

DIGITAL TRADE REGULATORY INTEGRATION

COUNTRY PROFILE

Botswana



United Nations
Economic Commission for Africa



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 digital trade and will help African countries bet-

ter 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.

This country profile presents the key findings for Botswana.

¹ See <https://arii.uneca.org/>.

RESTRICTIVENESS OF THE REGULATORY REGIME FOR DIGITAL SERVICES TRADE



To assess the degree of restrictiveness among digital services trade in Botswana, 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

The Botswana Communications Regulatory Authority (BOCRA) is the country's communications regulator, as mandated by the Communications Regulatory Act of 2012.² BOCRA is also charged with ensuring uni-

versal access to communications services across the country at affordable prices.³

There are three primary operators of fixed and mobile networks in the Botswana telecommunication market: Botswana Telecommunications Corporation Limited (BTCL), Mascom Wireless Botswana (Pty) Ltd (Mascom) and Orange Botswana (Pty) Ltd (Orange). Each company offers an array of services that include fixed and mobile voice telephony, internet, data, value-added services and international services.⁴ Downstream, other companies such as Botswana Fibre Networks provide wholesale internet. Other market players, such as internet service providers, offer value-added services and internet access directly to consumers.⁵ According to BOCRA, Mascom is the dominant player in the mobile space, with a 47 per cent share. Orange has a 35 per cent share, and BTCL a 15 per cent share.⁶

² <https://www.bocra.org.bw/sites/default/files/documents/COMMUNICATIONS%20REGULATORY%20ACT%2C%202012.pdf>.

³ <https://www.bocra.org.bw/sites/default/files/documents/BOCRA20.pdf>, p. 12.

⁴ <https://www.bocra.org.bw/sites/default/files/documents/BOCRA20.pdf>, p. 20.

⁵ <https://www.bocra.org.bw/sites/default/files/documents/BOCRA20.pdf>, p. 20.

⁶ <https://www.bocra.org.bw/sites/default/files/documents/BOCRA20.pdf>, p. 20; <https://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2018/MISR-2018-Vol-2-E.pdf>, p. 25.

The Communications Regulatory Act mandates the regulation of interconnection.⁷ The act states that interconnection must be offered on both fair and reasonable terms, but the act does not distinguish between fixed and mobile networks. Negotiations for interconnection charges are left to individual parties, but if the parties cannot agree, they may ask BOCRA to settle the dispute.

The act does not provide for vertical separation of either fixed or mobile networks.⁸ However, the Service and Application License requires licensees to comply with accounting separation guidelines issued by BOCRA. The licensees are obligated not to show undue preference to or exercise unfair discrimination against any user or other operator in the provision of any service or application or in interconnection or access.⁹

Previously, Botswana did not have primary legislation for the protection and privacy of personal data. However, the Data Protection Act of 2018 has come into effect, stipulating measures to protect and safeguard personal data as they are processed, an aspect of the accountability principle. The act prohibits the cross-border flow of personal data, with some exceptions. For example, cross-border data transfers may be allowed where the destination country has adequate safeguards protecting personal data.¹⁰

Electronic transactions

The electronic transactions pillar refers to requirements for engaging in e-commerce, the resolution of disputes emanating from cross-border digital trade and conditions for licenses to engage in e-commerce.

Botswana's Electronic Communications and Transactions Act of 2014 has no discriminatory provisions for licensing to engage in e-commerce.¹¹ The only obligation is that the service provider be licensed by the appropriate authority. For instance, the provision of electronic payment services requires licensing from the Bank of Botswana, the central bank.

None of the tax laws, including the Customs Act and the Excise Duty Act of 2018, provides for online tax registration and declaration for non-resident foreign providers.¹² Botswana is not a signatory to the United Nations Convention on Contracts for the International Sale of Goods, commonly known as the Vienna Convention. Botswana is, however, a signatory to the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Signatures (2001) and the UNCITRAL Model Law on Electronic Commerce (1996). This means that Botswana's legislation incorporates provisions of the Model Law on Electronic Signatures and that electron-

⁷<https://www.bocra.org.bw/sites/default/files/documents/COMMUNICATIONS%20REGULATORY%20ACT%2C%202012.pdf>.

⁸ The Communications Act of 2012 [<https://www.bocra.org.bw/sites/default/files/documents/COMMUNICATIONS%20REGULATORY%20ACT%2C%202012.pdf>].

⁹ https://www.bocra.org.bw/sites/default/files/documents/Service%20and%20Application%20License_0.pdf.

¹⁰ <https://www.bocra.org.bw/sites/default/files/documents/DataProtectionAct.pdf>.

¹¹ <https://www.bocra.org.bw/sites/default/files/documents/Electronic-Communications-and-Transactions-Act-2014.pdf>.

¹² <http://www.burs.org.bw/index.php/treaties-and-legislation/legislation/revenue-laws?download=723:customs-act-duty>; <http://www.burs.org.bw/index.php/treaties-and-legislation/legislation/revenue-laws?download=724:excise-duty-act>.

ic signatures are enforceable in Botswana. Furthermore, the Communications Regulatory Act of 2012 empowers BOCRA to settle disputes in whatever manner it deems fit.¹³

Protection of business secrets is not specifically legislated and is left to common law and contract law. Thus, parties to a contract may enter into non-disclosure agreements to protect their trade secrets.

Payment systems

Most of Botswana's population uses cash as part of the formal payment system, with only a small percentage using non-cash payment systems such as cheques.¹⁴ However, the Bank of Botswana recently announced that cheques will be discontinued effective 1 January 2024 in light of the availability of more cost-efficient, safe, secure and convenient digital/electronic payment instruments in the country.¹⁵ This means that the country should be deliberate and intentional about the financial inclusion of marginalized groups to ensure that they also have access to financial services. In urban centres, the use of payment systems such as automated teller machines and electronic payment systems is prevalent.¹⁶

The Electronic Payment Services Regulations of 2019 regulate only those conduct-

ing electronic payment services in Botswana.¹⁷ However, under the act, all residents in Botswana have access to the payment settlement system, provided they can be identified (use of identity cards or passports). This requirement is particularly challenging because not all Botswana residents, especially people who live in rural areas and undocumented immigrants, have identification documents, which effectively locks them out of the formal payment system.

The Bank of Botswana National Payment Systems Oversight Policy requires the Bank of Botswana to use internationally recommended payment system standards to conduct oversight activities. A prime example is the Principles for Financial Market Infrastructures (PFMIs) and other best practices. Payment systems that are classified as Systematically Important are automatically considered as Financial Market Infrastructures in terms of the PFMI. In addition, the Botswana National Payments System Vision and Strategy 2020–2024 provides that all bank cards issued in the country (especially chip cards) comply with Europay/MasterCard/Visa and Payment Card Industry Data Security Standard security and efficiency standards.¹⁸ It further provides that international security and operational standards, including straight-through processing, be enforced. This shows that Botswana is committed to ensuring that its payment system

13 <https://www.bocra.org/bw/sites/default/files/documents/COMMUNICATIONS%20REGULATORY%20ACT%2C%202012.pdf>.

14 <https://www.bis.org/cpmi/paysys/botswana.pdf>.

15 <https://www.bankofbotswana.bw/sites/default/files/press-release-files/Discontinuation%20of%20Cheques%20in%20Botswana%20-%20February%202022%202022.pdf>.

16 <https://www.bis.org/cpmi/paysys/botswana.pdf>.

17 [https://www.bankofbotswana.bw/sites/default/files/Electronic%20Payments%20Services%20Regulations%202019%20\(Website%20Download\)_0.pdf](https://www.bankofbotswana.bw/sites/default/files/Electronic%20Payments%20Services%20Regulations%202019%20(Website%20Download)_0.pdf).

18 <https://www.bankofbotswana.bw/sites/default/files/Natioal%20Payments%20System%20Vision%20and%20Strategy%202020-2024.pdf>.

is safe and secure and aligned to acceptable international standards.

Intellectual property rights

The Botswana intellectual property regime is governed by both the Copyrights and Neighbouring Rights Act of 2006¹⁹ and the Industrial Property Act of 2010.²⁰ These acts are augmented by treaties on intellectual property, which are often incorporated into the acts with a view to aligning the law to international standards. Botswana is a party to the Berne Convention for the Protection of Literary and Artistic Works, the World Intellectual Property Organization (WIPO) Copyright Treaty, the WIPO Performances and Phonograms Treaty and the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights.

There is no discriminatory treatment of foreign firms for protection of copyrights and

related rights. The intellectual property regime has an array of provisional measures, such as orders for seizures and injunctions. These also include interdict and injunctive relief or measures to prevent infringing acts. Both acts referenced above have criminal sanctions for infringement of the provisions of the law.

Other barriers affecting trade in digitally enabled services

There are few specific laws related to digitally enabled services in Botswana, making it difficult to identify any barriers or restrictions to digital trade. Among other types of barriers, for example, is the requirement for a local presence when conducting certain services in Botswana. As a practical example, foreign banks incorporated outside Botswana may not establish a representative office in Botswana to carry out banking business without the approval of the Bank of Botswana.

19 <https://www.cipa.co.bw/wp-content/uploads/2019/06/Copyright-and-Neighbouring-Rights-Act-2.pdf>.

20 <https://www.cipa.co.bw/wp-content/uploads/2019/06/Industrial-Property-Act-2010-1-2.pdf>.

INDICATORS OF DIGITAL TRADE INTEGRATION



This section discusses measures related to the level of digital trade integration in Botswana. 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.
- 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.

Tariffs and trade defence

Botswana does not impose restrictions on imports of ICT goods and digital services, including on the quantity or volume of ICT goods or services that can be imported. In addition, research on this issue finds no complaints or restrictive cases from any companies or countries. The lack of restrictions may be due to the fact that Botswana is still at an early stage of ICT goods and digital services trade and lacks a significant presence in the ICT and digital services space.

Foreign direct investment

This pillar covers restrictions on FDI in sectors that are relevant to the digital economy, such as telecommunications and telecommunications-related services, computer services, internet publishing services, manufacturing of telecommunication facilities and electronic retail.

Because a healthy investment landscape is a catalyst for digital trade, it is imperative that countries enact enabling legislation for sustainable investment promotion. The Botswana Investment and Trade Centre (BITC)

was established by an act of Parliament in 2012 as an integrated investment and trade promotion authority with a mandate encompassing investment promotion and attraction, export promotion and development.²¹ Botswana does not have legislation governing integrated investment, but various acts include provisions for regulating FDI, including the Public Procurement Asset Disposal Board Act of 2002²² and the Economic Inclusion Act of 2021.²³

Although Botswana has made strides in liberalizing the telecommunication sector, BTCL, formerly a state-owned company, prohibits the issuance of shares to non-citizens. Since BTCL is the only listed telecommunication company in Botswana, this restriction inhibits foreign investment and liquidity, as most of the shares are held by institutional investors. The recently promulgated Economic Inclusion Act of 2021 advocates for empowering local citizens on issues related to procurement in both the public and private sectors.²⁴

BITC screens all proposed investments to ensure that they are within priority investment sectors in Botswana's Economic Diversification Drive. BITC also established the Botswana One Stop Service for investors. Before investors can be assisted at the Botswana One Stop Service, they are screened by BITC. An investment applica-

tion is likely to succeed if it demonstrates the quality of local employment to be created and the transfer of skills and technology and if it falls under a priority sector, among other criteria.

Intermediary liability and content access

This pillar concerns the regulatory environment for intermediary liability and additional requirements of intermediaries. It also concerns restrictions on content access such as blocking and filtering of commercial websites. Botswana has no safe harbour law that shields intermediaries from liability, nor does any legislation provide for blocking or filtering web content. However, it is a criminal offence under the Cybercrime and Computer Related Act of 2018 for a person to publish pornographic or obscene materials, including child pornography, revenge pornography and racist or xenophobic materials.²⁵

Domestic data policies

This pillar is concerned with policies on the domestic use of data, regardless of whether the data are processed by local or foreign companies. Botswana has a comprehensive data protection regime that cuts across all sectors. Data is protected under the Data Protection Act of 2018,²⁶ the Cybercrime

21 <https://www.gobotswana.com/who-we-are-and-role>.

22 http://www.ppadb.co.bw/documents/PPAD_Act_revised.pdf.

23 <https://www.parliament.gov.bw/index.php/parliamentary-business/current-issues/567-economic-inclusion-bill>.

24 <https://www.parliament.gov.bw/index.php/parliamentary-business/current-issues/567-economic-inclusion-bill>.

25 <https://www.bocra.org.bw/sites/default/files/documents/18%20Act%2029-06-2018%20Cybercrime%20and%20Computer%20Related%20Crimes.pdf>.

26 <https://www.bocra.org.bw/sites/default/files/documents/DataProtectionAct.pdf>.

and Computer Related Crimes Act of 2018²⁷ and the Financial Intelligence Act of 2019,²⁸ among other legislation.

The Data Protection Act does not prescribe how long data are to be retained, but other legislation includes provisions for retention of certain information. For instance, Section 25 of the Electronic Payments Services Regulations mandates that information be retained for a maximum of five years from the date the transaction was concluded and after termination of the business relationship.²⁹ Section 28 of the Financial Intelligence Act of 2019 provides that information obtained from customers through customer due diligence, account files and correspondence be retained for 20 years from the date the transaction was concluded and after termination of the business relationship. Clause 15.5. of the Service and Application License terms and conditions provides that all accounts and records of licensees be kept in secure locations and secure formats designed to ensure their preservation.³⁰

Section 10 of the Data Protection Act gives the commissioner of the Information and Data Protection Commission power to access any personal data by requesting the information or document in writing. The commissioner also must stipulate the time-frame within which the information is to be provided. A failure to comply with the commissioner's request is subject to sanctions.

27 <https://www.bocra.org.bw/sites/default/files/documents/18%20Act%2029-06-2018%20Cybercrime%20and%20Computer%20Related%20Crimes.pdf>.

28 <https://www.bankofbotswana.bw/sites/default/files/FINANCIAL%20INTELLIGENCE%20ACT%20NO.11%20OF%202019.pdf>.

29 [https://www.bankofbotswana.bw/sites/default/files/Electronic%20Payments%20Services%20Regulations%202019%20\(Website%20Download\).pdf](https://www.bankofbotswana.bw/sites/default/files/Electronic%20Payments%20Services%20Regulations%202019%20(Website%20Download).pdf).

30 https://www.bocra.org.bw/sites/default/files/documents/Service%20and%20Application%20License_0.pdf.

31 <http://www.bobstandards.bw/Pages/Draft-Standards.aspx?mnusub=25&pid=18&mp=0&sp=18>.

32 [https://www.botswanalaws.com/StatutesActpdf/2008Subsidiarypdf/STANDARDS%20\(IMPORT%20INSPECTION\)%20REGULATIONS,%20S.%20I.%20NO.%2078%20OF%202008.pdf](https://www.botswanalaws.com/StatutesActpdf/2008Subsidiarypdf/STANDARDS%20(IMPORT%20INSPECTION)%20REGULATIONS,%20S.%20I.%20NO.%2078%20OF%202008.pdf).

Standards

Botswana adheres to international norms for product screening and testing, and the Botswana Bureau of Standards is recognized by the International Organization for Standardization. The procedures used in the development of standards comply with the WTO's code of good practice for the development of standards. Third-party testing results are accepted.

Botswana has a national certification programme. In Section 6 of the Standards (Import Inspection) Regulations of 2008, the certification programme allows the application of international or foreign standards that are recognized by Botswana Bureau of Standards.³¹ Foreign businesses are allowed to participate in the standards-setting process. Section 6 provides that a compliance certificate shall be issued where the imported commodity complies with the prescribed standards set by the bureau or with international or foreign standards recognized by the bureau.

However, Section 84 of the Communications Regulatory Authority Act mandates that BOCRA approve the type of communications equipment that may be connected, used or operated to provide broadcasting or telecommunication services in Botswana.³² Furthermore, BOCRA is mandated to ensure consumer protection. The purpose

of the type-approval procedure is to ensure that all radio communication and telecommunication equipment used in Botswana comply with international standards that are applicable in Botswana.

Online sales and transactions

As the world becomes more interconnected, there is a need to increase digital trade through online sales and transactions. This pillar covers restrictions related to online sales and transactions, such as restrictions on online payments and on the use of domain names.

Botswana has no bans or restrictions against firms engaging in e-commerce (online sales, delivery and advertising) or against use of

online payments. In fact, the Bank of Botswana National Payment Systems Oversight Policy emphasizes the use of internationally recommended payment system standards, such as PFMLs, and other best practice to conduct oversight activities.³³

Botswana's legislation and regulations do not require a local presence to use a local domain, nor do they require a company to have a local domain name to engage in electronic retail. Botswana has comprehensive legislation on consumer protection through the Consumer Protection Act³⁴ as well as the Electronic Communications and Transactions Act of 2014.³⁵ The Electronic Communications and Transactions Act also provides for facilitation and regulation of electronic communications and transactions.

33 [https://www.bankofbotswana.bw/sites/default/files/National%20Clearance%20and%20Settlement%20Systems%20Act%202003%20\(Website%20Download\).pdf](https://www.bankofbotswana.bw/sites/default/files/National%20Clearance%20and%20Settlement%20Systems%20Act%202003%20(Website%20Download).pdf).

34 The Consumer Protection Act of 2018 <https://www.bocra.org.bw/sites/default/files/documents/05%20Act%2020%EF%80%A204%EF%80%A22018%20CONSUMER%20PROTECTION.pdf>?

35 <https://www.bocra.org.bw/sites/default/files/Electronic-Communications-and-Transactions-Act-2014.pdf>.

CONCLUSION AND RECOMMENDATIONS

The objective of this study was to determine Botswana's legislative posture on digital services trade and digital trade integration. A comprehensive examination and assessment of current legislation revealed that since 2018, Botswana has steadily and consistently promulgated legislation for enabling digital trade. Botswana has also signed some international treaties with a view toward adopting international standards in areas such as intellectual property, payment systems and electronic signatures, among others.

In addition, as digital services trade has become multinational through sophisticated technological advances, the use of these technologies can pose threats and requires the application of security measures to protect the platforms used for digital trade.

Restrictive measures were found in some areas, which could be eased to facilitate digital trade. This could also be augmented by Botswana becoming a party to key treaties such as the United Nations Convention on Contracts for the International Sale

of Goods (the Vienna Convention) and the WTO Information Technology Agreement.

In light of the foregoing findings, the following recommendations are proposed for Botswana:

- To facilitate digital trade, consider becoming a signatory to the United Nations Convention on Contracts for the International Sale of Goods and the WTO Information Technology Agreement. As many goods and services are increasingly traded through digital means, it would be prudent for Botswana to harmonize its trade standards accordingly.
- Consolidate legislation related to promoting digital services trade, to reduce the number of laws that must be complied with, especially those that are difficult for foreign investors to comply with.
- Liberalize the telecommunication sector in line with continental standards, as provided for in the AfCFTA Agreement, and allow foreign investors to participate in BTCL, thereby improv-

ing liquidity. In addition to attracting FDI, this action could encourage Mascom and Orange to list on the local bourse.

- Re-consider pushing the Economic Diversification Drive, through which the government wants to substan-

tially limit the participation of foreign firms in both public and private procurement.

- Establish clear regulations on de minimis tax thresholds, to attract greater participation in e-commerce.



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