

Terms of Reference

Legal Advisory for Elaboration of Cyber Legal and Policy Framework

A. Background

1. The Government of the Republic of the Union of Myanmar (Government) has embarked on a broad and wide-ranging suite of sectoral reforms. In support of these reforms, the World Bank financed a project under a credit from the International Development Association (World Bank Project) which provided for a wide range of support to the Government. The objectives of the World Bank Project are to: (a) improve the enabling environment for the telecommunications sector and extend coverage in selected remote pilot locations; and (b) establish priority e-Government technological foundations and institutional capacity for Government to embark on its public sector reform program.

2. The Economic Policy of the Republic of the Union of Myanmar was launched on 29th July 2016, which outlines 12-point policy ranging from the privatization of some state-owned enterprises to the development of infrastructures including electrification facilities and ports to implementing an ID card system, the Digital Government Strategy and the e-Government System. Also, the Myanmar ICT Development Master Plans (2005-2030) and Myanmar e-Governance Master Plan (2016) include areas of e-Government, e-Commerce and Cyber Security.

3. The e-Government Steering Committee has been set up at National level under the leadership of the State Counsellor and Vice-President. The Myanmar e-Governance Master Plan (2016) has been developed as a road map to promote e-Government and aims to create better and more comprehensive system, and constitute policies and standards required for the effective and efficient implementation of e-Government system in Myanmar. The Government of Myanmar has undertaken several e-Government initiatives in various sectors, such as e-Trade, e-Learning, e-Procurement, e-Health, e-Visa, Myanmar National Portal, e-Government Integrated Data Centre, e-Leadership program etc. for its socio-economic progress.

4. The Government of Myanmar has been regularly participating and providing inputs regarding formulation of legal frameworks to ASEAN and other international organizations on e-Commerce regarding Cross Border transfer of information by electronic means, Electronic Authentication/Electronic Signature, Electronic Settlement, Unsolicited Commercial E-mail/Electronic Messages, Domestic Regulatory frameworks, Treatment of Digital Products, Location of Computing Facilities, Disclosure of Source code, Paperless Trading, Custom Duties and Online Trade, Online Consumer Protection and Online Personal Data/Information Protection etc. This will help in digitalization, expanding connectivity and promotion of SMEs.

5. As access to more and better services has increased, as well as access to broadband-enabled ICT and telecommunications services have increased, so have exposure to the risks associated with access to high-speed broadband services, including cyber threats (including cybercrime) and issues of privacy and data protection. The Cyber Security Legal Framework should promote trust in the System, Infrastructure and Services provided by Government and Private Sector while addressing the following cyber related objectives:

- (a) to promote e-Commerce and cashless digital ecosystem i.e increasing trust in electronic payments and transactions by legitimizing electronic signature.
- (b) protecting Personal Data from misuse and align with international standards such as General Data Protection Regulation (GDPR) etc.
- (c) protecting critical national infrastructure and related industries from Cyber-attacks.
- (d) discouraging and punishing Cyber criminals from hacking systems including non-critical Infrastructure.

B. Scope of Work

6. These Terms of Reference (ToR) are part of the World Bank Project: financing technical assistance and investments to support the Government in designing and implementing a policy and regulatory environment that promotes a healthy competitive environment, including, inter alia, the development of the enabling policy, legal and regulatory framework for the Myanmar's ICT sector reform agenda, and, as more specifically provided in the Project Appraisal Document, providing technical assistance in connection with Cyber law, reflecting international best practice in the areas including

- (a) **e-Government:** Electronic Information, Standardization, Online Services, Building Information Infrastructure, Human Resource Development, Open Government Data and Open Source Software and Intellectual Property Right etc.
- (b) **e-Commerce:** Cross Border transfer of information by electronic means, Electronic Settlement, Paperless Trading, Custom Duties and Online Trade etc.
- (c) **Cyber Security:** Electronic Authentication, Electronic Signature, exposure to Cyber threat and Cybercrime, Privacy and Data Protection etc.

7. Prior to the assignment, the Consultant will review and become familiar with the general socio-economic conditions of Myanmar, as well as with the current state of development in the ICT sector in Myanmar, including the relevant institutions, as well as the laws, regulations, instruments, policies and agreements currently applicable in the sector as well as previous documents analyzing the legal and regulatory framework as listed below, including reports of previous consultants which will be made available. Without limiting the generality of the foregoing, the Consultant will become familiar with the following documents:

- The Telecom Sector Master Plan and e-Governance Master Plans
- Existing laws including but not limited to the Telecommunications Law (2013) (as may be amended), Electronics Transactions Law (2004), Computer Science Development Law (1996), Protecting Privacy and Security of the Citizen (2017), Right to Information Law 2016 (draft), Mutual Assistance in Criminal Matters Law, Code of Criminal Procedure, Extradition Act, Penal Code, Myanmar Constitution, and the Copyright Act.
- Documents related to e-Commerce current status in Myanmar and stand of Government at various international platforms
- Laws/Policies/ Guidelines related to ICT of other countries
- GLACY reports: An assessment report consisting of a legal gap analysis of the current state of play with respect to the legal framework and a generic cybercrime legal framework to combat cybercrime in Myanmar were undertaken by a consultant under the auspices of the Global Action on Cybercrime program (GLACY), a joint program of the European Union and Council of Europe (CoE).

- World Bank cybercrime capacity building assessment: In coordination with the CoE, the World Bank also conducted a cybercrime capacity building assessment under a program financed by the Korea World Bank Partnership Facility.
- Reports of other Consultations
- Any other relevant document

8. *Objectives:* The objectives of the consultancy are to prepare a draft Cyber Law and policies related to Cyber Security, e-Commerce and e-Government for Myanmar, consistent with and reflecting best practice, and to conduct public consultations with both government and non-governmental stakeholders regarding the same.

9. *Tasks:* In order to meet these objectives, the following tasks will be undertaken:
- (a) Familiarization with current legal and regulatory framework, results of other consultations which have been undertaken, laws and policies of countries, views of major stakeholders and conduct other necessary due diligence with respect to the elaboration of Cyber legal framework in Myanmar. The Cyber Law will include components of Cyber Security, e-Commerce and e-Government.
 - (b) based on, *inter alia*, the findings from the due diligence phase of this engagement prepare draft Cyber Law for Myanmar and policies related to Cyber Security, e-Commerce and e-Government, that reflect best practice and would enable Myanmar to adhere to the Budapest Convention.
 - (c) Ensure that Cyber Law and related policies should not have legislative gaps.
 - (d) Address the concerns regarding Critical Infrastructures of Government and private Sector.
 - (e) Conduct public consultations with government and non-governmental stakeholders on the draft law; and
 - (f) Coordinate with other consultants working in Cyber Security, e-Commerce and e-Government reforms.

10. *Timing & Deliverables:* Deliverables will include a report including findings and recommendations and conducting of public consultations with public and private (non-governmental) stakeholders in both Nay Pyi Taw and Yangon. The consultancy is to be completed on the following indicative schedule:

Timing	Deliverable
Contract Signature + 2 weeks	Inception Report
Contract Signature + 4 weeks	Initial Consultation with stakeholders
Contract Signature + 12 weeks	1 st draft of policies and identification of legislative gaps
Contract Signature + 16 weeks	1 st Draft of Cyber Law and policies related to Cyber Security, e-Commerce and e-Government
Contract Signature + 18 weeks	Consultations and Alignment with various stakeholders
Contract Signature + 24 weeks	Report with recommendations from public consultations and 2 nd Draft of Cyber law and policies related Cyber Security, e-Commerce and e-Government
Contract Signature + 30 weeks	Final Draft of Cyber Law and policies

C. Administrative Arrangements

11. *Reporting:* The consultant will report to the Project Director of Legal Advisor for Elaboration of a Cyber Legal Framework under Telecommunications Sector Reform project, Ministry of Transport and Communications (MOTC). The consultant will be expected to prepare succinct and relevant documentation to support all recommendations, and to discuss recommendations with stakeholders in-country. All reports will be in English language (and also in local language wherever required), and in Word, Excel and PowerPoint format, or equivalent. Draft versions of Cyber Law and Policies, in both English and Local languages, will be submitted electronically as well as in five hard copies and successive versions of reports will be marked to show changes from the previous draft.

12. *Administrative Arrangements:* The Consultant will work in close consultation with the Director of e-Government Department and Director of National Cyber Security Centre under ITCSD, who will support in arranging all meetings with other Government agencies, communities and stakeholders. Office space will be provided for the consultant at the e-Government Department's office, S12 Exchange in Nay Pyi Taw. The Consultant shall treat all documents and communications under this engagement confidentially.

D. Minimum qualifications and experience.

13. *Qualifications and Experience:*

- The Consultant shall be a firm/Lead firm with sub-consulting firm/s consisting of individuals having high international repute and with relevant international experience (minimum 5 years) in legal aspects of Cyber Security, e-commerce, e-Government, and related areas, particularly in developing countries.
- The Consultant should have experience of minimum three similar projects.
- The proposed individuals should have knowledge and experience of
 - managing the full development life-cycle of legal frameworks of both developed and developing countries
 - benchmarking laws and regulations across a diverse and extensive range of jurisdictions
 - advising government bodies and regulators on cyber laws and policies in ASEAN region
 - advising government bodies about ICT standards and regulatory mechanism at National level.
 - key areas of laws and policies related to Cyber Security, e-Commerce and e-Government in ASEAN region
 - the Myanmar legal contexts, frameworks and public bodies