hand with various Risk Mitigation strategies. It is the most desirable outcome for the various strategies discussed.

Bhutan's Office of Consumer Protection has 3 divisions: -

- i) Planning and Research Division that Formulates Policies mainly relating to goods
- ii) Programme & Communication Division that deals with Consumer Education & Institutional Capacity Building
- iii) Consumer Grievance and Redressal Division that Investigates consumer grievances received from consumers. They can impose fines and can even cancel license.

It has been observed that there are no rules to regulate Maximum Retail Price (MRP) for products sold in Bhutan except the medicinal products that should be sold at MRP or lower as per the rule 116 of Bhutan Medicine Rules and Regulation 2012. The price fixation of the goods and services are mostly left to the sellers. However, the display of price of the goods and services is mandatory to allow consumer choice and make informed decision which in a way influences the price of the goods through market force and competition.

Having said this, if the consumers are charged exorbitantly or unreasonably high prices on goods and services, the consumers can complain to OCP whereby OCP will investigate the case and take necessary

course of action. In cases of Monopoly like in Meat shops which are limited in supply, the concerned offices through formation of committee Intervenes and fixes price. OCP has no laboratory capacity to ascertain adulterated products. However, OCP collaborates with the relevant agency and work closely to address such issues. And when it comes to setting up of standards, Bhutan Standard Bureau (BSB) has the mandates to do the task.

Drug related offences are very few and there are provisions for fine or compensation extending up to license cancellation in the Consumer Protection Act, 2012. There is no provision of issue of license to farmers, so are out of the purview of CSA. OCP has no jurisdiction over the offences that are criminal in nature although the case may be business and consumers. Such cases will be directly forwarded to relevant agencies.

There is no provision for issue of licenses to farmers, who do not have a trade license by the OCP. Their business is however operated through approvals by BAFRA. Hence, Consumer complaints have to be raised with BAFRA in this case.

Availability of counterfeit products is a major challenge. Presently, there are no mechanisms in place to deter inflow of counterfeit goods and services. However, OCP do carry out advocacy and educational programs to the consumers advocating on their rights, responsibilities, unfair trade practices, duties of the business entity, consumer grievance redressal etc. Consumers are informed / educated to be smart and make the right decision.

There is Consumer Toll Free number (1214) for registration of complaints relating to suspicion or unfair trade practices. Consumers can not just complain but seek advice relating to consumer protection affairs.

OCP continues to conduct advocacy Workshops and Seminars across the country to educate people about their rights & duties as a consumer and how to deal with various risks. Provisions are made Section 4(b) of the Consumer Protection Act to deal with Information Asymmetry. A Competition Policy is being developed which is expected to provide legal teeth to promote fair trading and regulate market.

Conclusion

This chapter has tried to identify various risks associated with e-Commerce enterprise and tried to provide practical and regulatory solutions to mitigate such risks. e-Commerce market is extremely sensitive to consumer trust. Any security incident can have a cascading effect on business revenue. It is absolutely necessary to manage risk.

Risk assessment, and Risk Monitoring are dynamic processes that change continuously with change in circumstance and need to be factored in while planning each and every aspect of an enterprise.

It has been noted that Businesses that do not master the techniques and strategies of e-Commerce and selling online risks are more likely to close down. Risk Management strategies equip enterprises to guard their venture from a lot of predictable losses. Bhutan is on the threshold of entering into e-Commerce arena, knowledge of Risk Management strategies is extremely important in building consumer satisfaction, longevity and growth of enterprise eventually leading to the growth of the country as a whole. Risk Management is the armor that can be the difference between a successful and a failing business.

Chapter 5: Institutional Structure fore-Commerce

Introduction

A proper institutional structure is of vital importance for implementing an e-Commerce policy in Bhutan. This is more so given the fact that the Royal Government is starting to encourage e-Commerce for the first time for promotion of trade, particularly exports from small scale industries with the objective of reducing a large trade deficit. As several organizations are involved in e-Commerce, coordination becomes a key function for the new office, apart from taking initiatives such as offering incentives to help e-Commerce start-up and growth. At the same time, a speedy dispute settlement mechanism is also needed together with a strategy for building the overall capacity of the new office that must be dynamic, proactive and innovative in its approach to provide relevant and timely services to the private sector. This Chapter addresses these and other related issues.

This Chapter also explains the institutional framework in some detail, which includes a number of Government departments and Authorities that were discussed in Chapter 2. Though this implies some repetition from Chapter 2, this Chapter also covers some additional institutions in the context of a discussion of a proposed set up for e-Commerce in Bhutan. The main features of the proposed arrangement, its functions and transitional to an effective functional entity is discussed as a main focus of this Chapter.

5.1 Present situation

E-Commerce started practically in vacuum during this decade with little or no policy framework or development strategies. Based on requests made by interested entrepreneurs, the Ministry of Economic Affairs (MoEA) held a consultation meeting in February 2017 with the Department of Information Technology & Telecom (DITT) and Royal Monetary Authority (RMA) of Bhutan and decided to issue business licenses upon production of a technical clearance from the RMA for international financial transactions. The Department of Trade (DoT) initiated the process to develop guidelines in 2018 on digital economy in cooperation with other stakeholders. The Guidelines were officially issued in July 2019. The Guidelines, *inter alia*, categorize e-Commerce operators who must obtain prior approval of the DoT for starting an e-Commerce portal or business, outline procedures for obtaining a license, specify their obligations, provide disclosure and transparency requirements as well as on data protection and privacy and stress the need for all relevant organizations to educate and create awareness on e-Commerce.

Based on their personal knowledge and drive, a few enterprises like the www.drukbees.com, www.druksell.bt and www.shop.bt have ventured into e-Commerce business and navigated their way to overcome hurdles at each step to make the enterprises profitable. As of August 2019, 23 e-Commerce operators had been licensed as per the information provided by the DoT, MoEA. It is possible that there may be a few other players in the market operating under other business licenses like the GNH corner platform of Bhutan Post, or without specific e-Commerce licenses that started to be issued only from 2016. E-Commerce operators have developed their own platforms and found a way to pay or receive payments by patching with the e-payment gateway hosted by the Bank of Bhutan.

The value or volume of annual e-Commerce trade cannot be estimated at present in the absence of research studies and availability of data. The Bhutan Postal Corporation Ltd. (Bhutan Post) keeps some data geared to its internal needs. As shown by the discussion in Chapter 2, the estimated value of e-Commerce, excluding e-Procurement, is about USD 1 million or NU 72 million per year.

An in-house study carried out by the Department of Revenue & Customs (DRC) in 2018 one-Commerce through Bhutan Post showed that there was a sharp increase in incoming mails (letters and parcels) in 2016 and 2017 compared to 2015. Although the parcels per se have shown an increase in 2016 and 2017 compared to 2015, the highest increase has been in registered mail for which segregation between parcels and letters is not available. The DRC also collected both customs duty (except for parcels originating in India) and sales tax for the imported parcels in the order of Nu. 13 million each in 2016 and 2017 as compared to Nu. 7 million in 2015 if their values had exceeded the free allowance of Nu. 3,000.00. China was the main source of import (Alibaba.com) followed by India (Amazon.in). Major items of import were garments and footwear, household appliances, cosmetics and vehicle spare parts. This is the first known study carried out one-Commerce that provides some basic information. Parcels delivered through other private carriers like the DHL are not covered by the study nor are the export items on which greater focus is essential if Bhutan wants to increase exports.

5.2 Major stakeholders

There are many agencies concerned with e-Commerce. For the policy and development support, MoEA is the principal government organization with at least four departments involved in some aspects of e-Commerce – the DoT exercises both functions of internal and external trade promotion and regulation, Department of Cottage & Small Industries (DCSI) is mandated to facilitate the growth of cottage and small enterprises, Department of Intellectual Property protects copyrights, trade-marks, industrial designs and geographical indications while the Office of Consumer Protection (OCP) has the responsibility to guard consumer interests by ensuring product qualities and fair trade practices. In addition, for cross-cutting issues, the Policy & Planning Division (PPD) coordinates the Ministry's functions and activities and the Department of Industry deals with industrial investments including foreign direct investment (FDI) for medium and large scale industries.

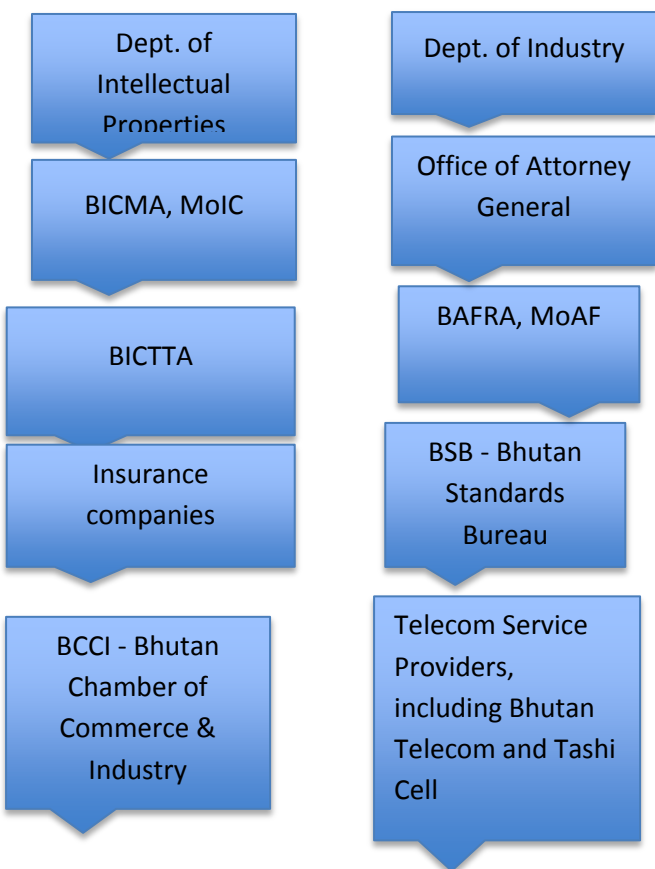
Outside the MoEA, the three other important players are the DITT, RMA and transport and courier services. The DITT is responsible for facilitating quality telecommunications infrastructure and networks for e-Commerce platforms in cooperation with other players in the field in the private sector. The RMA oversees the health and stability of the financial and banking sector and provides domestic and international payment gateways in cooperation with commercial banks. The carriage and courier services like the Bhutan Post and DHL are responsible for delivery of traded goods through e-Commerce after payment of taxes and fees. Hence, these three organizations and the MoEA represent the four wheels of the vehicle for e-Commerce. In addition, for customs and tax clearances, the role of the DRC is central as also that of the Bhutan Agriculture & Food Regulatory Authority (BAFRA) for national biosecurity and food safety and Bhutan Standards Bureau (BSB) for industrial product inspection and certification. The role of DRC is not only customs and sales tax, but also to provide trade facilitation and ensuring safety and security of society.

Beyond these agencies, as the legal arm of the Government, the Office of Attorney-General (OAG) will have a role in framing laws, rules and regulations of e-Commerce and in resolving disputes. The Bhutan Infocomm and Media Authority (BICMA) has a regulatory role in telecommunications and is indirectly involved. And there are a host of other entities in the private sector such as the insurance companies (for insuring traded products), telecom service providers, information technology, the Bhutan Chamber of Commerce and Industry (BCCI), trade and industry associations as well as actual e-Commerce operators. The role of production and trading community in boosting the growth of e-Commerce cannot be over emphasized.

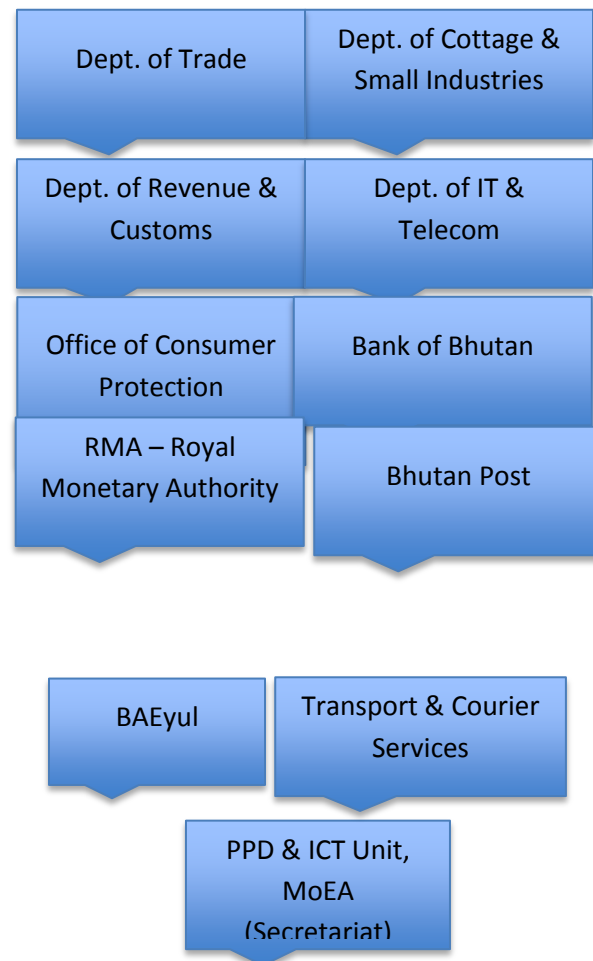
A list of primary and secondary stakeholders of importance in relation to e-Commerce is given in Figure 1 below and their functions vis-à-vis e-Commerce in Annex 5.2.

Figure 5.1e-Commerce Stakeholders

Secondary Stakeholders



Primary stakeholders



5.3 Proposed e-Commerce institution

In examining the responsibility for development of the digital economy, consideration has been given to whether the organization to be proposed should be in public, private or mixed domain. The main question to be asked is how the proposed organizational set up can effectively contribute to the growth of e-Commerce and how it can start functioning soon. This is the main rationale for making the suggestion below.

Given the contribution of the public sector in the Bhutanese economy and with the relatively undeveloped state of the Bhutanese private sector, the new organization for e-Commerce needs to be housed within the government. However, in acknowledging the seminal role of the private sector, its representatives from appropriate industry associations should be part of the new arrangement along with members of the key organizations in the Government. So, in essence, the new arrangement becomes a mixed body wherein both the private sector and the Government will have a role in decision making. The Government would have to finance the budget of the new entity, both capital and recurrent, including the expenses related to its functioning.

5.4 Practices in other countries

The next question then is which existing Ministry or other Government agency should host the new organization? If we look at other countries, there is no clear choice as reflected in Table 5.1 below. The criterion for introducing an e-Commerce institution seems to be the national convenience rather than a particular sector in the government although the popular candidate overseeing the development of e-Commerce seems to be the Ministry in-charge of commerce.

Table 5.1: Host organizations for e-Commerce in different countries

Countries	Government agency responsible for e-Commerce	Remarks
Afghanistan	Ministry of Commerce & Industry	
Bangladesh	Business Promotion Council, Ministry of Commerce	
Fiji	The Fiji Commerce Commission	
India	Ministry of Information Technology & Electronics	
Macao (SAR)	Business and Investment Department, Macao Trade & Investment Promotion Institute (IPIM)	Representation of both public & private entities
Myanmar	Ministry of Commerce	
Maldives	Ministry of Economic Development	Trade & commerce is under this Ministry
Nepal	Ministry of Industry, Commerce & Supplies	
Pakistan	Ministry of Commerce	
Sri Lanka	Ministry of Telecommunications & Digital Infrastructure	
Thailand	Electronic Transactions Development Authority (ETDA)	Licenses issued by Commerce Ministry

Source:
Various
sources of
Internet

**5.5
Broad
responsibility**

In
the
light

of the above and with a broad responsibility for development of industry, trade and commerce, the MoEA is more suitable for implementing e-Commerce initiatives than any other Ministry. At least four arms of the MoEA are involved in e-Commerce as mentioned before. It is therefore proposed that in due course of time the new office should operate like the OCP, outside any particular department, reporting directly to the Secretary, MoEA. This arrangement would allow greater flexibility in discharging its functions and availing of support from other entities within the MoEA.

There may be lessons to learn from the OCP. As it is headed by a Director, it is treated like a department under the MoEA in all practical purposes. Yet, it has a Consumer Board to help steer its activities and a dispute settlement system. The role of the Consumer Board is provided for in the Consumer Protection Act, 2012. The e-Commerce office can not only draw from the experience of the OCP but it can also utilize these two mechanisms with some adjustments and approval of the MoEA.

Notwithstanding the above, the e-Commerce office can also be set up under one of the MoEA's departments like the Department of Trade which has taken the lead for the first time ever to develop and issue the Guidelines. The DoT has also understandably taken the initiative to incorporate some aspects of the Guidelines on e-Commerce in the Rules and Regulations on Trade in Goods that are being

drafted. It is further learnt that the practice of issuing business licenses fore-Commerce that had initially started in the DCSI has recently been transferred to the DoT. Hence, in all probability, the DoT would be the principal agency one-Commerce in the future that will operate in cooperation with the other agencies involved. In the meantime, however, given the involvement the PPD in the current study one-Commerce policy and the lead taken by the DCSI in spearheading one-Commerce initiatives, the following interim measure is suggested for consideration.

5.6. Interim Arrangement

Understandably, it will take some time to fulfill all the requirements for establishing a new office as its structure, personnel and budget have to be approved by the Royal Civil Service Commission and the Ministry of Finance. But it would be unwise to wait for this to take its own course. The gamut of issues relating to one-Commerce have to be addressed straight away so as to maintain the momentum of the finalization of the policy, the approval of the Guidelines and the keen interest shown by the members of the Working Group that was constituted to assist the consultant one-Commerce policy and other stakeholders. An interim arrangement is suggested in the mean time until a full-fledged office one-Commerce is set up in the MoEA as a separate organization by the beginning of the 13th Five-Year Plan (2023-2028) at the latest.

An Interim Executive Committee (IEC) should be set up in the PPD, MoEA with the members to be drawn from the Government and private sector. What this means is that the Working Group, with minor modification, will be transformed into the IEC. The IEC would be supported by a full-time officer from the PPD, MOEA who will be the focal person one-Commerce and provide secretariat services for the IEC. He/she will seek approvals and report on the work of the IEC through the PPD's normal reporting channel.

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The IEC will mainly coordinate and implement issues related to one-Commerce and function as a focal agency one-Commerce for the Government. The composition and terms of reference of the IEC is given in Annex 5.1.

The IEC should process for a new independent office through the MoEA by 2022. By that time, it will have acquired two years of experience under the interim arrangement assuming that the IEC can start functioning in the first quarter of 2020.

5.7. Capacity building

Building national capacity for digital economy is of paramount importance. There is not only the need for education and creation of awareness one-Commerce but also in identifying functional areas of different agencies in the Government that interface with it. The role of the policy and legal framework must be reviewed, clarified and articulated in this respect.

In view of the above, the following broad topics for capacity building are suggested. Training of key personnel involved in the digital economy should be conducted in different phases stretched over a three-year period from the commencement of the IEC. Candidates can also be sent abroad to take advantage of training and educational courses arranged or offered by international and regional organizations; video-based training could also be used in a structured manner.

- Introduction to one-Commerce (its role in economic development)
- The state of one-Commerce: global and regional digital flows (business and ICT perspectives)

- Policy issues facing the digital economy (legal and policy framework, customs duties & taxes, de minimis, e-payments and virtual currencies, online transactions, competition, product and data quality and standards, insurance and protection of intellectual properties)
- Enabling policy environment for e-Commerce (digital infrastructure, financial resources and FDI, digital signature and electronic contracts, data security, protection and authentication and consumer protection)
- Internet governance and e-Commerce (actors, institutions, cyber security and cybercrime, encryption, data neutrality)
- Financial transfers and e-payment gateways (role of central and commercial banks)
- Use of e-Commerce in development of cottage and small industries and promotion of exports
- E-Commerce and supply chain industries and services
- Digital commerce in bilateral and regional trade agreements
- Dispute resolution (within and outside courts)
- Institutional development and capacity building for e-Commerce

Many international and regional organizations like the World Bank, EU, UNDP, UNCTAD (Train For Trade program), ITC (SME Academy), ITU, WTO and ESCAP offer courses on above topics on the digital economy that Bhutan may be able to utilize. The IEC can seek help from Bhutan's diplomatic missions abroad (Bangkok, Brussels, Geneva and New York) through the Ministry of Foreign Affairs to explore such opportunities. In addition, the national contact points for these international organizations in Bhutan can also be used. Moreover, courses in e-Commerce are conducted in many academic and training institutions in the neighboring countries of Bangladesh, India and Nepal. One can also find online courses, some of them free of cost, by surfing the net like <https://www.e-Commerceguide.com>; <https://www.shopify.com>; and <https://www.udemy.com>. However, one needs to find out the quality and authenticity of the courses advertised before enrolling in them to avoid any scam.

5.8. Dispute settlement

E-Commerce has to be driven by trust. Whenever a person orders or sells a product online, there is always an element of risk. For the buyer, the risks relate to the quality and identity of the product (i.e., whether it is the original or same as advertised in the seller's web page), whether it is delivered in good condition and in time, whether the buyer is satisfied with it and if not, whether he/she can return it and get back the money paid in advance. The same issues bother the seller in the reverse order. The buyers therefore must have complete information about the product and the mode and time of delivery before payment is made.

Disputes are inevitable in business transactions whether these are digital or traditional paper-based. When disputes are extra-territorial, remedial measures become more difficult. It is necessary to have appropriate legal means for resolving disputes whenever they arise and when these cannot be resolved mutually or through mediation, so as to protect the interest of both buyers and sellers. The IEC and/or its successor should develop and introduce an appropriate legislation as soon as possible in keeping with international practices like the UN trade law (UNCITRAL) and the WTO framework. Pending enactment of such a law, the available legal means in Bhutan such as the lawyers working in various ministries including those in the MoEA and OAG have to be used for dispute resolution based on our existing laws. In the first instance, the IEC may set up a five-member sub-committee to mediate on dispute resolution relating to e-Commerce issues like it is being done in the OCP by the Consumer Board. If this is not productive, then it should engage the OAG lawyers, as required, to find a solution. The aggrieved party of course has to first report the case to the IEC to enable it to initiate suitable action. The last resort is for the aggrieved party to approach a court of law.

An additional mechanism that needs to be explored is on-line dispute resolution. This would fall under the Alternative Dispute Resolution Centre of Bhutan.³³

Conclusion

The commission of the study on the Development of the National e-Commerce Policy for Bhutan, the issuance of the Guidelines on e-Commerce and other recent initiatives by the DITT and RMA confirm the need and public interest in the promotion of e-Commerce in the country. The timing is propitious as there is an increased focus at the national level to enhance the contributions of the cottage and small industries sector to generate employment and promote exports and to make maximum use of the opportunities offered by information and communications technology. Against this backdrop, the establishment of the IEC as proposed will be the right step not only for coordination of national efforts but also in facilitating and implementing the needed support and incentives to prospective entrepreneurs. The Government should provide adequate budget and personnel to enable the IEC to achieve its functions effectively and transform it into a full-fledged office within the MoEA by the beginning of the 13th Five-Year Plan (2023-2028).

³³ <https://www.bhutanadrcentre.bt/>

Annex 5.1 Compositions and ToR of the Interim Executive Committee (IEC)

Composition and Meetings of the Committee

To assist the Government in coordination and implementation of thee-Commerce policy, an IEC may be constituted until such time that the Government is ready to open a separate office one-Commerce in the MoEA. It will consist of the representatives at senior level, ideally at the head of the organization indicated under the heading 'principal stakeholders,' in Figure 5.1 above. These organizations are the following:

1. Department of Cottage & Small Industries, MoEA
2. Department of Trade, MoEA
3. Office of Consumer Protection, MoEA
4. Department of Information Technology & Telecom, Ministry of Information & Communications
5. Department of Revenue & Customs, Ministry of Finance
6. Royal Monetary Authority of Bhutan (central bank)
7. Bhutan Postal Corporation Ltd.
8. Bank of Bhutan (that hosts a payment gateway) to represent the banks
9. Bhutan Chamber of Commerce & Industry representing the private sector
10. BAEyul - Bhutan Association of Entrepreneurs until a more broader organization in the private sector is set up to promote their interest in the application ofe-Commerce in the businesses
11. Officer, PPD, MoEA to function as the Member-Secretary and focal person
12. BICMA

The Committee will meet at least four times a year, in January, April, July and October but it can hold more meetings as and when required and as determined by the Chairperson on the advice of the Member-Secretary. The Committee will elect its own Chairperson for holding the meeting. It shall also adopt its own rules of procedure for its meetings and for representation and approve a work program to be endorsed by the MoEA.

Terms of Reference

As mentioned in the above report, the main function of the IEC shall be to coordinate and implement issues related toe-Commerce. The tasks of the IEC shall include the following:

1. Coordinate and consolidate action aimed at promotion of digital commerce keeping in view the primary roles and responsibilities of the parent organization of the members, as appropriate;
2. Develop and implemente-Commerce law, rules and regulations thereto and implement the strategy for promotion and growth ofe-Commerce;
3. Encourage and facilitate the private sector to introduce new and innovative ideas to promote exports, especially from the CSI sector;
4. Facilitate and supporte-Commerce establishments in start-up and promotion of their business;
5. Assiste-Commerce operators in overcoming and addressing their problems insofar as these relate to Government policies and regulations;
6. Take a lead role in capacity building measures for the organizations involved ine-Commerce;
7. Mobilize financial and technical resources to build the national capacity one-Commerce;
8. Perform monitoring and evaluation functions on a periodic basis with the help of an independent evaluation body, where necessary;
9. Help promote, organize and participate in educational and awareness creation activities on digital economy; and

10. Participate in the meetings of the Committee as well as in other national, regional and international activities one-Commerce.

Chapter 6 Free Trade Agreements and-Commerce

Introduction

E-Commerce businesses and particularly SMEs in Bhutan can enjoy lower import duties by applying for tariff concessions covered by FTAs. This allows businesses to increase their margins or reduce the prices of their goods. As one of the main drivers for-Commerce sales from consumers point of view is price, lower prices could potentially increase international-Commerce sales.

FTAs can also help-Commerce businesses in Bhutan to engage new markets at lower costs by improving access to some of the biggest global markets. Large markets such as China, Japan, and Australia – New Zealand are now more accessible for both international-Commerce sales and as potential sources of better supplies. There is also a spaghetti effect from Bhutan's trading partners. For example Bhutan has a Trade and economic co-operation agreement with Thailand, which in turn has FTAs with all the other larger partners.

6.1 How to Apply for Tariff Concessions

SMEs and-Commerce companies can follow these steps to apply for tariff concessions under FTAs:

1. Find out whether an FTA exists between Bhutan and its ultimate destination country, e.g. USA.
2. Identify the export goods' product codes under the Harmonised System.
3. Determine whether these products are covered by the FTA's tariff concessions.
4. Check the products' eligibility for tariff concessions – for example, whether or not the goods satisfy the FTA's rule of origin.
5. Comply with documentary requirements outlined in the FTA and by the related countries' Customs bureaus.
6. Lodge an application, together with the documentary requirements, through the Customs office.

6.2 Supporting-Commerce Businesses across ASEAN

The ASEAN Agreement on Electronic Commerce will cover different aspects of-Commerce, including logistics, consumer protection, modernizing the legal framework governing-Commerce, and more. It will promote freer movement of-Commerce goods across the region—perhaps even leading to the creation of an-Commerce FTA. In addition, the agreement aims to address a major hindrance to the growth of-Commerce in the region, the lack of access to online payment methods. This is done by aiming to enable smoother, more cost-effective cross-border payments across the region. By supporting-Commerce in Southeast Asia, the region will help companies, especially SMEs, expand their markets and grow their businesses internationally.

6.3 India Bhutan Trade Agreement

This highly liberal bilateral Free Trade Agreement (FTA) features duty-free and quota-free trade and therefore trade with India is not restricted by tariff or rules of origin. The majority of trade takes place with India, amounting to nearly 90 per cent of exports and 75 per cent of imports. Exports, beyond

hydroelectricity to India, remain minimal and of low value. Most imported goods travel overland through India to get to Bhutan. The European Union's General System of Preferences (GSP) and Everything But Arms (EBA) programme have been extended to Bhutan, but it has so far not been able to make full use of this facility. It also has duty-free and quota-free access to European and United States markets as a Least Developed Country (LDC). Hydropower is the mainstay of its economy, accounting for over 12 per cent of its GDP, 40 per cent of total export – almost 90 per cent of which is to India. The industry generates 45 per cent of government revenues. Exports of minerals and mineral-based products account for nearly half of total exports.

The major problem in e-Commerce as highlighted elsewhere in the report is the payment mechanism. According to a joint statement issued following the bilateral meeting on 17-18th August, 2019, India's Prime Minister Mr. Modi committed to provide a transitional trade support facility of Rs 4 billion over a period of five years to strengthen bilateral trade and economic linkages. Part of this fund can be used for e-Commerce start-ups. Bhutan can benefit from India's FTAs as India has 21 FTAs with other countries. Bhutan can also set up value chains for some products such as traditional medicine, electronics and even textiles with India and export with such value chains to other FTA partners of India. Further the launch of RuPay credit and debit cards would facilitate e-Commerce as well as boost people-to-people ties between the two countries. This in turn would boost e-Commerce especially of tourism.

6.4 South Asian Free trade Agreement (SAFTA)

The South Asian Free Trade Area (SAFTA) is the free trade arrangement of the South Asian Association for Regional Cooperation (SAARC). The agreement came into force in 2006, succeeding the 1993 SAARC Preferential Trading Arrangement. SAFTA signatory countries are Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. SAFTA recognizes the need for special and differential treatment for LDCs in its preamble. This has been translated in the following measures: Market access: LDCs benefit from smaller sensitive lists in some of the SAFTA members (meaning that they have duty free quota free access in a larger number of products) and less stringent rules of origin (requirement of change of tariff heading and value addition of 10% less than the general requirement for non-LDCs; the general rule is 60% regional value added. Bangladesh has 1,233 products on the sensitive list for the Least Developed countries and 1,241 for the non-Least developing countries under the SAFTA. Bangladesh will reduce the sensitive list by 246 items for the least developed countries (LDCs) and 248 for the non-LDCs. India has 25 items on the sensitive list for the LDCs and 695 for the non-LDCs. Bhutan has 150 items for both the LDCs and non-LDCs and has no plan of shortening its list. Nepal has 1,257 for the LDCs and 1,295 for the non-LDCs. Nepal has reduced its list by 259 from its previous list of 1295. Now it is 1036. The Maldives has 681 for all seven SAFTA nations. Pakistan had 1,169 in its sensitive list but has cut its sensitive list by 20% to 936. Sri Lanka has 1,042 and Afghanistan has 1,072 items on the negative list.

As Bhutan has a generous FTA with India this agreement would only benefit Bhutan in accessing Nepal and Sri Lankan markets. With the RuPay it would be easy for Bhutan to use e-Commerce transactions to access these markets as the Indian rupee is widely used to trade in the region.

6.5 Bhutan and Bangladesh trade agreement

Bhutan and Bangladesh signed a bilateral trade agreement in 1980, granting each other the "most favoured nation" preferential status for development of trade. As of FY 2009-2010 Bangladesh's total imports from Bhutan stood at US\$25 million, while its exports to Bhutan accounted for US\$3 million. The bilateral trade agreement affords duty-free access to 90 products. In January 1st-October 15th 2014 Bangladesh was Bhutan's second-largest export destination after India, with Bhutan's exports to

Bangladesh reaching Nu1.08bn (around US\$17m). However, Bhutan's imports from Bangladesh were much lower, at Nu133.27m (US\$2m), and Bangladesh was only the tenth-largest source of Bhutan's imports. However, the terms and conditions of the agreement allow easy access for e-Commerce operators. A demand mapping of typical e-Commerce products in Bangladesh is required.

6.6 The Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC)

BIMSTEC is a regional economic bloc comprising seven member states lying in the littoral and adjacent areas of the Bay of Bengal constituting a contiguous regional unity. The group formed in 1997 consists of Bangladesh, Bhutan, India, Nepal, Sri Lanka, Myanmar and Thailand. The grouping accounts for 22 per cent of the global population, and has a combined gross domestic product of USD 2.8 trillion. In the last five years, BIMSTEC countries have been able to sustain an average growth rate of 6.5 percent, despite the global financial meltdown in the late 2000s (See Table 6.1).

Table 6.1: GDP Growth (annual percentage) of BIMSTEC members (2004-2016)

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Bangladesh	5.24	6.54	6.67	7.06	6.01	5.05	5.57	6.52	6.52	6.01	6.06	6.55	7.11
Bhutan	5.90	7.12	6.85	17.93	4.77	6.66	11.73	7.89	5.07	2.14	5.75	6.49	6.17
India	7.92	9.28	9.26	9.80	3.89	8.48	10.26	6.64	5.46	6.39	7.51	8.01	7.11
Myanmar	13.56	13.57	13.08	11.99	10.26	10.55	9.63	5.59	7.33	8.43	7.99	7.29	6.50
Nepal	4.68	3.48	3.36	3.41	6.10	4.53	4.82	3.42	4.78	4.13	5.99	2.73	0.56
Sri Lanka	5.45	6.24	7.67	6.80	5.95	3.54	8.02	8.40	9.14	3.40	4.96	4.84	4.38
Thailand	6.29	4.19	4.97	5.44	1.73	-0.69	7.51	0.84	7.24	2.73	0.91	2.94	3.23

Source: <http://data.worldbank.org/data-catalog/world-development-indicators>

The objectives of the agreement are the following:

- Creating an enabling environment for the rapid economic development of the sub-region.
- Encouraging the spirit of equality and partnership.
- Promoting active collaboration and mutual assistance in the areas of common interests of the member countries
- Accelerating support for each other in the fields of education, science, and technology, etc.

The potential of this agreement are to:

- Form a Bridge between South and South East Asia and represents a reinforcement of relations among these countries.
- Platform for intra-regional cooperation between SAARC and ASEAN members.
- Home to around 1.5 billion people that constitute around 22% of the global population.
- With a combined gross domestic product (GDP) of 2.7 trillion economy, BIMSTEC Member States have been able to sustain an average 6.5% economic growth trajectory in the last five years.
- A fourth of the world's traded goods cross the bay every year.

- Important Connectivity Projects:
 - Kaladan Multimodal Project – links India and Myanmar.
 - Asian Trilateral Highway - connecting India and Thailand through Myanmar.
 - Bangladesh-Bhutan-India-Nepal (BBIN) Motor Vehicles Agreement - for seamless flow of passenger and cargo traffic.

Given the ASEAN initiative one-Commerce specifically as shown above, this agreement has the potential for giving large benefits through e-Commerce. The important issues are whether the RuPay card would be applicable in these countries or only in the SAARC countries.

BIMSTEC Coastal Shipping Agreement draft was discussed on 1 December 2017 at New Delhi, to facilitate coastal shipping within 20 nautical miles of the coastline in the region to boost trade between the member countries. Compared to the deep sea shipping, coastal ship required smaller vessels with lesser draft and involve lower costs. Once the agreement becomes operational after it is ratified, a lot of cargo movement between the member countries can be done through the cost effective, environment friendly and faster coastal shipping routes. This will reduce the logistics cost for e-Commerce businesses in Bhutan and improve its access to some of the biggest global markets.

Intra-regional investment cooperation is needed to strengthen the BIMSTEC-FTA and to attract FDI to the region. The member countries must strengthen their competitiveness and productivity to become active recipients of both intra-regional and inter-regional FDI. FDI inflow will help in increasing incomes and employment, and in raising capital and technological intensity of production by bringing in know-how from advanced countries. The government should incentivize major e-Commerce players like Amazon, Flipkart, Alibaba to invest in the country. This would create a level playing field between offline and online retailers.

6.7 Bangladesh, Bhutan, India, Nepal (BBIN) initiative as part of South Asian Growth Quadrangle (SAGQ)

BBIN - In light of economic interdependence demonstrated by "growth triangles" across Asia and hitherto unheeded concerns of eastern subcontinent nations, its Council of Ministers in May 1996 approved a sub-regional body for Nepal, Bhutan, north east India and Bangladesh as the *South Asian Growth Quadrangle (SAGQ)*.

As the mechanism operated through specific projects, constituent members endeavored to integrate without requiring alteration in broader policy or methods of governance. It sought to impel the subregion's latent socio-economic potential, harnessing disparate stages of development to augment each other. Borders of member states rest within 50 kilometers of Siliguri. Norms, tradition and lifestyle amongst inhabitants underscore the importance of an integrated market. Considerable emphasis was placed upon power trading between naturally abundant and energy-scarce localities to address the impact of shortages on industrial production, reverse consequently depressed rates of growth, reduce transmission and distribution losses through interconnected grids, and provide needed revenue for upstream nations with adverse balance of payments. Over the years its objectives expanded to incorporate land and port connectivity. For example to link West Bengal and remote north eastern states through Bangladesh by rail, highway and maritime corridors, alongside north-south transport routes that span Nepal, Bhutan and Indian hill states to northern Bay of Bengal ports

6.8e-Commerce FTAs

Digital tools and e-Commerce have rapidly altered trade patterns. The proliferation of the digital economy has extended the capacities of firms of all sizes enabling them to engage in cross-border trade

in ways that continue to rapidly evolve. The size of the digital economy continues to grow exponentially, making it increasingly important for policymakers to think through sensible frameworks to provide the best enabling environment for consumers and companies to thrive for the future.

Digital trade is intertwined with often domestically sensitive issues such as cross-border data flows, data collection and storage, cyber security and privacy. Parties signing free trade agreements (FTAs) have begun adding new rules to regulate and harmonize provisions of importance to companies trying to operate across multiple jurisdictions. Sixteen elements of e-Commerce have been identified which any country should be aware of before signing a trade agreement with other countries.³⁴

Sixteen key elements in FTAs fore-Commerce

1. Elimination of customs duties on digital products and/or electronic transmissions

The parties are prohibited from imposing customs duties, fees or other charges on cross-border electronic transmission of digital products. (However, parties are not precluded from imposing internal taxes.) The elimination of customs barriers for digital products and electronic transmissions is a key measure to facilitate digital trade between the FTA members. It reduces the costs incurred by consumers and helps businesses to access new markets.

2. Non-discrimination against digital products

Non-discriminatory treatment of imported digital products is another fundamental measure to support open digital economy between the FTA members. Equal treatment of digital products ensures healthy market competition and provides better quality and more affordable choices for consumers.

3. Electronic authentication and electronic signatures

The provision refers to a mutual recognition of electronic process of identity verification and validity of electronic signatures. Unless they do not meet certain performance standards or are not certified by an accredited authority, the FTA parties should not prohibit electronic authentication methods or deny the legal validity of the e-signatures. This provides flexibility for users of authentication technologies and e-signatures facilitates trade processes and eases the efficiency of transactions.

4. Paperless trading

The FTA parties should ensure there is a transparent platform that provides access to all measures related to electronic commerce and make trade administration documents available to the public in electronic form. Unless there is a legal requirement for the printed version, each party should accept trade administration documents submitted electronically as the legal equivalents. This increases the effectiveness of trade administration documents' processing.

5. Domestic electronic transactions framework

Domestic electronic transactions framework refers to the domestic legal frameworks governing electronic transactions adopted by FTA members. These frameworks should be consistent with the principles of the UNCITRAL Model Law on Electronic Commerce adopted in 1996. Individual parties are encouraged to avoid unnecessary regulatory burdens on electronic transactions and facilitate the participation of interested stakeholders in the development of the domestic legal framework. The framework facilitates enforcement of the FTA rules governing electronic transactions between the FTA parties and provides clear regulations for conducting cross-border business in those countries.

³⁴ <http://asiantradecentre.org/talkingtrade/comparing-digital-rules-in-trade-agreements>

6. Online consumer protection

The parties should provide the same protection measures against fraudulent or deceptive commercial activities for online consumers as they do for any other consumers. The measures should be transparent and effective to protect consumers and proscribe activities that can cause harm or potential harm to consumers engaged in online commercial activities. This provision is important for enhancing consumer welfare and establishing firm consumer trust in digital trade.

7. Personal information protection

Parties should proactively protect personal information by designing a legal privacy framework to prevent a misuse of individual information of consumers engaged in electronic commerce. The framework should not discriminate against any users of digital trade, and the FTA parties should be responsible for ensuring compliance with these measures within their territories. Compliance guidelines and information on how a person can pursue a remedy in case of privacy breach should be publicly available.

8. Measures against unsolicited commercial electronic communications

Colloquially known as ‘spam messages,’ unsolicited commercial electronic communications are messages sent in-bulk to recipients in forms such as advertisements, product updates, or trade offers from various sources. Acknowledging the detrimental effect these communications may have on the digital consumer experience, certain FTAs have taken steps to regulate unsolicited commercial electronic communications. Such measures include obtaining a personal consent of the consumers to receive such messages, their right to opt out from receiving unwanted messages, and appropriate recourse if suppliers do not respect such regulations.

9. Cybersecurity

As cyber-attacks pose a significant risk to participants of the digital trade, the FTA members should build the capacities of their respective national agencies responsible for ensuring cybersecurity, responding to cyber threats, mitigating the effects of any malicious intrusions, recovering from them and spreading general awareness of cyber-attacks. Risk-based approaches and preventive practices are usually encouraged as more effective ways rather than prescriptive regulation in addressing cyber threats.

10. Cross-border transfer of information

Free movement of data and transfer of information by electronic means across borders are essential for building effective and sustainable international digital trade. Decisions related to business development, marketing, innovation and development of comparative advantage cannot be made without cross-border data flows.

Data flow-restrictive measures should only be imposed as regulations necessary to protect consumer privacy and security, and never as digital trade restrictive and protectionist measures. Facilitation of cross-border transfer of information for business purposes should be a common goal for countries facing the digital age as it decreases the costs of doing cross-border trade, increases productivity, helps to meet consumer demands and enhance innovation.

11. Prohibition of data localisation

Data localisation refers to digital trade regulation imposed by a country which requires a person to use or locate computing facilities in the country’s territory as a condition for conducting business there. Data localisation measures target both personal and non-personal types of data such as company and tax records. Prohibitions of data localisation allow businesses to be free from storing and replicating data

locally. The provision may become of particular interest to multinational businesses, as it allows outsourcing of data, reduces costs of doing business internationally and promotes an open and flexible global technical infrastructure.

12. Cross-border transfer of information by electronic means and prohibition of data localisation for financial services

The provision allows cross-border transfer of information by electronic means (including personal information) and prohibits data localisation for financial services when these activities are in connection with the conduct of the business of a covered financial person.

13. Liability of intermediary service providers

Intermediary service providers are suppliers of interactive computer services. The provision refers to a liability distinction between intermediary service providers and their service users, i.e. the information content providers. It prevents the intermediary service providers from being held legally accountable for harm related to information stored, processed, transmitted, distributed, or made available by their service users. The provision also allows intermediary service providers to moderate online content by restricting harmful or objectionable material. The provision does not apply to intellectual property protection measures.

14. Non-disclosure of software source code and related algorithms

A source code of software or an algorithm expressed in the source code often contain trade secrets and information that grant a competitive advantage to the owning party. If the owners are required to disclose the source code of their software or related algorithms as a condition for trade, they risk losing the exclusive right over their technologies. Provisions that ban any party from requiring access to the source code or related algorithms ensure a more secure trade environment.

15. Open government data

Open government data is a digital provision that makes government information, including data, readily available for public consumption. Though no more than a recommendation (i.e. non-binding), this provision emphasises the positive impact that electronically-available non-sensitive public data can have on innovation, competitiveness, and economic development.

16. Cooperation

Cooperation refers to parties' commitments to collaborate on various regulatory measures, their implementation steps, and further enforcement. These cooperation practices include exchanging information and sharing experiences on regulations, personal information protection, security in electronic communication, spam prevention, establishment of safeguards etc. The provision encourages parties to commit to building a more inclusive and safer world for the digital trade, assisting SMEs to overcome obstacles to the use of FTAs, and engaging the private sector in the development of self-regulation tools.

Conclusion

While Bhutan has a few FTAs their reach is potentially very large covering markets of over 2 billion and one fourth of global GDP. In order to benefit from these and other schemes such as the EBA, Bhutan has to focus on its domestic eco-system for promoting e-Commerce. In particular it should focus on payment and risk mitigation mechanisms.

Chapter 7 Taxation undere-Commerce

Introduction

E-Commerce occurs in various forms and between various entities in the market. As internet crosses geographical boundaries, the main challenges are how can the basic requirements of physical presence and substantial nexus criteria of taxation be met. e-Commerce is any transaction completed over a computer-mediated network that involves the transfer of ownership or rights to use goods or services. According to the European Commission, e-Commerce encompasses more than the purchase of goods online. It includes a disparate set of loosely defined behaviours such as shopping, browsing in Internet for goods and defined behaviours, gathering information about items to purchase and completing the transaction like any other sustained business activity. It also means conducting consumer satisfaction surveys, capturing information about consumers and maintaining consumer databases for marketing promotion and other related activities.

7.1 Taxation for Internet Transaction

The Internet has changed many of the fundamental and longstanding concepts of direct and indirect taxation. Governments all over the world are grappling with the various issues of taxation raised by e-Commerce. This is because of lack of comprehensive understanding of:

- The communication technologies.
- The complex nature of business offered through Internet business.
- The modus operandi of Internet business, has made the operation of tax legislations more difficult.

Basic Principles of Taxation

Several basic principles form the foundation of taxation policy in any country. The most important of these principles are efficiency, equality, certainty and positive economic effect. The efficiency principle encompasses notions of both fiscal and economic efficiency. An economically efficient tax system should be neutral and not influence one's economic behaviour simply because of the manner in which the tax is levied. An ideal tax system is also equitable in its application. Not only does it treat taxpayers in similar economic circumstances similarly but also it makes suitable distinctions in its treatment of those in different economic situations. It necessarily raises questions of "similar economic circumstances", certainty in the tax laws is a fundamental principle in the establishment of ideal tax structure because predictability of tax consequences is an essential component of other basic tax principles. Finally, taxation has always been a mechanism for stabilisation and regulation of the economy. Recognising this fact, legislature has emphasised the economic effects of the principle of taxation, with a particular focus on encouraging economic growth.

Some of the peculiarities of Internet are:

- It is a network of networks and it cannot be controlled or owned by one person.
- This network of networks is capable of rapidly transmitting packets from one computer to another.
- No human involvement is necessary to transmit data from one computer to another.
- The Internet can re-route itself if one computer is connected to the net. Content wise the Internet is very rich.
- The world-wide web environment provides a user friendly graphical interface.
- A simple click is sufficient to obtain vast information anywhere in the World.
- It encompasses all territorial and geographical limitations

Taxation under e-Commerce cannot be confined to conventional topics like whether an e-merchant has a permanent establishment, how income from one line transaction should be characterised and where consumption of goods and services delivered electronically takes place, etc. These topics should be considered in the context of broader study evaluating the total impact of e-transformation on business productivity, supply chain, economic cycles and sector differences. To put it in another way, revenue authorities should not simply focus upon taxation of e-Commerce per se (such as B2C sale and purchase of goods by Amazon.com the downloading of Norton anti-virus program), where attention is typically focused upon the location and function of servers, characterisation of income and place of consumption. Instead, the analysis should extend more broadly to ensure a deeper understanding of the nature of e-business as it is today and as it will develop tomorrow.

In this regard, it is tempting to argue that business function will simply and suddenly disappear into cyberspace and that virtual companies will be able to operate with little presence anywhere except a site hosted by an Internet service provider in a tax-free jurisdiction. Primarily, Internet activities are divided into two parts. One is "access service" and other is "content service." In the former, access to the Internet will be provided to the individuals whereas, in latter, content consisting of information are delivered electronically. To distinguish further Internet service provider is one who provides the service of accessing Internet whereas, online service provider (OSP) is one who provides service through Internet. The service is rendered by them in return for the payment of subscription and usage fees. These are subjected to tax. The Internet as discussed earlier encompasses content/material service, traditional retail transaction to an electronic medium, electronic commerce involving digital products. This would eventually create so many intellectual property problems.

The practicalities of enforcing sales tax, customs duty differ between online and offline transactions. The tax authorities will need to re-think their current methods of tax collection, simplifying or streamlining procedure without threatening any revenue and other cross-frontier controls.

Taxing on-line Transactions

The term online is used to describe any transaction that is delivered online. For tax authorities, these transactions are very difficult to handle. The problems with online transactions, as perceived by tax collecting authorities include:

- Inability to identify a transaction
- Encryption of transaction
- Collecting the tax from millions of end-users rather than a small number of intermediaries.
- Difficulties in determining where a product is produced or consumed.
- Definition of goods and services and
- Distinctions between types of services

Tax collecting authorities will be virtually powerless in identifying transaction between Bhutanese consumers and overseas suppliers, where all of the transaction has been performed electronically including paying the money through electronic cash.

Encryption of Transaction

Powerful encryption technologies are now available to everyday Internet user and are expected to become commonly used in the next two to three years. These technologies allow users to encrypt all of the transaction so that only the parties involved can decrypt the information.

This means that if the income tax officer or other tax authority is able to interrupt a transaction, he will not be able to read it or understand its content in order to identify whether the transaction involves

accessible goods or not. The use of encryption technologies will not only be conducted by tax evaders but also by the most honest citizen who just wishes his transaction to be secure.

Another important problem in e-taxation is collection of tax from millions of individuals rather than intermediaries. This will increase the cost of tax collection. Internet makes the physical location of the seller's business irrelevant. Whereas, the conventional notions of sales tax law are based on the location of seller's business itself. Making use of the unique feature of the Internet, the seller may operate his market in a state effectively from far beyond the state's borders where it may be immune to the state's taxing jurisdiction. The VAT systems currently in place in 30 OECD countries are credit invoice tax systems. This method has a basis that relies on a number of rules and one of these rules is the "place of supply rule". This rule tries to ensure that appropriate goods and services are subject to taxation only once. The OECD has recommended that the place of supply rules be called the place of taxation rules so as to minimise any prospect of misunderstanding about the extent and implication for countries arising from any consensus reached on the place of taxation.

7.2e-Commerce Taxation

Bhutan has signed tax treaties with both India and Bangladesh. Taxation of e-Commerce has become a major concern for international agencies and tax authorities worldwide. In Europe, North America and Australia and in many Asian countries substantial research has been conducted on the impact of e-Commerce on taxation. Among the plethora of book reports, articles and papers produced on the topic, the work of OECD stands out as the most significant. The theme underlying throughout OECD work done till now is, that the Government has to successfully meet the challenges posed by e-Commerce for taxation systems, and a global coordinated approach is required to tax a truly global phenomenon.

OECD Report

The report of OECD paved way for a statement of broad taxation principles that should apply to e-Commerce. In sum and substance, same principles of conventional taxation should apply to e-Commerce. Taxation should be neutral and equitable between different forms of e-Commerce and thus, avoiding double taxation or international non-taxation. Compliance costs for business and administration costs for the Governments should be minimised as far as possible. Tax rules should be clear and simple to understand so that tax payers know where they stand. Taxation should produce the right amount of tax at the right time, and the potential for evasion and avoidance should be minimised. Taxation system should be flexible and dynamic to ensure that they keep pace with technological and commercial developments. These principles can be applied through existing tax rules and there should be no discriminatory tax treatment of e-Commerce.

In addition:

1. Consumption Tax Issues

The consumption Tax report proposes guidelines defining the place of taxation for cross border services and intangible property by reference to the recipient's business establishment for (B2B transactions) and by reference to the recipient's usual jurisdiction of residence for (B2C transaction)

2. International Direct Tax Issues

Permanent Establishments -The revised commentary to Art 5 of OECD Model Tax Convention clearly states that a non-resident enterprise with an Internet website alone would not be regarded as having permanent establishment in the country in which the website is located. This concept is of course crucial to the assessment of business profits under Article 7 of the OECD Model Tax Convention Article 5(1) which defines a permanent establishment and Article 5(2) provides what it means. The revised

commentary explores various challenges posed by e-Commerce to the wording of permanent establishment concept detailed in Art .5. The revised commentary classifies that a website cannot by itself be considered a permanent establishment. Similarly, an ISP normally will not constitute a dependent agent of another enterprise so as to constitute a permanent establishment of that enterprise.

3. Income Characterisation

This issue concerns the classification of various types of e-Commerce income as either royalties or income from the sale of goods or income from the provision of services. This will decide the extent to which tax jurisdiction will benefit and this, in turn, may depend upon whether the home and source jurisdiction are net exporters or importers of technology. The OECD guidelines insist on neutrality of taxation between traditional commerce and e-Commerce. For instance, buying virtual books, by downloading the content and the right to read without the right to reproduce is similar to buying a paperback. Therefore, it seems logical that taxation treatment on Internet need not be different from conventional tax system.

4. Transfer Pricing

The OECD recognises that transfer pricing issues will be increasingly important in the e-Commerce age. e-Commerce is more collaborative and dispersed than traditional forms of commerce and its supply chain is intrinsically connected. It facilitates connectivity both intra-group and inter-group. Examining the totality of existing arena, it will be difficult in terms of determining appropriate transfer pricing to decide which business functions should carry greater weight particularly given that e-Commerce has changed the way of intermediation and distribution of business flows to a significant extent. It is of no wonder therefore, that tax payers and tax collectors alike are struggling to determine which business functions are significant and then agree upon a suitable allocation of profits thereto.

5. Administration of Tax - Technological Challenges

It is a fine balancing act to legislate on the basis of an intellectual and equitable framework on the one hand and to take proper consideration of enforcement barriers and administrative particularities on the other. In action on the part of taxation authorities in today's e-business environment is simply not an option. There is an integrated web based system for Customs and Excise namely e-CMS (Electronic Customs Management System). DRC is currently using a timeworn offline based system known as Bhutan Automated Customs System (BACS). With digitisation of Customs a proper record of e-Commerce transactions and the taxation can be worked out under e-CMS. Taxation authorities worldwide appreciate that obtaining information from taxpayers and related parties and ensuring tax compliance in an e-Commerce world will be a mushrooming problem. Numerous questions arise in this regard:

1. How should transaction be kept and where?
2. What is the appropriate record keeping standard and how detailed should this be?
3. How should the constraints under various privacy and personal data laws be balanced with the need to ensure tax compliance?
4. It is feasible or appropriate to require an e-merchant to obtain a business registration in every place in which sales are made or services provided.
5. How parity treatment should be ensured between new e-merchants and old style catalogue houses that export goods from a remote location?

7.3 Challenges Before Bhutanese Tax authorities

The general perceived wisdom, to which tax authorities universally appear to subscribe, is that their major challenges regarding e-Commerce are:

- (i) Identifying the tax payer, especially when an Internet user is involved.
- (ii) Identifying audit risks and developing audit trials to ensure compliance.
- (iii) Obtaining access to verifiable information and documents.
- (iv) Obtaining access to encrypted data
- (v) Developing a response to the advent of electronic money (e-cash) and ensuring efficient mechanism for collecting tax especially from non-resident tax payers.

There is a need for initial inter-government and multi-jurisdictional co-operation and agreement to synchronize the taxation treatment. Taxation authorities need to modernise their operation radically. There is a need to monitor cross-border business activities on the Internet. Authorities need to upgrade their technological knowledge. Tax authorities need better data mining techniques, database management and an audit policy towards thoroughly examining the various models of e-business. Tax treatment need to match electronic reality. Privileges such as extended filing dates for tax returns could be granted to tax payers who conduct their dealings with the tax authorities electronically. Many tax authorities urgently need to co-ordinate better with other Government departments to obtain information on matters such as customs duty clearances.

General legislations and domain registration requirements and investment attraction

Tax policy makers need to strike a balance between providing incentives to promote the new e-business economy. Simplicity of rules and ease of compliance are obvious legislative and administrative goals yet these must be balanced by regulatory controls preventing crime and tax fraud ensuring personal data protection.

7.4 Tax Evasion and the Internet

Some of the Conventional tax evasion measures undertaken by companies are

- Shifting of profits to low tax Countries by transfer pricing.
- Allocation of costs operation artificially either against domestic profits or foreign profits depending on where the rates of tax are less favourable.
- Setting up conduit or intermediary companies outside the home country to process and channelize income from different foreign source.
- Establishing base companies in tax havens or legal domicile.

The problem of the Internet is that all of these become much easier with location being quite irrelevant in the borderless world.

Need for Consensus

In this context, considering the unique characteristics of the medium, consensus is necessary at an international level if countries are to ensure the effective application of taxes, direct and indirect, to e-Commerce that:

- Protects tax revenue generally;
- Does not increase the opportunity for avoidance evasion or fraud;
- Minimise the cost of compliance for business;
- Does not hinder the development of electronic trade.

On a larger perspective, the base of tax system should be broadened. It should also be simple within the administrative capacity of the Government. The Government tries to enhance its revenue while tax payers oppose any increase in tax rates. Therefore, there has to be a line of demarcation which the Government will have to follow because excessive taxes do not reflect positive indications for the growth of any economy and may act as deterrent.

7.5 Some examples of e-Commerce Taxation from other countries

Fiji

Any business that operates in Fiji needs to be registered with the Fiji Revenue and custom services for tax purposes. They need to submit their applications to Revenue and Custom Service Department. All business (Including online businesses) in Fiji must register for tax identification number upon starting a business. If the annual sale of online business exceeds \$100,000 then it is required to register for value added tax. After getting it registered the business is required to charge VAT on all sales made and file VAT returns, as well as make VAT payments. A VAT registered company acts as a collecting agent on behalf of the government. It is important for online businesses to maintain a record of all business transactions for a minimum of seven years. They need to set up a direct debit from business account to pay online business taxes. Thus VAT and direct taxes would be paid in the case of e-Commerce as long as they are registered in Fiji.

Afghanistan

Hesab.af is an e-taxation and online payment system primarily developed to help small businesses calculate and submit different types of taxes to the government and help individuals/businesses with their day to day payment transactions. Hesab.af is integrated with the Ministry of Finance and, in particular, paying taxes to the government is easier for millions of Afghans, using Hesab.af.

The interface can toggle between 1) Pashtu, Dari and English languages, 2) Afghani (AFN) and U.S. Dollar (USD) currencies, and 3) Gregorian and Afghan calendars. For those familiar with Western products, Hesab.af can be compared to an extremely simple cross between Intuit QuickBooks, TurboTax and PayPal, capable of preparing the three basic types of financial statement for proper financial management, as well as, submitting all six types of Afghan taxes (e-Filing) and transferring funds or making payments (e-Payment).

Maldives

Maldives has a self-assessment tax system. It is important that entrepreneurs find out and fulfill their obligations such as obtaining the required trade permits and completing the tax registration. A person whose average monthly gross revenue earned from all business activities, including online businesses, during any 12-month period exceeds MVR 20,000 (Twenty Thousand Rufiyaa) is required to register with Maldives Inland Revenue Authority (MIRA). Furthermore, if the goods sold online are imported goods, the person must obtain a trade permit from the Ministry of Economic Development to sell imported goods. The business, subsequently, must be registered with MIRA.

All businesses generating gross annual sales of over MVR 1 million or holding an import license are required to register for Goods and Services Tax (GST). Those who have already registered their online businesses with MIRA for Business Profit Tax (BPT) should maintain proper records in order to check if they meet the annual sales requirement for GST registration. Once an online business is registered for GST, they shall display their TIN in a visible place on their online page, together with a logo designated by MIRA to indicate that the business is registered for GST. Buyers should also be more conscious about the amount being paid for a product sold online. It should be noted that GST can only be charged if the seller is registered for GST.

India

Tax regime fore-Commerce and the key challenges

In case of Indian e-tailers who are running their operations from within the shores of India the tax implications are very straightforward and as applicable to normal business houses. However, there has always been a dispute on the taxability aspect of non-residents carrying out such businesses in India. As per Indian taxation structure the basis of tax in India has been resident based taxation while in other countries the taxation basis has been source basis. This has resulted into countries encroaching upon each other's territory to tax the assessee. However, with e-Commerce transactions the need for a physical presence virtually ceases, which further creates problems in the enforcement of tax laws. Accordingly, in 2001, Central Board of Direct Taxes constituted a High Powered Committee (HPC) to contemplate the need of a separate tax regime fore-Commerce transactions. The report submitted by the HPC took into consideration the principles laid down by the Organisation for Economic Co-operation and Development (OECD) for taxation of e-Commerce transactions. According to the press note issued by the department of industrial policy and promotion (DIPP), a marketplace model is an information technology platform run by an e-Commerce entity on a digital and electronic network to act as a facilitator between buyer and seller.

Direct tax

While non-residents employ several business models and mechanisms to carry out their e-Commerce business in the country, issues about the taxability of income and the subsequent litigations are primarily on account of the following reasons:

1. Characterization of income in the hands of the non-resident – In accordance with Sec 9 of the Income Tax Act, 1961 the taxation depends upon the residential status of the person. In case of royalty and professional services the person is taxable for any income accrued or arisen in India without any link to the permanent establishment (PE) within India. However, for business income the person taxable ought to have a PE within India. In the current scenario it is seen in many instances that the taxmen want to tax the business income (without any PE) under the head of royalty thereby creating artificial demands.
2. Issues surrounding PE – On the PE front, there have been issues around whether a website in India constitutes a PE for a non-resident and whether certain activities performed by an agent in India constitute a dependent agent PE.
3. Applicable withholding tax rates on payments made to resident e-Commerce/internet companies – There has been litigation on the applicable withholding tax rates on payments to resident e-Commerce companies for activities such as e-cataloging, warehousing, logistics and payment gateways. – Sec 194C which provides for 2% v. Sec 194J which provides for a 10% rate.
4. In the Finance Act, 2016 the government has levied an equalization levy of 6% on payments exceeding INR 1 lakh a year made to foreign e-Commerce companies as consideration for online advertisement. Through this move, the Government aims to tap the income accruing to foreign e-Commerce companies in India².
5. For smooth clearance of exports, a new customs act and customs rules and regulations has been enacted in 2017 in line with Revised Kyoto Convention. These are simplified and in harmony with government agencies and private unit.

Indirect Taxes (GST)

In India, GST has replaced indirect taxes. It is a destination-based consumption tax as opposed to erstwhile origin-based tax which has now been subsumed in GST. GST has now provisions with respect

toe-Commerce operators and vendors selling through such operators. Electronic Commerce has been defined under the GST to mean the supply of goods or services or both, including digital products over digital or electronic network. Electronic Commerce Operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. As per the provisions of GST thee-Commerce operator is required to collect Tax at Source (TCS) which is calculated at the rate not exceeding one percent of the net value of taxable supplies made through it. Being a new tax, Indiane-Commerce retailers and suppliers can expect changes in the present scheme³.

Conclusions

For Bhutan, there is no VAT but there is sales tax. As sales tax is collected at point of entry (Import) and at source (Domestically manufactured goods) charged at the point of supply, it can also be charged on goods which are supplied undere-Commerce. A more complicated issue is the income tax for foreigne-Commerce transactions. Domestic firms which export viae-Commerce need to be registered for which they require a tax clearance. However, foreign firms which are not registered in Bhutan do not pay income tax while they carry out their business in Bhutan. As Bhutan does not have double taxation agreements with a number of countries, it will need some other mechanism for direct taxation. One way out could be to register each company that has business transactions in Bhutan with the tax authorities on the basis of the point of sale mechanism. However, taxinge-Commerce companies has to be balanced with the objective of encouraginge-Commerce.

As Bhutan moves to the GST system it could use it to distinguishe-Commerce transactions from normal transactions. Hence companies that register undere-Commerce would report their GST earnings separately and hence GST payments could be rebated for exports and charged on imports. Customs could also be charged more easily when data one-Commerce is made available through GST.

Chapter 8 Best Practices from other Countries one-Commerce

Introduction

The earlier chapters, especially chapter 2 had identified the main challenges to e-Commerce in Bhutan. These related mainly to inadequate logistics, payment problems, product diversification, risk mitigation, cross border transactions in foreign exchange, and other such issues. This chapter shows the best practices in other countries with a view to addressing these problems. It examines how countries similar to Bhutan have addressed these problems. It also studies the practices in other more advanced countries in addressing these problems. e-Commerce policy making is at its infancy in most countries of Asia. Hence this chapter may record the experiments that countries are making, but not how successful these attempts have been. This is because information on successful policies is still missing. Nevertheless e-Commerce is increasing rapidly in most countries. Hence elements of the policies of some countries studied here have promoted e-trade.

8.1 E-Payments issues

In the recent past, improvement in technology has allowed a significant increase in inclusivity through e-payment and that means a section of people who earlier had no access to formal financial system of the country are now getting access. But still, there are many challenges pertaining in the e-payment system in both large as well as small economies.

In Bangladesh, very few consumers visit the branch physically. Often they do it through a bearer or some representatives. So there lies a big challenge to educate people about new banking systems. In Bangladesh, mobile financial service follows a bank led model. So there are also directives from the central bank that they have to follow. This often creates confusion. There is no provision of national payment solution, proper dispute management, fraud management and abolishing redundant management policies. Without clear policy guidelines about these issues, if any problem occurs there is no government body which will take the responsibility. Recently, a private sector bank experienced a major fault in credit card where 21 credit cards were used for forging about 100 million taka. Similar thing happened with another private and one public sector bank. SIM replacement is also one of the big challenges to maintain a secure electronic payment system. Anyone can withdraw anyone's SIM. Some banks send OTP (One Time Password) through SMS. But anyone can get the OTP by replacing the SIM.³⁵

Sri Lanka has made some progress towards creating a better environment for buying and accepting payments online, but is still nowhere near where it should be. Takas processes large amounts of payments online, the interfaces and features of these payment gateways are very outdated.³⁶ For international transactions, PayPal is still not an option for Sri Lanka.³⁷

In terms of digital payments, India is still fairly nascent when compared to some other countries¹². Indian economy continues to be heavily reliant on cash. Dependence on cash persists due to certain challenges deeply rooted in the digital payments ecosystem in India. In the current scenario, digital payment systems are heavily reliant on smartphones that are enabled with data connections, Near field

³⁵ <https://roar.media/english/tech/insights/takas-and-the-difficulties-of-e-Commerce/>

³⁶ <https://www.thedailystar.net/electronic-payment-system-in-bangladesh-pros-and-cons-26717>

³⁷ <https://roar.media/english/tech/insights/takas-and-the-difficulties-of-e-Commerce/>
<https://www.vesess.com/online-payment-methods-in-sri-lanka-the-bad-and-the-ugly/>

Communication Technology (NFC), and Bluetooth. Out of India's 800 Mn mobile phone users, [only 200 Mn use smartphones](#). Of these phones, only 6 Mn are NFC-enabled. An even smaller percentage of users have access to QR code mechanisms. This translates to approximately 85% Indians who do not have access to the infrastructure required to adopt the current digital payment systems that are heavily reliant on smartphones. Additionally, the hardware and software required to adopt the current digital payment infrastructure are bulky and expensive. A lot of retailers are resisting adoption due to these high costs and continue using cash¹³.

In China, a 2017 report from the Consultative Group to Assist the Poor indicates, close to 70 percent of rural Chinese remain offline and require a compelling reason to acquire the smartphone and bank account needed to utilize mobile payments. As these digital platforms attempt to become the default form of payment, China is facing a critical challenge to get its unbanked citizens caught up to financial inclusion standards. For payments out of China, a unique attribute of the China market is that consumers rarely use, or even hold a Visa or MasterCard as their payment method. Instead, they rely on local payment channels. This leaves Chinese consumers at a disadvantage when they need to make purchases from off-shore companies and websites. To top it off, prepaid cards of any kind, are illegal in China³⁸.

Japan is one of the most technologically advanced and integrated nations in the world and have a lot of tech-savvy consumers, but when it comes to payments, they haven't embraced the new way of purchasing things. Close to 70 percent of consumers across every age group used cash mainly when purchasing something. The study found that it was more than double the percentage of Japanese internet users who typically pay via a digital payment method. The report noted that the lack of consumers in Japan using digital payments could be because consumers in Japan have real concerns about security³⁹.

8.2 Consumer Protection

One of the key features of e-Commerce regulation would be consumer protection. E-tailers and marketplaces will be made liable for fraudulent sales and substandard or defective product. Besides checking fraud and business misconduct, the regulations will properly manage electronic transactions, regulate foreign currency transactions and promote products through online stores on the global market. This is the practice in almost all countries surveyed.

8.3 Information and Technology Infrastructure

Several countries in the region, especially Nepal lag behind in e-Commerce because of poor information and technology infrastructure. New regulations would contain provisions for electronic transaction management and international transactions in foreign currency. The government doesn't have a separate mechanism to monitor online stores⁴⁰.

According to a report from the Speedtest, a global speed testing company, Nepal has ranked 118 amongst 123 countries in quality of GSM Internet. Nepal stands at 89th among 130 countries in quality

³⁸ <https://www.forbes.com/sites/outofasia/2017/09/28/the-unique-challenges-and-opportunities-of-handling-payments-in-china/#3f9aa5296c9e>

³⁹ <https://www.pymnts.com/news/payment-methods/2016/japans-cash-problem/>

⁴⁰ <https://www.ktm2day.com/2019/03/11/e-Commerce-policy-in-the-offing-to-supervise-online-marketplace/>

of broadband Internet. This indicates the need for improvement of Internet quality in Nepal to make the digital currency use successful⁴¹. Bhutan is in a similar position.

8.4 FDI in e-Commerce

Recently India has also announced 100% FDI under the e-Commerce marketplace model but prohibited FDI in inventory based e-Commerce. In the first, e-Commerce companies act as platforms for vendors to sell their products and in the second, they can sell their own products. The changes, which took effect on 1 February, 2019 are five-fold: First, marketplace entities cannot buy more than 25% from a single vendor; second, marketplaces will not directly or indirectly give discounts on products; thirdly, entities in which there is equity participation by the marketplace entity cannot sell their products on the platform run by the marketplace; fourthly, e-Commerce marketplace entity will not mandate any seller to sell any product exclusively on its platform only; and fifthly, marketplaces will have to submit a compliance report to the Reserve Bank of India (RBI) by 30 September every year. Similarly, Bangladesh govt. has set up a high powered committee with the commerce minister to promote growth of electronic commerce in the country. The committee will curb malpractices and deal with issues that slow down or block its buoyant growth in the country. Besides, it will focus on bringing all the activities in e-Commerce under a disciplined and organized system⁴².

8.5 e-Commerce promotion Schemes

China is the world's largest e-Commerce market with over 50% of global e-Commerce transactions coming from China. In 2018, China's online retail transactions reached \$1.33 trillion and are forecasted to reach \$1.99 trillion by the end of 2019⁴³. The Chinese government places high importance on developing cross-border e-Commerce and other new forms of trade. No requirements of licensing, registration or record-filing for first-time imports shall apply to the retail imports through cross-border e-Commerce platforms. Goods included in the cross-border e-Commerce retail imports list have so far enjoyed zero tariffs within a set quota and had their import VAT and consumer tax collected at 70 percent of the statutory taxable amount. Such preferential policies will be extended to another 63 tax categories of high-demand goods. At the same time, export tax rebate policies will be further improved in line with international practices to further boost exports via cross-border e-Commerce⁴⁴. Like China, Japan is the third largest—and one of the fastest growing—e-Commerce markets in the world. The growth rate has become stable over the past few years, with annual growth estimated at 9.1% in 2017. Japan's developed economy, highly urban population, and single language make the market attractive to online retailers. Highly developed distribution infrastructure and small country size make delivery easy and convenient⁴⁵.

8.6 Laws governing Internet

Japan has many laws and regulations governing business on the internet. Japan has many laws and regulations governing business on the internet. First, the IT Basic Act is the principal legislative instrument governing internet-related issues. Second, the Civil Code, the Consumer Contract Act and the Act on Specified Commercial Transactions are the main legislative instruments for dealing with e-Commerce. Third, some intellectual property laws can be applied to internet-related issues. The Act on the Protection of Personal Information, the Premiums and Representations Act and the Act on the

⁴¹ <https://blog.khalti.com/fintech-trends/digital-payment-system-in-nepal-challenges-opportunities/>

⁴² <https://thefinancialexpress.com.bd/editorial/promoting-e-Commerce-1517243631>

⁴³ <https://www.export.gov/article?id=China-ecommerce>

⁴⁴ http://www.china.org.cn/business/2018-11/22/content_74196369.htm

⁴⁵ <https://www.export.gov/article?id=Japan-E-Commerce>

Limitation of Liability for Damages of Specified Telecommunications Service Providers can also be applied⁴⁶.

8.7 Inter country comparison of e-Commerce Policies

Bhutan could examine the e-Commerce policy framework of other countries to formulate its own. Two factors are relevant in this context. First other countries at a similar stage of development as Bhutan could be studied. Second other advanced countries have implemented policies that will be of relevance to Bhutan. Section 8.1 shows the comparison with other smaller countries while section 8.2 shows inter country comparison with larger countries.

Table 8.1: Small country Comparison

	Maldives	Afghanistan
E-Payment System	BML Mobile Pay, Credit Card/ Debit Card – VISA, American Express, MasterCard, Maestro Card.	Hesab Pay, Bazaar.com, Afghan-web.com, Afghanonlinebazaar.com, Afom.af
Products covered	Phone and tablets, electronics, Home and living, vehicles etc.	clothing, music, books, Automobile logistics services, Furniture, clothes, cell phone etc.
Top e-Commerce websites	Ebay.com.mv, koo.mv, ebazaar.com	Amtaa, Afghan Bazar, Azad Bazar, afom.af, JVBazar.com and zarin.com.
Internet penetration	0.765	6.8%

⁴⁶ <https://gettingthedealthrough.com/area/11/jurisdiction/36/e-Commerce-japan/>

<p>Risk mitigation strategies for non-payment.</p>		<p>1. Afghanistan in the near future will have a fully functional national switch, named as Afghanistan Payments Systems (APS). APS is a national country level payments switch which is a gateway to all online local and international payment schemes. It also provides interoperability between both governments and private banks including Mobile Money Operators (MNO) and other payment aggregators.</p>
<p>Initiatives to promote e-Commerce</p>	<p>1. In 2016, the Bank of Maldives collaborated with Epic Lanka to introduce BML Mobile Pay, which enables the user's phone to make and receive payments.</p>	<p>1. Introducing e-Commerce in Afghanistan:</p>

Source: Footnote⁴⁷

⁴⁷ <http://www.southasiaathudson.org/blog/2018/7/31/the-rise-of-e-Commerce-in-the-maldives>
<https://www.adb.org/sites/default/files/publication/159385/adb-proceedings-ebusiness.pdf>
<https://www.travelcentremaldives.com/visit-maldives/online-payments-terms-and-conditions>
<https://import-export.societegenerale.fr/en/country/afghanistan/ecommerce>
<https://www.dhisale.com/>
<https://www.privacyshield.gov/article?id=Hong-Kong-Macau-safety-and-security>
<https://kathmandupost.ekantipur.com/news/2019-03-06/government-to-introduce-e-Commerce-regulations.html>

8.2 Large Country Comparison

	Indonesia	Malaysia	Taiwan	China
E-Payment System	<p>Three main pillars: card payment, peer to peer and electronic money.</p> <p>1. Card payment facilities are limited to credit card, ATM card and debit card.</p> <p>2. Under the electronic money (electronic store of monetary value on a technical device) quota management, unregistered users can store a maximum of 2 million rupiah while a registered user can have a wallet limit of 10 million rupiah.</p> <p>3. Peer-to-peer transactions are electronic money transfers made from one person to another through an intermediary</p>	<p>Three main Malaysian payment systems:</p> <p>1. Credit card channel (VISA, Mastercard, Amex)</p> <p>2. Internet banking (Maybank2u, CimbClick, HongLeong connect)</p> <p>3. e-wallet (Alipay, Wechat Pay, MOL-Wallet) and payment over the counter (MOLPay Cash).</p>	<p>There are three types of payment instruments under Taiwan's electronic payment system, including</p> <p>(1) electronic funds transfers through bank accounts,</p> <p>(2) credit cards and cash cards for retail payments, and</p> <p>(3) electronic money for storing value and making payments.</p>	<p>The top payment methods for digital purchases include Alipay, WeChat Wallet and digital payment via credit card. AliPay and WeChat Pay together represent over 90% of payment systems market.</p>
value of online trade	In 2018, the e-money transaction value amounted to approximately 47 trillion Indonesian rupiah	In 2018, the online payment transaction volume in Malaysia amounted to 9.9 billion Malaysian ringgit.	In 2017, the amount of electronic payment transactions totaled NT\$664.5 trillion.	In 2018, the online payment transaction volume in China amounted to 23.1 trillion yuan.
Products covered	The top products/product categories for Indonesian online buyers include clothes and accessories, personal care, cosmetics, food and beverage and mobile phones & tablets.	The top products/product categories for Malaysian online buyers include clothing, jewelry and accessories, travel arrangements, top-up prepaid phone, food and beverage and other entertainment products.	The top products/product categories for Taiwanese online buyers include clothing and accessories, food products and beauty and skin care.	The top products/product categories for Chinese online buyers include household essentials, alcohol, consumer electronics, home appliances and office supplies.
Top-Commerce websites	Lazada, Tokopedia and Blibli.com. Other top retail sites include Elevenia.co.id,	Lazada Malaysia, 11street.my and Zalora Malaysia. Other top retail sites include	ruten.com.tw, shopee.tw and taobao.com. Other top retail sites include	Tmall, JD.com and Suning. Other top retail sites include vip.com, Gome, Yihaodian,

	Bukalapak.com, OLX, MatahariMall.com, Traveloka, Zalora and JD.id	Groupon Malaysia, Mysale, MBO Cinemas, Tesco Malaysia, DirectD and SuperBuy.	momoshop.com.tw and books.com.tw.	Amazon.cn, Dangdang, Jumei and other .
Number of Internet users	143.26 million internet users in 2017	15.3 million online shoppers (50 percent of the population)	25.08 million active internet users (79 percent of the population).	460 million internet users In 2016
Internet penetration	20.40%	68.6%	88.00%	52.20%
Risk mitigation strategies for non-payment.	<p>Law No. 8 of 1999 on Consumer Protection:</p> <p>a) Recognition of transactions, information, documents and electronic signatures in the legal framework of engagement and law of evidence, so that the legal certainty of electronic transactions can be guaranteed; b) the classification of measures that include qualification of law violations related to misuse of information technology accompanied by criminal sanctions</p>	<p>The Consumer Protection Act 1999 (CPA) protects consumers against a range of unfair practices and enforces minimum product standards. In 2007, an amendment was made to the CPA that expanded the scope to cover electronic commerce transactions.</p>	<p>1. TSM mitigates risk in mobile commerce by introducing interoperability and setting common standards for telecom providers and merchants.</p> <p>2. Consumer Protection Act, passed in 2005, allows consumers to return goods they find to be unsatisfactory within a seven-day window.</p> <p>3. Taiwan Act Governing Electronic Payment Institutions was introduced in January 2015. Its purpose is to define and regulate electronic payment institutions</p>	<p>1. Under the current draft law, daily purchasing amounts through third party agents will be determined based on the level of consumer security checks within the online platform. The regulation is an attempt to mitigate occurrences of theft and fraud within thee-Commerce market</p> <p>2. Payment agents that install security tokens and digital signatures as verification methods prior to allowing a transaction will not be required to adhere to daily or annual purchasing payment limits. However, consumers will not be allowed to exceed daily purchases of RMB 5000 (US\$ 781.55) if the payment agent does not require both a security token and digital signature. This restriction is maintained even if the payment agent provides two alternative consumer identification methods.</p> <p>3. Payment agents using only one method to verify consumer identities prior to a</p>

				transaction may not permit daily consumer transactions exceeding RMB 1000 (US\$156.31)
Initiatives to promote e-Commerce	<p>Funding: Micro credit programs will be run to provide support to app developers, and business incubator. Startup mentorships, universal service obligation (USO) funds for digital small and medium enterprises (SMEs) and E-Commerce startups, angel investment, seed capital from venture capital as well as crowd-funding will also be included.</p> <p>Taxation: The tax rates will get lowered for local startup investors. Taxation procedure will be eased for E-Commerce ventures with a total turnover of \$357,191 and below per year.</p> <p>Consumer protection: The government will regulate electronic transactions in order to allow for transactions and government spending through E-Commerce and develop a national payment gateway.</p> <p>Education and human resources: The government will start a national E-Commerce awareness campaign along with a national incubation programme, and E-Commerce education programme for all stakeholders.</p>	<ol style="list-style-type: none"> Promote and market E-Commerce to SMEs to ensure that businesses are aware of the benefits of E-Commerce. Improve SME E-Commerce training and talent development by establishing multi-platform, multi-tool training opportunities to cover the life cycles of SMEs, from entry to maturity Create a one-stop e-Business portal for SMEs to obtain information about E-Commerce, such as E-Commerce readiness surveys, eBusiness apps, training opportunities, community FAQs, and financial incentives, among others. Require government agencies to use eProcurement to buy goods and services as a way to clarify applicability of E-Commerce to statutory bodies, Ministry of Finance companies, and JKR. (Program Lead: Ministry of Finance) Encourage government-linked companies' use of eProcurement by, for 	<ol style="list-style-type: none"> In December 1997, the Taiwanese government established a task force under the Executive Yuan, known as the National Information Infrastructure (NII) Task Force, with its main task being to design and oversee policies promoting the development of e-Commerce. The Taiwanese government has initiated Industrial Automation and Electronic Business (iAeB) program in 1999 whereby tax incentives would be provided for private enterprises investing in computerization, and in related technology development and personnel training to accommodate the computerization A certain proportion of this expenditure can be taken as a tax credit, under the auspices of the Statute for Industrial Upgrading, just as in the case of R&D expenditure. 'Four-Year e-Commerce Application Plan': The program aims to 	

	<p>Logistics: E- Commerce players will be allowed to leverage on the national logistics system (Sislognas). Local and national courier companies are to be strengthened and logistics routes from rural areas to cities developed.</p> <p>Communication: Strengthen communications infrastructure through national broadband development.</p> <p>Cyber Security: The government will set up a national surveillance and E- Commerce monitoring system, offer education on E- Commerce cyber threats, and standardise data collection.</p> <p>Management: Form an operating management structure to manage, monitor, and evaluate the implementation of the E- Commerce roadmap.</p> <p>National Payments Gateway. Central bank hopes that NPG implementation will increase financial inclusion and promote greater use of electronic payments for in person and online transactions.</p>	<p>example, defining threshold spending through eProcurement and using self-assessments to accelerate adoption. (Program Lead: Ministry of Finance)</p> <p>6. Transform Malaysia's last-mile delivery network with best-in-class capabilities, including information transparency, updated standards that include E- Commerce, realigned courier policies, and relevant service-level agreements. (Program Lead: Malaysian Communications and Multimedia Commission)</p> <p>7. Protect consumers' rights with advocacy programs, making sure that all consumers are aware of their rights and redress channels. (Program Lead: Ministry of Domestic Trade, Co-operatives and Consumerism)</p> <p>8. Turn Malaysia into a regional e-Fulfillment hub by providing resources such as special commerce zones, bonded warehouses, and special provisions on trans-shipment tax policies, to name a few. (Program Lead: Malaysian Investment Development</p>	<p>upgrade hardware facilities, provide legal infrastructure and establish e-Commerce-enabling institutions for the local service industry; it also aims to cover a wide-range of industries with a target of 40,000 participating enterprises.</p> <p>5. Laws relating to the protection of intellectual property (IP) rights have also been amended to strengthen the IP protection in electronic-based trade. Major amendments to the Copyright Law were made in 2001, whereby the right to transmit and safeguard data was specified and made an integral part of the copyright law</p>	
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		<p>Authority)</p> <p>9. Reduce border clearance lead time for inbound and outbound parcels, beginning with the timely rollout of uCustoms, Malaysia's National Single Window. (Program Lead: Ministry of International Trade and Industry)</p> <p>10. Increase awareness of e-Payment innovations, benefits, and security to include nationwide consistent messaging to raise awareness of the benefits and security of e-Payments. (Program Lead: Bank Negara Malaysia)</p> <p>11. Promote Malaysian brands in international marketplaces by developing go-to-market strategies for various countries, platforms, and products to boost exports. (Program Lead: Malaysia External Trade Development Corporation)</p> <p>12. In 2016, the Malaysian Ministry of International Trade and Industry (MITI) launched a new e-Commerce Initiative with the goal to bring roughly 80 percent of small- and medium size enterprises into the world of e-</p>		
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		<p>Commerce and to expand market access for more than 87 million digital consumers in the ASEAN region.</p> <p>13. The Malaysian Government has pledged not to censor the Internet.</p> <p>14. The Ministry of Education has deployed more than 100,000 laptops (more than 2,400 mobile computer labs) to schools as part of its plan to ensure schools are equipped with the necessary ICT devices for e-Learning.</p>		
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Source: Footnote⁴⁸

Conclusions

A comparative study of policies of some countries shows that almost all countries have difficulties with e-payment systems. Bhutan would of necessity have to evolve its e-payment system in keeping with its foreign exchange constraints. Some suggestions on e-payments schemes are provided in the next chapter. Further Bhutan has to find multimodal solutions to its logistics problems. A combination of air and road transport would be required. In terms of products, as stated earlier conventionally traded products cannot be used in e-Commerce. New products should be developed for this. There are a number of risk mitigation strategies that Bhutan can learn from other small countries but insurance is one of them which must be explored. Though Bhutan does have some national web portals, linking them to international ones such as Amazon may improve e-business considerably. For the promotion of e-Commerce a number of lessons can be learnt from Macau or Fiji. However tax based policies of

⁴⁸ <https://inc42.com/indonesia/indonesia-E-Commerce-roadmap-digital/>
<http://southeast-asia.atkearney.com/documents/766402/12784442/Malaysias-National-eCommerce-Strategic-Roadmap-2017.pdf/e5d85a87-0845-4d3b-8b7a-21923cfca3fd>
<https://www.unido.org/api/opentext/documents/download/9921295/unido-file-9921295>
<https://pdfs.semanticscholar.org/e14f/62d9c14e0e1ea6174da9805adc75d8d8400d.pdf>

China has proven to be most effective in promoting e-Commerce. The Annex details e-Commerce policies of several other countries which may be relevant for Bhutan.

Annex 8.1 Australia

Support fore-Commerce start-ups

1. *Entrepreneurs' Programme*: The Entrepreneurs' Programme, which replaced Commercialization Australia and the Innovation and Investment Fund in 2014, aims to help businesses increase productivity and competitiveness with funding and access to a national network of private sector advisers and facilitators.

The programme offers entrepreneurs grants through the Accelerating Commercialization fund and Business Growth Grants.⁴⁹ Accelerating Commercialization Grants offer ventures up to 50% of expenditure on a project, which is capped at \$250,000 for Commercialization offices and eligible partner entities, and \$1 million for other applicants.

Entrepreneurs can also apply to get free expert advice on their ventures to address knowledge gaps and accelerate growth via Innovation Connections. Additionally, the Entrepreneurs' Programme offers funding support for incubators helping startups enter global markets. New and existing incubators can apply for grants equal to 50% of the project value capped at \$500,000, and entrepreneur or expert-in-residence projects can gain up to \$25,000.

2. *CSIRO Kick-Start*: Startups and SMEs keen to partner with Australia's Commonwealth Scientific and Industrial Research Organisation (CSIRO) in research activities can get up to \$50,000 in matched funding to help them further develop and grow their business.

Kick-Start is a relatively new initiative, which started in early 2017. It aims to further drive Australia's innovation output by supporting local startups "on their way to becoming Australian success stories". Aimed at the research and testing stage of companies, the grant is for companies researching a new idea, or testing or developing a "novel" product or service.

To be eligible, companies have to be registered in Australia for GST, have an annual turnover of \$1.5 million or less in the current and past two previous financial years, and have been registered as a company for less than three years.

If companies match eligibility criteria, they could receive between \$10,000 and \$50,000 in matched funding. The funding can then be used to cover the costs of undertaking the project — such as salaries for researchers or travel and accommodation — but it may not be used for capital works, expenditure, or infrastructure costs.

3. *Biomedical Translation Fund (BTF)*: If you're a startup operating in the space of health and wellbeing, there's a chance you could go one better than a grant and instead receive a line of venture capital straight from the government.

The Biomedical Translation Fund (BTF) was established by the federal government as part of the National Innovation and Science Agenda in December 2016, and was fuelled with \$250 million of Commonwealth capital and an additional \$250 million of private sector capital.

For eligibility, a company must be “developing and commercializing biomedical discoveries” and have the majority of employees and assets in Australia, along with revenue of less than \$25 million over the past two financial years. ‘Biomedical discoveries’ are classified as “therapeutic, medical or pharmaceutical products, processes, services (including digital health services), technologies or procedures that represent the application and Commercialization of the outcomes of research that serve to improve health and wellbeing”

Alternative, traditional, or complementary medicine developments are not supported. Startups are also not guaranteed an investment just for meeting the criteria, with the investments made at the discretion of the fund managers.

4. Export Market Development Grant (EMDG): The EMDG has been set up for aspiring and current exporters across a wide range of industries and products to help drive new outbound markets from Australia and encourage inbound tourism.

For businesses that have spent \$15,000 or more on export promotion, they can be reimbursed up to 50% of costs exceeding \$5000. To be eligible, businesses must have promoted either the export of goods and services, inbound tourism, export of IP and “know-how” or Australian events and conferences. Eligible businesses will have an income under \$50 million in the grant year.

5. Research and Development Tax Incentive: The R&D tax incentive aims to help all businesses stay ahead of the curve through a tax offset that encourages innovation in even the smallest ventures. Companies with an annual turnover under \$20 million can claim a 43.5% refundable tax offset against R&D expenditure that amounts to \$100 million or less. All other eligible companies can claim a 38.5% non-refundable tax offset. Non-refundable offset amounts that go unused can be carried on to future income years. For R&D expenditure under \$20,000, companies can only make a claim if it was undertaken with a research service provider or co-operative research Centre. Applications are ongoing but companies must register for R&D activities within 10 months of their income year first.

6. Venture Capital Limited Partnerships (VCLP): The VCLP programme aims to draw in foreign investors to Australia and boost the local VC market with tax benefits. To be eligible, funds must register as a VCLP under the *Venture Capital Act 2002* and make high risk investments that hold for at least 12 months. The investments must be in ventures where total assets are valued under \$250 million, 50% of assets are located in Australia and 50% of employees are also located here. Tax benefits for VCLPs include flow-through taxation treatment, exemption from capital gains tax on their share of profits made by the partnership and the ability to claim carried interest on the capital account instead of revenue. Fund managers are encouraged to get professional tax advice before registering.

7. Austrade Landing Pad: This initiative aims to give Australian startups a leg-up in the global market by immersing them in one of five world-class innovation hubs. Startups accepted into Landing Pads in Singapore, Berlin, and Shanghai, Tel Aviv or San Francisco benefit from on-the-ground presence in these markets plus access to their networks, talent, mentors and investors.

To be eligible, startups must demonstrate strong vision, scalability, traction and differentiation, and explain how 90 days in a Landing Pad could help their venture. Austrade provides workspace in an accelerator and free services but participants must fund their own travel, accommodation, living costs,

visas and insurance. Austrade does provide funding for global startups in Australia through the Export Market Development Grant⁵⁰.

Government policies to boost-Commerce

1.The Australian Government is working to make it easier and more reliable to use electronic communications in business and personal transactions. This includes a commitment to provide government services online wherever possible. The *Electronic Transactions Act 1999* ensures that a transaction under a Commonwealth law will not be invalid simply because it was conducted through electronic communication. If a Commonwealth law requires you to:

- give information in writing
- provide a handwritten signature
- produce a document in material form
- record or retain information
- The Electronic Transactions Act means you can do these things electronically⁵¹.

2. *Free Trade Agreements*: Australia has included 'electronic commerce' chapters in 10 of its 11 concluded free trade agreements. Australia is currently pursuing commitments on digital trade in our bilateral negotiations with Indonesia, Hong Kong and Peru, and with countries participating in the negotiations for a *Regional Comprehensive Economic Partnership* and the *Trade in Services Agreement*. As customs duties on electronic transmissions may restrict the growth of online trade, Australia is committed to a permanent moratorium on customs duties on electronic transmissions⁵².

3. *Trade facilitation*: Australia supports practices that improve the efficiency of trade conducted electronically, including through the use of digital technologies, such as paperless trading and electronic authentication. Australia will continue to support trade facilitation in key international forums. This includes exploring the trade-enabling and cost reduction potential of emerging technologies such as Blockchain. Australia also recognises that strong cyber security builds trust in cyberspace and facilitates digital trade⁵³.

4. *Promote Trade and Investment Opportunities*: To maximise international digital trade opportunities for Australian businesses, Australia will develop a whole-of-Government digital economy strategy, led by the Department of Industry, Innovation and Science. Austrade will also create a practical guide for Australian companies exporting in the digital economy. These documents will be developed in close consultation with the private sector⁵⁴.

5. *Harmonized Standards*: Australia support capacity building projects in the Indo-Pacific to encourage the harmonization of international standards for digital goods, building trust and confidence in digital trade. Just like global trade rules, international standards need to be industry-led and technology-neutral. In particular, Australia supports the development of globally interoperable Internet standards and associated reference architecture, as well as *ISO 27000 Information Security Management systems* standards⁵⁵.

⁵⁰ <https://www.smartcompany.com.au/startupsmart/advice/startupsmart-funding/five-top-government-grants/>

⁵¹ <https://www.ag.gov.au/RightsAndProtections/ECommerce/Pages/default.aspx>

⁵² https://dfat.gov.au/international-relations/themes/cyber-affairs/aices/chapters/part_1_digital_trade.html

⁵³ https://dfat.gov.au/international-relations/themes/cyber-affairs/aices/chapters/part_1_digital_trade.html

⁵⁴ [ibid](#)

⁵⁵ [ibid](#)

6. Transparency: Australia is committed to leading by example on stakeholder consultation and transparency in policy-making. Appropriate multi-stakeholder consultations help ensure well-targeted policy responses to the challenges and opportunities of digitisation. Australia will continue to hold regular consultations with industry on digital trade and invite submissions from the private sector when developing new digital trade rules. Similarly, Australia encourages other countries to consult with businesses when developing new trade laws and policies⁵⁶.

7. *Report a trade barrier*: Exporters can report the trade barriers directly to the “Department of Foreign Affairs and Trade”, at tradebarriers.dfat.gov.au⁵⁷.

8. *Economic Effects of e-Commerce*⁵⁸: The recent *E-Commerce Beyond 2000* report estimated a number of specific macroeconomic effects of e-Commerce over the next decade, including:

- an increase in national output of 2.7 per cent
- an increase in real investment of 4 per cent
- an increase in consumption of 3 per cent
- an increase in real wages of 3.5 per cent
- an increase in employment of 0.5 per cent
- an increase in the real exchange rate of 2 per cent

9. *Export Market Development Grant*: The Export Market Development Grants (EMDG) scheme is a key Australian Government financial assistance program for aspiring and current exporters. Administered by Austrade, the scheme supports a wide range of industries.

*The EDMG scheme*⁵⁹:

- Encourages small- and medium-sized Australian businesses to develop export markets.
- Reimburses up to 50 per cent of eligible export promotion expenses above \$5,000 provided that the total expenses are at least \$15,000.
- Provides up to eight grants to each eligible applicant.

Policy implications

E-Commerce cuts across most policy areas and will pose considerable challenges in the following areas⁶⁰:

Competition policy: The Internet and e-Commerce has the potential to increase competition by expanding geographical markets and making it easier for new entrants to enter markets. However, the existence of increasing economies of scale and of 'network' externalities may deter competition and allow monopoly power to develop.

Consumer and privacy protection policy: In order to foster confidence in the use of e-Commerce, it is important that consumer protection and privacy issues be addressed. The international nature of the

⁵⁶ *ibid*

⁵⁷ <https://tradebarriers.dfat.gov.au/>

⁵⁸ aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/ecomaus

⁵⁹ <https://www.austrade.gov.au/Australian/Export/Export-Grants/About/What-is-EMDG/what-is-emdg>

⁶⁰ https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/ecomaus

Internet requires a global response to consumer protection. To this end the OECD has been working with member countries towards an internationally co-ordinated approach to consumer protection. The Australian Government, as a member of the OECD, will be seeking to implement these guidelines. Measures currently being implemented by the Commonwealth Government can be found on the Government's e-Commerce Consumer Sovereignty Site. On 6 December 2000, the Australian Parliament passed an amendment to the *Privacy Act* to increase protection of consumers using the Internet.

Tax policy: e-Commerce may undermine the ability of governments to raise the revenues required to finance public services, especially in the case of the GST. The OECD is currently considering recommendations on the tax treatment of e-Commerce. Details of the Committee on Fiscal Affairs' conclusions and recommendations are contained in the Annex to this press release: *OECD Progress Towards Achieving an International Consensus on the Tax Treatment of e-Commerce*, 12 February 2001.

Trade policy: The ease of e-Commerce across national borders makes it easier to evade tariffs and other trade policy measures. It also makes local enforcement of national laws more difficult (e.g. censorship, consumer protection and copyright). Consumers may be unaware that prices quoted on the Internet do not take account of tariffs, copyright laws and other regulations that apply when the products enter Australia.

Labour market policy: The growth of e-Commerce will lead to changes to the composition of jobs by transforming the organisation and the operation of value chains. e-Commerce will also impact on employment at the micro, sectoral and aggregate level. (See again the OECD report, *The Economic and Social Impacts of Electronic Commerce*, Chapter 4: Electronic commerce, jobs and skills).

Education and training policy: e-Commerce changes the mix of skills required by people to perform economic and other activities on line thereby affecting the demand for skills. e-Commerce will accelerate the existing multi-skilling trends in the workforce. The Department of Education Training and Youth Affairs (DETYA) and NOIE are together developing programs to widen the base of skills required for the further development of electronic-based systems. More details are provided in the discussion paper, *Information and Communications Technology (ICT) Centre of Excellence*, June 2001.

Regional development policy: Regions or regionally based businesses are more likely to succeed in the global market if they are major investors in new technology, export focused and competent in the use of IT and e-Commerce. The importance of e-Commerce to regional businesses is highlighted in *e-Commerce in Rural Areas: Case Studies*.

Annex 8.2 Thailand

Government policies to boost e-Commerce

In October 2018, Thailand formally launched its Thailand 4.0 initiative. With an eye on technological innovation, regional competitiveness, and financial empowerment, the Thai embassy lists five agendas for Thailand 4.0. Each of these either supports or has a direct impact on e-Commerce—be it on the side of sellers, buyers, manufacturers, or logistics service providers⁶¹.

1. Improving Thai Human Capital: This agenda takes a three-pronged approach to the development of the Thai people. One is education reform, encouraging mindful and results-based learning. The second promotes the development of new skills to support non-routine and project-based jobs—a necessity in the future workplace where AI and automation will take over repetitive work. The last approach aims to “unlock individual limitation” by providing financial support and social opportunities to Thais who live in poverty and those who earn moderate incomes but lack financial security. e-Commerce is seen as a way for individuals to augment their income by setting up small online ventures—something that is becoming more feasible with increased startup funding in the country’s e-Commerce marketplace. This, in turn, may increase opportunities for more Thais to set up e-Commerce businesses.

2. Development of Technical Clusters: Thailand 4.0 emphasises the need to develop five ‘technology and targeted industries’:

- Food, Agriculture and Bio-Tech
- Health, Wellness and Biomedical
- Smart Devices and Robotics
- Digital, Internet of Things (IoT), Artificial Intelligence and Embedded Technology
- Creativity, Culture and High-Value Services

It aims to increase investment in these industries by offering incentives like corporate tax exemption for a given number of years. The government also recognises the need to reform its research system and spur R&D. Thailand also aims to develop knowledgeable and highly-skilled manpower in these industries. On its website, the Thai embassy in Washington DC identifies robotics technicians and fashion designers as two examples of such manpower.

Robotics technicians and IoT specialists can help to digitize and automate many areas of logistics, such as picking and packing, labelling, and even delivery. This may lead to shorter delivery times, more accurate parcel tracking, and reduced risks of lost and stolen packages, benefitting e-Commerce sellers and buyers in Thailand. Creative services can also support these industries’ sales. For example, this can spur the rise of vertical e-Commerce platforms in different crafts and artistic categories. A vertical platform focuses on a specific category, like groceries or electronics instead of selling a wide variety of product categories.

3. Entrepreneur Incubation: Thailand 4.0 emphasizes financial and technological support for startups and SMEs. It also signals a shift towards “high-value services”, including advertising and logistics services. Boosts to these services can greatly benefit e-Commerce in Thailand. Entrepreneurship in the logistics sector will benefit both local and international e-Commerce sellers hoping to move goods to and from Thailand.

⁶¹ <https://janio.asia/articles/how-thailand-4-0-will-affect-e-Commerce/>

4. Developing Thai Provinces: This agenda involves planning a specific economic specialisation for different geographical areas in Thailand and developing regional innovation hubs with different specialisations. These regional hubs aim to develop initiatives like smart cities, creative economies and smart energy. This agenda also focuses on creating support initiatives for those industries, services, and innovation hubs.

With regards to e-Commerce, this agenda could benefit merchants in Thailand through better connectivity, better payment options for Thai citizens and, for local Thai merchants, access to better funding. Creating smart cities also means encouraging e-payments. That's exactly what the government is doing with its National E-Payments Master Plan. Under this plan, the country has introduced PromptPay, which allows people to transfer funds electronically using only their mobile phone numbers or citizen ID as verification.

This agenda also includes the Province 4.0 strategic plan which aims to transform local enterprises in terms of their productivity and capabilities. One of the initiatives here involves helping local startups via financial measures and risk management and helping them conduct businesses on digital platforms.

5. Improving ASEAN and Global Trade networks: Agenda 5 includes supporting cross-border trading and the selling of goods to international markets. It seeks to position Thailand as a "trading nation and one of Asia's business centres". For e-Commerce players, it could mean less complexity and lower costs when selling and delivering goods across these five countries, especially in the Indochina region.

To be well-positioned for Thailand 4.0, e-Commerce sellers both in and outside of the country can: Target the industries that the government aims to grow. This includes e-Commerce categories like electronics and fashion, as well as unique local goods. Thailand Post, for example, is creating e-Commerce units that showcase local produce, handicrafts, and other goods. It aims to have 25,000 of these e-Commerce units by 2020.

Consider how offline stores can offer an online shopping experience. For instance, Thailand's Industry Ministry will be encouraging 11,505 merchants at the famous Chatuchak Market to join Shopee. e-Commerce sellers may take a cue from this strategy and partner with brick-and-mortar stores.

Stay up-to-date on logistical innovations in the country and the logistics service providers who can offer these. If you have the chance to offer faster shipping before your competitors do, and if the price makes sense for your business, grab it.

Look beyond Thailand's major cities. Understand the challenges and opportunities of online selling to people in the villages. Establish your brand early in the villages that will be first to benefit from the broadband network by using both online and offline marketing strategies.

Learn digital marketing and advertising strategies and tools that can help you in Thailand. Seek out local advertising and marketing agencies with proven knowledge of Thai consumers and experience in the e-Commerce space.

Understand the CLMVT market and how Thailand can be a hub for e-Commerce operations targeting these countries.

E-Commerce Taxation

1. The Thai cabinet recently approved a proposal on July 17, 2018 to collect a 7 per cent value-added tax (VAT) from foreign vendors and e-Commerce platforms. Under the amended Revenue code¹¹¹, all foreign business operators selling goods in Thailand produced abroad via Internet platforms (e.g. brand websites, social media, etc.) are subject to 7% VAT to the Revenue Department. The business operators are required to register as a Thai company in order to pay VAT in Thailand. The government will first forward the draft bill to the Council of State, the government legal advisory body, before submitting it to the National Legislative Assembly for a debate⁶².

2. If an entrepreneur outside the Kingdom of Thailand sells intangible assets or provides services through a website or application owned by a third party, the owner of the website or application shall be deemed to be the representative of the entrepreneur and shall apply for value added tax registration for the entrepreneur.

3. Entrepreneurs outside the Kingdom of Thailand that sell intangible assets or provide services by using electronic methods to a purchaser or client who is not a value added tax registrant, if its income from selling intangible assets or providing services exceeds Baht 1.8 million per year, shall register as a value added tax registrant and be subject to the value added tax pursuant to the rules, procedures, and conditions prescribed by the Director-General.

4. If an entity incorporated under the laws of a foreign country conducts trade or business using electronic methods and does not carry on business in Thailand but receives taxable income from such trade or business in the form of online advertising fees, web hosting fees, or any other types of income prescribed in a Ministerial Regulation, the payer of such taxable income shall withhold income tax from the taxable income at the rate of 15 percent and remit it to the Revenue Department⁶³.

5. Thailand is mulling implementing a value-added-tax (VAT) on electronic businesses next year (2020), with an aim to tap the boom of e-Commerce in the country. The Thai government is hoping to collect between \$98 million to \$131 million every year courtesy of the VAT, for which it will seek parliamentary approval sometime this year, per the report⁶⁴.

Digital payments infrastructure

1. The government is making efforts to drive up card use when spending online. Alongside commercial banks, it has installed 550,000 electronic data-capture terminals across the country to enable online shoppers to settle invoices via card payments. The government incentivizes sellers via tax rebates to adopt the services.

2. The state has also launched PromptPay, which allows registered users to transfer funds between consumers and businesses using their mobile phone number or citizen ID. The scheme already has 14 million users.

⁶³ file:///C:/Users/dell/Desktop/Austrade_E-Commerce%20Guide%20in%20Thailand_Final.pdf

⁶⁴ <https://www.medianama.com/2019/08/223-thailand-to-tax-e-Commerce-companies-from-next-year-report/>

3. International payment gateways including WorldPay and PayPal have entered Thailand's e-Commerce payments market, and domestic players are capitalizing on their ability to support card payments in local currency (Thai Baht) and therefore offer higher margins to merchants. Local providers include Bangkok Bank and Thaipay⁶⁵.

⁶⁵ <https://www.jpmorgan.com/europe/merchant-services/insights/reports/thailand>

Annex 8.3 Singapore

Government Policies to Boost e-Commerce

1. Retail Industry Transformation Map (ITM): With the Retail ITM, retailers can look to strengthen their enterprise capabilities to increase their productivity, and make their presence felt in the global arena with a more vibrant sector supported by a skilled workforce.

Under the Economic Development Board's (EDB) Industry 21 blueprint, the Info-communications Media Development Authority (IMDA) has teamed up with EDB and the industry to define and adopt common IT standards to enhance seamless B2B documents exchange among companies for the electronic cluster. The plan to accelerate the use of e-Commerce comprises of five main thrusts, namely to develop an internationally linked e-Commerce infrastructure, jump-start Singapore as an e-Commerce hub, encourage its strategic usage by businesses, promote its usage by the public, and to harmonise cross border e-Commerce laws and policies.

2. Start-up Community: This collaboration between Enterprise Singapore and JTC Corporation provides co-innovation programmes between corporates and start-ups, and favourable tax regimes. Under Enterprise Singapore, the government has leverage shared platforms to enable small and medium-sized enterprises (SMEs) to pool their resources for more efficient operations – with one of it being a shared e-Commerce platform. This e-Commerce platform will benefit SMEs looking to enter e-Commerce but are unable to afford the initial capital costs. The platform, designed to get them into the online marketplace, will offer support such as integrated warehouse functions, inventory management solutions and order-fulfilment capabilities, allowing the streamlining of the logistics chain, increasing efficiency by up to 45 per cent.

3. Networked Trade Platform: The Networked Trade Platform (NTP) is an advanced trade information management platform to support companies in the trade and logistics industry and adjacent sectors such as trade finance, where importers and exporters would have access to all government-related and commercial trade services. This mainly involves the electronic bill of lading and sea freight e-Commerce. The NTP will help businesses boost productivity by streamlining work processes, reducing inefficiencies of manual trade document exchange, and leveraging data analytics for insights from their trade data, so as to be well-equipped for the digital economy. It also enhances the competitiveness of local SMEs in the field of e-Commerce with regards to international trade and promotes Singapore as a strategic destination of choice for traders, shippers, logistics and trade finance companies around the globe.

4. Talent Development: Support for e-Commerce in Singapore can also come in the form of skills upgrading for individuals working in this field and other related sectors, enabling them to adapt their skills to become more competent, increasing productivity overall. Mainly under the large umbrella of SkillsFuture, this collaboration between Workforce Singapore (WSG) and SkillsFuture Singapore (SSG) (formerly Workforce Development Agency) offers a wide range of skills available for individuals to tap on and increase their competency.

5. Skills framework for retail: The Skills Framework is a SkillsFuture initiative developed for the Singapore workforce to promote skills mastery and lifelong learning, and is an integral component of the Retail Industry Manpower Plan. Jointly developed by SkillsFuture Singapore (SSG), WSG, and the Enterprise Singapore, together with industry associations, training providers, organisations and unions, the Skills Framework for Retail provides useful information on:

- Sector information
- Career pathways
- Occupations and job roles
- Existing and emerging skills
- Training programmes for skills upgrading and mastery
- Special focus training one-Commerce and Omni-channel is also a part of the Skills Framework for Retail⁶⁶.

E-Commerce Taxation

1. When goods are sold via the internet and delivery is locally in Singapore, GST is charged. On exports GST is 0 rated. If the physical delivery of the goods is from a place outside Singapore to another place outside Singapore, it is out of scope for GST purpose.

2. GST is charged when services are supplied over the internet to local consumers. Exports can be zero-rated if services exported qualify as international services under Section 21(3) of the GST Act. This also applies to digital services.

3. With the implementation of the OVR regime on 1 Jan 2020, an overseas supplier making B2C supplies of digital services to consumers in Singapore may be required to register for GST and charge GST on its supplies. Under certain conditions, an electronic marketplace operator (whether local or overseas) supplying B2C supplies of digital services on behalf of overseas suppliers to consumers in Singapore may also be regarded as the supplier of the digital services and be required to register for GST and charge GST on the supplies.

4. Provision of web-advertising service (e.g. banner ad, sidebar ad and pop-up ad) is a sale of advertising space or time. It is a form of media sales. The entire package of media sales may be zero-rated under Section 21(3) (u) if the advertisement is placed on a webpage or website that allows access to both Singapore and overseas viewers/browsers. However, if the advertisement is placed on a website or webpage that only allows access to Singapore viewers/browser (i.e. sg domain), the entire package of media sale should be standard-rated.

5. Under a co-location arrangement, a server (that does not belong to you) is placed at a firm's facility or data centre needs to charge GST for its services. However, server co-location services can be 0 rated (even though the server is placed in Singapore) under Section 21(3) (s) of the GST Act.

6. Web-hosting services involve hosting a client's website on a shared server or dedicated server that belongs to a firm in Singapore. In this case GST needs to be charged to the consumer for the services. However, if the services qualify as international services under Section 21(3) of the GST Act, they may be zero-rated.

7. Online games are games played over an internet or computer network that allow multiple players to interact simultaneously in real time and form social communities within a game environment. Within the virtual world, players may trade virtual goods (e.g. land, house, weapon), virtual currencies, in-game credits and provide virtual services (e.g. plastic surgery, dance, clubbing). When these virtual items are sold on-line, the right to use the virtual items is passed to another party. For GST purposes, the supply of digital services and are required to charge GST on the sale of virtual items to the consumer if the⁶⁷:

- Firm is GST-registered;
- It is selling the virtual items in the course or furtherance of his business; and
- The virtual items are sold for real monies, or exchanged for goods or services.

⁶⁶ <https://www.edb.gov.sg/en/news-and-events/insights/innovation/singapore-industry-initiatives-for-e-Commerce.html>

⁶⁷ <https://www.iras.gov.sg/irashome/GST/GST-registered-businesses/Specific-business-sectors/e-Commerce/>

Annex 8.4 Switzerland Legislation

1. Switzerland has no law tailored for doing business online. Generally, contracts made through online channels are governed by the same provisions as standard 'offline' contracts. Somee-Commerce specific regulations are found among others in the Unfair Competition Act, the Telecommunications Act and the Code of Obligations. The distinction between business-to-business (B2B) and business-to-consumer (B2C) transactions is marginal. There is no separate body of laws or rules for B2B deals, but for B2C contracts some restrictions apply in terms of consumer protection.
2. There is no legislative or regulatory body dedicated to passing legislation on doing business online. However, legislative and regulatory bodies in other fields, such as data protection or unfair competition, may regulatee-Commerce issues where they concern their respective fields.
3. There are no special requirements concerning the formation of contracts online (see question 7 for rules on offering products online). Swiss law allows for contracts to be concluded electronically, which requires a manifestation of the parties' mutual assent to the contract's essential elements. The content of the acceptance must be identical to the offer, which requires that the consumer is informed in detail about the offered product and the price⁶⁸.

Electronic Payment regulations

1. Swiss law does not provide for specific provisions on the use of electronic payment systems and the general rules apply. In particular, the financial market regulations, such as the Swiss Federal Anti-Money Laundering Act (AMLA), the Swiss Federal Banking Act (BA) and the Swiss Federal Financial Market Infrastructure Act (FMIA) may be relevant for electronic payment service providers.
2. Further, credit, debit and store card systems enabling payments, web or on line-based payment systems may qualify as payments systems within the meaning of the FMIA. Although the FMIA foresees certain obligations on such payment systems, there is no license requirement unless such payment system is necessary for the proper functioning of the Swiss financial market or the protection of financial market participants.
3. Swiss law does not provide for specific provisions on digital currencies. Thus, the general rules apply, including as regards risks, liability and anti-money laundering⁶⁹.

E-Commerce Taxation

1. Since Switzerland does, in principle, not distinguish between online and offline transactions, sales concluded online are subject to the usual taxes, such as value added tax as well as taxes levied on certain product categories (e.g. alcohol and cigarettes). VAT (currently 7.7 per cent for most goods and services) must be included in the price. Under certain conditions, no Swiss VAT applies (eg, in case of export of goods or services abroad).
2. If a good that has been imported to Switzerland is physically re-exported unaltered, import duties and taxes may be reimbursed provided certain criteria are met. In terms of transfer pricing, transfers between different affiliates have to be done at arm's length, namely any charges or prices paid for services or goods must not exceed fair market value⁷⁰.

⁶⁸ <https://gettingthedealthrough.com/area/11/jurisdiction/29/e-Commerce-switzerland/>

⁶⁹ <https://gettingthedealthrough.com/area/11/jurisdiction/29/e-Commerce-switzerland/>

⁷⁰ <https://gettingthedealthrough.com/area/11/jurisdiction/29/e-Commerce-switzerland/>

Chapter 9- Framework for Policy one-Commerce in Bhutan

Introduction

The last eight chapters have exhaustively discussed the various aspects of e-Commerce in Bhutan. Each country frames its e-Commerce policy as was shown in Chapter 8 by keeping its own specific conditions in mind. Bhutan would also frame policies which would take account of the fact that it is a landlocked country, trades in very few commodities and must take account of the supply side problems in preparing products for exports. Further foreign exchange is a major constraint in Bhutan and hence incentives to promote e-Commerce should be linked with foreign exchange earnings. Further, the RGoB has already issued guidelines on e-Commerce. Any framework for e-Commerce policy should build on these guidelines. Hence the next section examines the provisions and gaps in the guidelines.

9.1 Bhutan's Guidelines

The guidelines on e-Commerce were issued to promote development of e-Commerce market and to regulate it in order to protect the economic interest of the consumers. The scope of the guidelines was extended to e-Commerce activities that take place within and from or to the territory of Bhutan. Any Bhutanese citizen having attained the age of 18 years shall be eligible to obtain license and operate an e-Commerce business after taking approval from Department of Trade, Ministry of Economic Affairs. An individual must apply for license in prescribed form through online B2C services at www.citizenservices.gov.bt as per the existing licensing procedure. While the guidelines relate primarily to B2C and to government procurement it is to be noted that B2B is the largest growing trade in the world in e-Commerce. More than 75% of e-Commerce trade is B2B but guidelines for B2B trade are not provided. Typically B2B has a longer lead time and requires more handholding than B2C.

The guidelines on e-Commerce business are designed to ensure the delivery of goods and services to the consumer in a manner and time provided as per the commitments made, and assumes the risk and the responsibility during the shipments of the goods, unless consumer choose another logistic service. The business should issue e-invoices or paper invoice for the goods sold or services provided by them, according to the law. It shall comply with rights of the consumers and duties & obligations of business entities with regard to the Consumer Protection Act of Bhutan 2012 and Consumer Protection Rules and Regulations 2015. The business entity should provide consumers with authentic information concerning their goods and services and shall not make any false or misleading representation of goods and services. However in e-Commerce business, when a visitor goes to an e-Commerce website and signs up, the portal is unaware of the consumer information they entered. Whether the consumer information is genuine or not remains questionable. Cash-On-Delivery (COD) purchases using an invalid or fake phone number or address can lead to huge revenue losses. The policy guideline is silent on such issues.

Further the guidelines state that a business entity should engage in cross border e-Commerce in accordance with the relevant laws, rules and regulations, and other related guidelines of the state concerning the supervision and administration of import and export. Fraud is a valid worry for e-Commerce merchants. Many sellers see cross-border sales as inherently riskier than domestic ones, so they block international orders or reject most of them. There should be special guidelines for secure cross border e-Commerce trade.

The guidelines state that an e-Commerce platform shall set-up payment methods either through a licensed payment service provider, a bank or a payment gateway approved by RMA to provide secure payment services as per the RMA's Payment and Settlement Rules and Regulation, 2018 and amendments thereto. Prior to making any transaction, they shall disclose all relevant information including fees, charges and payments related to the product or services offered to the consumer to enable consumer to make an informed decision whether to enter into the transaction. However, there is a very high possibility of fraud in e-Commerce trade. The problem arises because the person who is selling can't see his transactions with the counter-party. This fact makes it harder to verify the identity of the person purchasing on e-Commerce web site. For e.g. card testing fraud is the practice of creating and testing the validity of a credit card number, in order to use it on another website to commit fraud. Fraudsters target websites which give a different response for each type of decline: for example, when a card is declined due to an incorrect expiration date, a different response is given, so they know they just need to find the expiration date. There is no guideline provided to deal with such issues.

The guidelines are silent about the legal framework for e-Commerce and IP. Druksell is a part of the Bhutanese Association of Entrepreneurs of small-scale industries since 2010. Its concern is that because of a lack of a legal framework there was a brand infringement of its logo by a firm in Singapore, which adversely affected its sale through e-Commerce. Such issues need to be addressed.

The guidelines suggest that products supplied to the consumer if found defective and different from that advertised shall be returned to the supplier for replacement. The cost incurred for product return shall be borne by the supplier. If the consumer prefers refund of money in lieu of replacement, the consumer shall be refunded. However the guidelines provide inadequate mechanisms for redressal of consumer complaints should the e-tailer not follow this guideline. While mechanisms for redressal of consumer complaints are not explicit, the dispute settlement mechanism allows the consumer to lodge a complaint with OCP should their complaints not be adequately addressed.

The guidelines state that In order to maintain privacy, a service provider engaged in electronic business shall conduct business in accordance with the prevailing privacy laws and rules to provide appropriate and effective protection for the consumers. To spread consumer awareness, all stakeholders shall take the responsibility to educate consumers and businesses about the prevailing consumer protection laws and remedies. Non-compliance to this guideline shall be dealt as per relevant laws and regulations of the kingdom of Bhutan. However, there is no provision in the guidelines on data localization. Hence privacy laws will be difficult to uphold in a jurisdiction outside Bhutan.

Any national e-Commerce policy should aim at simplifying procedures for export products. There needs to be an integrated public service warehouse (coordination among enforcement agencies). Warehouse could house together all agencies issuing documents for exports such as customs, BAFRA, DOT, Department of Culture and other relevant agencies. Currently even for exporting a small package the procedures are tedious often forcing the seller to give up on the transaction as the cost involved is too high versus the revenue generated. Ways to streamline these services using technologies wherever possible should be found. Policies should expedite exports and must cover air cargo as an option which can boost and reduce logistic costs. A dialogue between the government and operating airlines needs to be open to provide subsidized cargoes for export. To begin with there could be a focus on startups, though experience from other countries show that brick and mortar firms engage in e-Commerce more.

E-Commerce policies were initially a response to trade in services which went untaxed and on which there is a moratorium. However goods involve different transactions and different logistics. This framework focuses more on goods as all provision on intellectual property also apply to services.

9.2 Elements for a Framework Policy on e-Commerce

The following elements would be key to a Bhutanese e-Commerce Policy.

- An Effective e-Payment System
- The whole Logistic supply chain should be identified and worked out including the use of dry ports, air cargo, possibilities of logistics discounts and other such measures.
- Products that can be covered by e-Commerce should be identified. These products can include those that are being discussed in Flagship programs of the RGoB.
- Top e-Commerce sites should be identified and linked with Bhutanese websites.
- Risk mitigation strategies for non-payment and product return should be identified
- Initiatives to promote rather than regulate e-Commerce should be the guiding principle
- Institutional structures which can facilitate e-Commerce trade and operate on a single window basis should be developed.
- Skill development especially for CSI (cottage and small industries) and women to avail the opportunities provided by e-Commerce should be worked out.
- Best Practices from other similar sized countries could also be considered though Bhutan is unique in many ways.
- Legal framework and Enforcement mechanism for e-Commerce needs to be developed.
- If traditional medicinal products are to be traded as they are high value and low volume then an effective framework for IP protection should also be put in place.
- Measures to stimulate both domestic investment and FDI also need to be explored in this framework.
- Measures to integrate CSI (cottage and small industries) in the e-Commerce supply chain need to be worked out.

9.3 Suggestions for an e-Commerce Policy Framework

(a) **Provision of affordable ICT infrastructure and services:** As a prerequisite for conducting e-Commerce, it is essential to improve access to reliable and affordable ICT. For this purpose the telecom firms could develop packages for e-tailers which would ensure high speed connectivity at affordable costs. The RGoB could consider subsidising one-time fixed costs of installing sufficient bandwidth especially for MSMEs.

(b) **Strengthening the logistical and transport infrastructure and services:** Adequate transport and logistics infrastructure, an efficient transport and logistics service, an established national address system, among others, are essential for the actual delivery of physical goods. Multi-modal transport particularly air cargo could be explored using public private partnership arrangements. Further the department of post, air cargo and road logistics may need to be subsidised for an improvement in e-Commerce transactions. Installing basic machines such as X-rays and scanners would reduce time in shipping.

(c) **Fostering an environment for e-Commerce and online payment solutions:** It is important to strengthen electronic payment systems for facilitating e-Commerce and promote the availability of e-Commerce solutions that are tailored to suit local needs such as the use of mobile payment systems. Inter-perability with international payment systems is a critical element of gaining access to cross-

border payment systems such as international e-wallets. Also, promoting secure servers and safe online payment systems, and more generally ensuring that the legislation is in place for e-transactions to take place safely, will enhance consumer confidence. In this context RMA should consider extending the limit of dollars to e-tailers subject to foreign exchange neutrality or augmentation of foreign exchange earnings. This could equally apply to rupee transactions. The Rupay may go a long way in this context. Promoting the use of credit and debit cards and improving its general acceptability would go a long way in promoting e-tailing. In this context some insurance schemes as outlined in Chapter 4 should also be examined. E-Commerce operators based on their size should be provided forex for sourcing raw materials, network connections, warehousing and marketing. As approximately 30% of the revenue is spent on marketing by an e-Commerce operator.

(d) **Strengthening the legal and regulatory framework:** A stable, consistent, clear and predictable legal environment and policies and legal framework will go a long way in promoting e-Commerce by increasing certainty while fostering trust in e-Commerce. Furthermore, a legal framework also ensures consistency in standards and addresses concerns over privacy, consumer protection and reliability of payment systems in addition to ensuring that operators conform to national and international laws. In this context Bhutan is at a distinct advantage as its legal system is based on a foundation of self-regulation. However in cross border trade its legal mechanism for checks and balances need to be strengthened. Suggestions have been provided in Chapter 2.

(e) **Promoting skills development.** Raising stakeholder awareness on e-Commerce is the first step for promoting skills development. This policy area focuses on building e-Commerce skills among small businesses, exploring the scope for women entrepreneurs to engage in e-Commerce and leveraging entrepreneurship through business incubators, co-working spaces and mentorship schemes and promoting business platforms usage, reducing transactions costs and create new markets for small and medium-sized enterprises. While on-line courses are available the RGoB could help develop courses which suit Bhutan's needs. Suggestions have been provided in Chapter 3.

(f) **Promoting government e-procurement.** Making e-procurement a requirement for public tenders provides an incentive for small and medium-sized enterprises to increase the use of the Internet as a business tool. As Bhutan moves to the third phase of e-gp a lot more firms would be integrated into the framework of e-Commerce Policy.

(g) In cognizance of the challenges that the consumers are likely to face while carrying out online purchases, the following policy measures are recommended for inclusion in e-Commerce Policy:

- 1) **Disclosure and Transparency:** The e-Commerce operators are required to provide accurate, clear and easily accessible information about their business and goods & services to allow consumers to make informed decision before entering into the transaction and avoid risk to the consumer.
- 2) **Confirmation:** To avoid ambiguity concerning the consumer's intent to make a purchase, the consumer should be able, before concluding the purchase, to identify precisely the goods or services he or she wishes to purchase; identify and correct any errors or modify the order; express an informed and deliberate consent to the purchase; and retain a complete and accurate record of the transaction. The consumer shall be able to cancel the transaction before concluding the purchase.

- 3) **Product Return, Refund, and Replacement:** Any products that are supplied to consumer are defective and different from advertised and agreed one shall be returned to the supplier for replacement. The cost incurred for product return shall be borne by the supplier. If the consumer prefers refund of money in lieu of replacement, the consumer shall be refunded.

Data Protection and E-privacy: E-Commerce operators are required to conduct business in accordance with the prevailing privacy laws and rules to provide appropriate and effective protection for consumers. The personal information of the consumers, that include but not limited to, banking details, business status, purchase history shall be maintained confidential unless otherwise required by the law in force, subpoenaed by the court or authorized by the concerned consumer. The personal information of the consumer shall be only used for the e-Commerce transactions and not for other purposes.

Consumer Education: Consumer Education is the process of raising awareness and knowledge to consumers about the electronic commerce to enable them to know their rights and responsibilities while dealing with online business and make informed decisions. All relevant stakeholders shall take the responsibility to educate consumers and businesses about the prevailing consumer protection laws and remedies.

Contract Terms: Any contract terms and agreement executed should be fair, transparent and agreeable to both the parties and should not be unfair to consumers.

Consumer Redress/ Dispute Settlement: The e-Commerce operators shall put in place appropriate system to resolve consumer complaints arising from e-Commerce including cross border transaction without undue cost or burden to the consumer. In case of disputes, the aggrieved party may approach Office of Consumer Protection (OCP) for grievance redressal. In addition an on-line dispute resolution is being suggested.

Promotion of Sustainable Consumption: In line with the United Nations Guidelines for Consumer Protection section 49 that states, "Sustainable Consumption includes meeting the needs of present and future generations for goods and services in ways that are economically, socially and environmentally sustainable", it is expected that the member states in consultation with business, consumers and environmental organizations and other concerned groups develop a policy for sustainable consumption and the integration of those policies with other public policies. Business has a responsibility for promoting sustainable consumption through the design, production and distribution of goods and services. Member states, in partnership with business and relevant organization of civil society have the obligations to develop and implement strategies that promote sustainable consumption through a mix of policies.

9.4 Customs and Taxation

With digitisation of customs a proper record of e-transactions and their taxation can be worked out. Further introduction of GST will make both income and indirect taxes a lot easier to administer in Bhutan.

9.5 Legal Framework

The e-Commerce policy should reward compliance with applicable laws and standards. The following provisions of law may supplement the legal framework and also e-Commerce transactions:

- (1) Evidentiary value of computer data and electronic data and documents are provided under the Evidence Act of Bhutan, and

(2) Penal Code of Bhutan provide offence related to computer including tampering of computer data and materials that belong to another person, and offence of unlawful possession of computer materials including reproduction and duplication of data and information.

Since e-Commerce may involve maximum cross border trade, the draft policy may entail the need to ratify international and regional conventions (based on relevancy and need). Similarly, it may entail the need for bi-lateral agreements.

The draft policy recommends the need of specific laws. This may need some details. Usually, when OAG receive Bills for legislative consideration, we firstly look at the policy details. It includes, why the law is required, or why the existing law requires amendment; what is the mischief; what are the objectives; how to address the problem or achieve the objectives; what are the best practices; does the policy entail creation of new agency; and are there any budgetary implications.

9.6 Implementation mechanism

The institutions that should be involved and the detailed mechanisms have been worked out in Chapter 5. The risk mitigation mechanisms have also been worked out in chapter 4.

The detailed policy paper and implementation strategy has been worked out in a different document which has been provided separately to MOEA.

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