

DIGITAL TRADE REGULATORY INTEGRATION

COUNTRY PROFILE

Ghana



INTRODUCTION



The African Trade Policy Centre of the United Nations Economic Commission for Africa (ECA) has embarked on a Digital Trade Regulatory Integration (DTRI) initiative with four primary objectives:

- Provide information on digital services trade regulations that could facilitate the negotiation and implementation of the African Continental Free Trade Area (AfCFTA) Protocol on Digital Trade.
- Inform the development of a digital trade integration index that could become a component of the Africa Regional Integration Index.¹
- Inform the addition of African countries to the Digital Services Trade Restrictiveness Index (Digital STRI), as developed by the Organisation for Economic Co-operation and Development.
- Offer a solid basis for further analytical work by ECA and others on digital trade.

The DTRI initiative researches the legal and regulatory environment associated with dig-

ital trade and will help African countries better understand and address barriers to the growth and development of digital trade and e-commerce. Addressing the issues DTRI identifies will help promote digital trade and e-commerce and make it a more plausible choice for commercial transactions between businesses and consumers.

This country profile is based on observations from two datasets developed from the DTRI initiative. The first includes information on restrictions to digital services trade from 2014 to 2021 and is modelled after the Digital STRI. The second covers measures related to digital trade integration, beginning with the effective date of each measure, and reflects the latest available information. The legal and regulatory measures researched are categorized into policy areas in both digital services trade restrictions and digital trade integration, and the results are presented in the corresponding section of the profile. Where policy areas overlap, the profile presents results only once, to the extent possible.

¹ See <https://arii.uneca.org/>.

RESTRICTIVENESS OF THE REGULATORY REGIME FOR DIGITAL SERVICES TRADE (DIGITAL STRI)

This country profile presents the key findings for Ghana.

To assess the degree of restrictiveness of digital services trade in Ghana, an in-depth review of policies, legislation and regulations on digital services trade restrictions was conducted under the five pillars of the Digital STRI:

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

Infrastructure and connectivity

Network operators in Ghana are required 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. These reference offers may include price, technical and administrative conditions, and other specifications.

Service delivery is vertically separated. Separation requirements cover both form (service) and account (cost). In Ghana, there is only one network operator with significant market power. That operator controls an average data subscriber share of 67.8 percent. The next closest operator has a market share of 15.8 percent.

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 type (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 (Act 775).²

The Data Protection Act of 2012 (Act 843) contains no provision against the transfer of data but does prohibit the disclosure of personal data through sale or purchase.³ It is possible to transfer personal data from Ghana to other countries within its regional bloc (Economic Community of West African States), but any country to which personal data are transferred must have adequate data protection, privacy, freedom and fundamental human rights. No prior authorization is needed to transfer data abroad.

Electronic transactions

Ghana sets no discriminatory licensing conditions for engaging in e-commerce. E-commerce businesses are subject to the general rules of operation stipulated in the Ghana Companies Act of 2019.⁴ However, some ambiguity surrounds registration and value-added tax payment requirements for non-resident providers of telecommunications services and electronic commerce. As of 2021, Ghana has yet to clarify these requirements.

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.

However, the Protection against Unfair Competition Act of 2000 (Act 589) contains provisions that explicitly protect confidential information.⁵ Further, Ghana's Electronic Transactions Act of 2008 (Act 776) recognizes electronic signatures as equivalent to handwritten ones.⁶ Finally, Ghana has a dispute settlement mechanism to resolve disputes arising from cross-border digital trade.

Payment systems

Ghana does not have a discriminatory access regime for payment settlement methods, and national payment security standards are in alignment with international standards. All payment system technology is required to comply with ISO 8583 and Europay/MasterCard/Visa (EVM) standards. Further, Ghana has no internet banking or insurance restrictions. While this leaves the market open for entry, this also means that there is no authentication process in place.

Intellectual property rights

Foreign firms that operate in Ghana are not discriminated against in trademark protection. Since Ghana is a party to the Madrid System, foreign firms that are registered in their home country also enjoy protection in Ghana. However, the Registrar General of

² <https://nita.gov.gh/theevooc/2017/12/Electronic-Communications-Act-775.pdf>

³ [https://www.dataprotection.org.gh/data-protection/data-protection-acts-2012#:~:text=OVERVIEW%20OF%20DATA%20PROTECTION%20ACT%2C%202012%20\(ACT%20843\)&text=It%20recognises%20a%20person's%20right,accordance%20with%20the%20individual's%20rights.](https://www.dataprotection.org.gh/data-protection/data-protection-acts-2012#:~:text=OVERVIEW%20OF%20DATA%20PROTECTION%20ACT%2C%202012%20(ACT%20843)&text=It%20recognises%20a%20person's%20right,accordance%20with%20the%20individual's%20rights.)

⁴ <https://rgd.gov.gh/docs/Act%20992.pdf>

⁵ [https://www.bcp.gov.gh/acc/registry/docs/PROTECTION%20AGAINST%20UNFAIR%20COMPETITION%20ACT,%202000%20\(ACT%20589\)-%20PA.pdf](https://www.bcp.gov.gh/acc/registry/docs/PROTECTION%20AGAINST%20UNFAIR%20COMPETITION%20ACT,%202000%20(ACT%20589)-%20PA.pdf)

⁶ <https://nca.org.gh/wp-content/uploads/2020/09/NCA-Electronic-Communications-Act-776.pdf>

Ghana may ask applicants to provide copies of initial trademark certification.

Ghana is a party to the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty. These grant foreign companies the same protection of copyright and related rights as Ghanaian companies.

Exceptions to copyright protections are in line with international rules and include use of a literary or artistic work either in the original language or in translation, reproduction and adaptation of computer programs, permitted use of protected copyright work by libraries and archives, permitted use of a work or publication of a portrait in public interest events and ephemeral recordings.

Finally, Ghana has legal provisions through the Copyright Act of 2005 (Act 690) relating to judicial, administrative and provisional measures.⁷ The act also codifies criminal enforcement proceedings and remedies to enforce intellectual property rights.

Other barriers affecting trade in digitally enabled services

Ghana also has several other regulations that affect digitally enabled services. Performance specifications of service operators or network providers, including user equipment, need to be registered by an interconnect clearinghouse. Further, under the Companies Act of 2019, a foreign company seeking to provide cross-border services must set up a branch or a company in the country. Each branch or foreign company

set up for this purpose is classified as an external company. If the foreign firm does not set up a company or a branch in Ghana, it must identify a local agent authorized to act on its behalf.

Ghana places no limitation on cross-border data downloading and streaming since the government does not restrict or disrupt access to the internet or censor online content. Any content restriction in Ghana requires judicial authorization. There are also no restrictions on online advertising, and firms in Ghana can complain to officials when they believe that business practices restrict competition.

Indicators of digital trade integration

This section discusses measures related to the level of digital trade integration in Ghana. The regulatory regime of digital trade integration was assessed under 11 pillars:

- Tariff and trade defence on measures applied to intraregional imports of information and communication technology (ICT) goods.
- Public procurement of digital goods and services.
- Foreign direct investment (FDI) for digital trade.
- Intellectual property rights.
- Telecommunications infrastructure and competition.
- Cross-border data policies.
- Domestic data policies.

⁷ [https://bcp.gov.gh/acc/registry/docs/COPYRIGHT%20ACT,%202005%20\(ACT%20690\).pdf](https://bcp.gov.gh/acc/registry/docs/COPYRIGHT%20ACT,%202005%20(ACT%20690).pdf)

- Intermediary liability and content access.
- Quantitative trade restrictions.
- Standards.
- Online sales and transactions.

Since the findings for some of these pillars are discussed in the previous section on Digital STRI, to the extent possible, a duplicative discussion is avoided in this section.

Foreign investment

Ghana's Investment Promotion Centre Act of 2013 (Act 865) allows wholly foreign and joint investment provided that foreign investment capital is no less than \$500,000.⁸ For joint foreign–local investment projects, 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.

Companies that operate under the customs territory of Ghana have restrictions and quotas allocated to foreign investment. Investments above \$700,001 have an automatic quota of expatriate work visas of four persons. When more expatriates are needed, the investor must justify the selection of expatriates rather than Ghanaian citizens. However, foreign companies that operate under the Free Zones Programme rather than directly under customs territory are not subject to residency requirement restrictions. Finally, Ghana does not screen investments or acquisitions in the digital space.

Cross-border and domestic data policies

To process data in Ghana, controllers must first be registered with the Data Protection Commission and be granted permission to carry out local processing.

For domestic data, the Data Protection Act of 2003 prohibits access to personal data without prior consent but provides for various exceptions, including national security, crime and taxation, health, education and social work, regulatory activities, journalism, literature and the arts, research, history and statistics, legal proceedings, armed forces, public service or ministerial appointments, examination marks and examination scripts, and professional privilege.⁹ The Data Protection Act also limits data retention to the purposes for which the data are intended to be used. Once data have been used for their intended purpose, they must be deleted by the data controller. Sections 1–6 of the Act lay out exceptions to this rule.

Data controllers must also appoint data protection supervisors. Supervisors are professionals who monitor the data controller's compliance with the provisions of the Data Protection Act.

Finally, Ghana's Anti-terrorism Act of 2008 allows senior police officers (not below the rank of assistant commissioner) to obtain written consent of the attorney-general and minister of justice to apply to a court for an order to allow the interception of communi-

⁸ <https://www.gis.gov.gh/PDFs/GIPC%20Act%202013.pdf>

⁹ [https://www.dataprotection.org.gh/data-protection/data-protection-acts-2012#:~:text=OVERVIEW%20OF%20DATA%20PROTECTION%20ACT%2C%202012%20\(ACT%20843\)&text=It%20recognises%20a%20person's%20right,accordance%20with%20the%20individual's%20rights.](https://www.dataprotection.org.gh/data-protection/data-protection-acts-2012#:~:text=OVERVIEW%20OF%20DATA%20PROTECTION%20ACT%2C%202012%20(ACT%20843)&text=It%20recognises%20a%20person's%20right,accordance%20with%20the%20individual's%20rights.)

cations to gather evidence of offences under the act.¹⁰

Intermediary liability and content access

Ghana's Electronic Transactions Act of 2008 (Act 772) provides a framework for insulating intermediaries and services providers from liability arising from data transmission, routing and storage of electronic records.¹¹

Ghana has no law specifically blocking or filtering access to digital information. However, the president does have the power to order the regulation of electronic communications in the event of war. Further, authorization or licenses issued by the National Media Commission are required in order to broadcast content on any public electronic communications network, public electronic

communications service or broadcast service.

Online sales and transactions

Ghana does not have restrictions or regulations that impede online or mobile payments, but businesses that accept online payments must comply with Payment Card Industry Data Security Standards. The Bank of Ghana is tasked with ensuring an appropriate legal and regulatory environment that is competitive, has high standards for cards, ATMs and electronic fund transfers at point-of-sale systems. Card technologies of these platforms must comply with ISO 8583 and EMV.

There is no de minimis regime to exempt goods below a certain threshold from duties and taxes. However, there is an informal agreement that exempts goods not exceed-

¹⁰ <https://www.mint.gov.gh/wp-content/uploads/2017/06/Anti-Terrorism-Act-2008-Act-762.pdf>

¹¹ <https://nca.org.gh/wp-content/uploads/2020/09/NCA-Electronic-Communications-Act-776.pdf>

CONCLUSION AND RECOMMENDATIONS



ing \$200 in value. Finally, local companies are required to use the domain “com.gh,” and service providers must adhere to universal principles on consumer protection, including equity, transparency, accessibility, privacy protection, and responsibility and any other directive on consumer protection issued by the Bank of Ghana.

Ghana is a relatively open country for digital trade and services. This is reflected in the absence of regulations on internet traffic, restrictions on the use of communication 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 could help Ghana achieve optimal digital service delivery:

- The role of intermediaries in online payments should be emphasized to prevent customer data from being exposed to criminal activity. These intermediaries can authenticate the process of online payments as a way of guarding against fraud.
- Covid-19 has revealed the importance of electronic transactions. Ghana should endeavour to participate in international conventions on the use of electronic communications to have access to a wider range of electronic transactions.
- Legislation should be enacted to control unwanted advertising.



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