

DIGITAL TRADE REGULATORY INTEGRATION

COUNTRY PROFILE

Ghana



BACKGROUND AND INTRODUCTION

The United Nations Economic Commission for Africa, through the African Trade Policy Centre, carried out a training and research initiative to capture the extent to which countries in Africa integrate digital trade in national legislation and regulations and to throw light on digital trade in Africa. This is particularly timely and useful since the African Continental Free Trade Area Agreement entered the implementation phase on 1 January 2021.

In this framework, two data sets on digital trade regulatory integration were compiled for Ghana. The first focuses on digital services trade restrictions modelled on the Organization for Economic Cooperation and Development digital services trade restrictiveness index, while the second concerns measures that relate to digital trade integration.

The objective was to ascertain whether the various measures promote or hinder digital trade in Ghana as the success or failure of Ghana in digital trade depends on its digital regulatory environment and openness. The measures are presented into two distinct groups, corresponding to the two data sets:

a) Measures relating to digital services trade restrictions on the model of the digital services trade restrictiveness index, which cover:

- Infrastructure and connectivity
- Electronic transactions
- Payment systems
- Intellectual property rights
- Other barriers affecting trade in digitally enabled services

b) Measures relating to digital trade integration, including:

- Foreign investment in sectors relevant to digital trade
- Cross-border data policies
- Domestic data policies
- Intermediary liability and content access
- Online sales and transactions

This country profile provides key findings and recommendations on the measures examined in Ghana. The information collected will enable Ghana to take stock of its digital regulatory environment and openness, and give entrepreneurs and investors an overview of what to expect when conducting digital trade with Ghana.

KEY FINDINGS

I. Measures relating to digital services trade restrictions

Infrastructure and connectivity

- In Ghana, it is obligatory for network operators to provide interconnection services to other network operators and service providers.
 - Interconnection prices and conditions are regulated by the Ghana National Communications Authority.
 - Interconnection reference offers are public, especially when there is a network operator with significant market power. Such reference offers may include price, technical and administrative conditions, etc.
 - Service delivery is vertically separated and takes the form of function (service) and accounting (cost).
 - There is only one network operator with significant market power, which controls an average data subscriber share of 67.78 per cent. The next closest has a market share of 15.81 per cent.
- There is no mandatory provision to regulate Internet traffic. However, industry players have called on the Ghana National Communications Authority to consider net neutrality regarding over-the-top services.
 - There are no restrictions on the use of communication (voice over Internet protocols such as WhatsApp and other over-the-top services) in Ghana, as universal access is provided for in the Electronic Communications Act of 2008.
 - The Data Protection Act of 2012 (Act 843) contains no provision against the transfer of data, in general, but it prohibits the disclosure of personal data through sale or purchase.
 - It is possible to transfer personal data from Ghana to other countries within its regional bloc (Economic Community of West African States), but countries to which personal data is transferred should have an adequate level of data protection, privacy, freedom and fundamental human rights. No prior authorization is needed to transfer data abroad.

Electronic transactions

- There are no discriminatory conditions for licences to engage in e-commerce. E-commerce businesses follow the general rules of operation stipulated in the Ghana Companies Act of 2019.
- As of 2021, registration and value-added tax payment requirements for non-resident providers of telecommunications services and electronic commerce have yet to be clarified.
- Since Ghana is not a party to international conventions such as the United Nations Convention on the Use of Electronic Communications in International Contracts, national contract rules for cross-border transactions deviate from internationally standardized rules.
- The Protection Against Unfair Competition Act of 2000 (Act 589) contains provisions that explicitly protect confidential information.
- The Electronic Transactions Act of 2008 (Act 772) places electronic signatures on an equivalent level with handwritten signatures. In addition, there is a dispute settlement mechanism to resolve disputes arising from cross-border digital trade.

Payment systems

- There is no discriminatory access to payment settlement methods.
- National payment security standards align with international standards such that the technology adopted should comply with ISO 8583 and EMV.

- There are no restrictions on Internet banking or insurance. This also means that there is no authentication process.

Intellectual property rights

- Foreign firms operating in Ghana are not discriminated against on trademark protection. Since Ghana is a contracting party to the Madrid System, any foreign firm that is registered in its home country also enjoys protection in Ghana. Nevertheless, it is possible for the Registrar General of Ghana to ask the applicant to provide a copy of initial trademark certification.
- Ghana is party to the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty. Therefore, foreign companies enjoy the same protection of copyrights and related rights as Ghanaian companies.
- The exceptions to copyright protection in Ghana are in line with international rules and include: (a) use of a literary or artistic work either in the original language or in translation; (b) reproduction and adaptation of computer programs; (c) permitted use of protected copyright work by libraries and archives; (d) permitted use of work or publication of portrait in public interest events; and (e) ephemeral recordings.
- The Copyright Act of 2005 (Act 690) contains judicial, administrative, and provisional measures and criminal enforcement proceedings remedies to enforce intellectual property rights.

Other barriers affecting trade in digitally enabled services

- Performance requirements of service operators or network providers, such as for user equipment, need to be registered by an interconnect clearing house.
- There are no limitations on downloading and streaming affecting cross-border digital trade because the Government of Ghana does not restrict or disrupt access to the Internet or censor online content. Any such restrictions would require prior judicial authorization.
- There are no restrictions on online advertising.
- Under the Companies Act of 2019, a branch or a company must be set up in the country to provide cross-border service. Such a branch or foreign company set up for this purpose is classified as an external company. If the foreign firm does not set up the company or a subsidiary in Ghana itself, it must identify a local agent authorized to act on its behalf.
- In Ghana, firms can officially complain when business practices restrict competition.
- The communication service tax can be transferred to the user (service provider, interconnect services and end user).

II. Measures related to digital trade integration

Foreign investment in sectors relevant to digital trade

- Investment legislation (Ghana Investment Promotion Centre Act of 2013 (Act 865)) in Ghana allows wholly for-

ign and joint investment, provided that the wholly foreign capital is no less than \$500,000 in cash or capital. For a joint investment (foreign-local), the capital must be no less than \$200,000 and the local (citizen) investors must own no less than 10 per cent of the joint investment.

- For companies operating under the customs territory of Ghana, restrictions and quotas are allocated to foreign investments. Investments amounting to \$700,001 and above have an automatic expatriate working visa quota for four persons. When more expatriates are needed, the investor must justify the selection of an expatriate rather than a Ghanaian citizen. Foreign companies operating under the Free Zones Programme (not directly under the customs territory) are not subject to residency requirement restrictions.
- With reference to digital trade, there is no screening of investment and acquisitions in sectors.

Cross-border data policies

According to the data protection legislation of Ghana, a data controller can process data in Ghana but must first be registered with the Data Protection Commission and be granted permission to carry out local processing.

Domestic data policies

- The legal framework for data protection (Data Protection Act) prohibits access to personal data without prior consent, except where such data are accessed for the purposes of: national security; crime and taxation; health, education and social work; regulatory

activity; journalism, literature and the arts; research, history and statistics; disclosure required by law or made in connection with legal proceedings; domestic purposes; confidential references given by a data controller; armed forces, public service or ministerial appointment; examination marks and examination scripts; and professional privilege.

- The Data Protection Act limits data retention to the purpose for which the data are used. Once the data have been used for the purpose for which they were intended, they must be deleted by the data controller. Exemptions are set out in sections 1 to 6.
- The Data Protection Act requires data controllers to appoint a data protection officer, also defined as a data protection supervisor. The supervisor is a professional whose role is to monitor the data controller's compliance with the provisions of the Act.
- The Anti-Terrorism Act of Ghana allows a senior police officer (not below the rank of an Assistant Commissioner of Police), with the written consent of the Attorney-General and the Minister of Justice, to apply to a court for an order to allow the interception of communications for the purpose of obtaining evidence of commission of an offence under the Act.

Intermediary liability and content access

- The Electronic Transactions Act of 2008 (Act 772) provides a framework that insulates intermediaries and service providers from liability arising from data transmission, routing and storage of electronic records.

- Generally, there is no law that blocks or filters information that enters Ghana. However, the President of Ghana may order the regulation of electronic communications in the event of war.
- Authorization or a licence issued by the National Media Commission is required to broadcast content on any public electronic communications network, public electronic communications service or broadcasting service.

Online sales and transactions

- There is no restriction or regulation hindering online or mobile payments. Businesses in Ghana that accept online payments must comply with the Payment Card Industry Data Security Standard.
- The Bank of Ghana ensures the appropriate legal and regulatory environment, competitive market and high standards for cards, automated teller machines and their platforms, and electronic funds transfer at point of sale systems. The card technology of these platforms must comply with ISO 8583 and EMV.
- The customs administration of Ghana does not apply a de minimis regime to allow goods not exceeding a certain threshold to be exempted from duties and taxes. However, there is an informal agreement that allows goods not exceeding \$200 in value to be exempted.
- Local companies are required to use the domain name "com.gh".
- Service providers must adhere to universal principles on consumer protection. Such principles include equity,

transparency, accessibility, privacy protection, responsibility and any other directive on consumer protection issued by the Bank of Ghana.

CONCLUSION AND RECOMMENDATIONS

Ghana is a relatively open country as far as digital trade and services are concerned. This is reflected in the absence of regulations on Internet traffic, restrictions on the use of communication (such as WhatsApp and other over-the-top services), discriminatory conditions to engage in e-commerce, discriminatory access to payment settlement methods, restrictions on Internet banking, discrimination against foreign firms on trademark protection, limits to downloading and streaming that affect cross-border trade and restrictions on online advertising.

Nevertheless, the following recommendations are made with a view to achieving effective and optimal service delivery:

- The role of intermediaries in online payments should be emphasized to prevent customer data from being exposed to crime. These intermediaries can authenticate the process of online payments as a way of guarding against fraud.
- Coronavirus disease (COVID-19) has revealed the importance of electronic transactions. Ghana should therefore endeavour to participate in international conventions on the use of electronic communications in order to have access to a wide range of electronic transactions.
- Legislation on advertising should be enacted to control child pornography and unwanted advertising.

This country profile was prepared by Richard Adu-Gyamfi, Mo Ibrahim Fellow at the International Trade Centre.

The country profile is part of the training and research initiative on digital trade regulatory integration in Africa, launched by the Economic Commission for Africa towards the end of 2020 to collect specific data on digital trade regulations and integration. Ghana was selected as one of the pilot countries for the initiative.