

DIGITAL TRADE REGULATORY INTEGRATION

COUNTRY PROFILE

The Gambia



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 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.

This country profile presents the key findings for the Gambia.

¹ See <https://arii.uneca.org/>.

Context

Information and communications technologies (ICT) and telecommunications are vibrant sectors in the Gambian economy and some of the fastest growing in the West Africa Region over the last decade.² The Public Utilities Regulatory Authority (PURA), an independent government agency created under the PURA Act of 2001,³ has been the regulator of the telecommunications service sector of the Gambia since 2001.⁴ In addition to the PURA Act, the Gambian government has created policy, legal and regulatory instruments to ensure the sectors seamless and effective operation. These instruments include the Information and Communication Act of 2009,⁵ Mobile Money Regulations of 2011,⁶ Guidelines for Interconnection of 2012,⁷ Single Window Business Registration Act of 2013,⁸ Companies Act of 2014,⁹ Draft Data Protection and Privacy Policy and Strategy of 2019¹⁰ and a host of other regulations and policies.

Accordingly, the penetration rate of mobile phones has grown. The number of mobile connections in the Gambia in January 2021 was 4.02 million, a 4.5 per cent increase since 2020.¹¹ Internet penetration stands at 23.7 per cent, with 580,200 internet users.¹² The

upsurge of mobile phone adoption expanded financial inclusion through mobile money service, while the Mobile Money Regulation of 2011 led to even greater mobile money service penetration. Also, the country has attracted investment in digital services trade. For instance, several digital trade companies operate in the country, including money transfer platforms such as Ping Money and World Remit, ride-hailing platforms such as Uber and online trading through social platforms such as WhatsApp and Facebook.

Although the country is still in the infancy stages of digital development, the government works hard to create a conducive environment to attract investment in the digital sector. For instance, to enhance its trade competitiveness in the fourth industrial revolution, the government is working to improve the investment and business climate for the ICT sector, promote enterprise development and increase internet penetration to 100 percent by 2024 (with a 4G coverage, upload and download speed of 5Mbps).¹³ Although the ICT vision of the Gambia is commendable, several regulatory restrictions hinder the advancement of digital trade. A more conducive regulatory environment is likely to attract local and international investors and consumers in the digital market.

2 <https://www.finnpartners.com/news-insights/what-will-it-take-to-get-the-internet-access-we-need-in-the-gambia/>

3 https://en.unesco.org/creativity/sites/creativity/files/qpr/public_utilities_regulatory_act_2001.pdf.

4 PURA Legislative Mandate (<https://pura.gm/about-pura/overview-of-pura/>). See also s. 2(1) of The Gambia Public Utilities Regulatory Authority Act 2001.

5 <https://www.wipo.int/edocs/lexdocs/laws/en/gm/gm006en.pdf>.

6 <https://www.cbg.gm/mobile-money>.

7 <https://www.pura.gm/wp-content/uploads/2018/01/GUIDELINES-FOR-INTERCONNECTION.pdf>.

8 <https://www.mofea.gm/downloads-file/business-registration-and-company-law>.

9 <http://doccdn.simplesite.com/d/8b/b2/283163832058688139/21fae0a7-0c0d-4e29-9ff3-9119c88da582/TRADE-AND-COMMERCE---COMPANIES-ACT.pdf>.

10 <https://www.dataguidance.com/sites/default/files/data-protection-and-privacy-draft-policy-and-strategy-august-2019.pdf>.

11 <https://datareportal.com/reports/digital-2021-gambia#:~:text=There%20were%204.02%20million%20mobile,164.1%25%20of%20the%20total%20population>. And according to World Bank data, there were 111 mobile subscriptions per 100 People in the Gambia in 2020.

12 <https://datareportal.com/reports/digital-2021-gambia#:~:text=There%20were%204.02%20million%20mobile,164.1%25%20of%20the%20total%20population>.

13 The Gambia National Broadband Policy 2020–2024, pp. 14–16 (<https://moici.gov.gm/sites/default/files/2021-05/BROADBAND%20POLICY%202024.pdf>).

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 rights.
- Other barriers affecting trade in digitally enabled services.

Infrastructure connectivity

Having a regulatory framework for infrastructure connectivity is essential for creating a conducive environment to facilitate digital trade. Infrastructure connectivity has four aspects: interconnection, vertical separation, market dominance and cross-border data flow. Gambia's interconnection regulations mandate interconnectivity for mobile and fixed telecommunications services and insist that interconnection reference offers

be publicly available. The laws also regulate interconnection prices and conditions and ensure non-discriminatory internet traffic management by interconnection service providers. The country's Interconnection Regulation also mandates that interconnection service providers maintain separate accounts of telecommunications/ICT activities (as if done by legally independent companies), especially when interconnection services are not provided through structurally separated subsidiaries.¹⁴ This enables PURA to identify all cost and revenue attribution elements in arriving at a final interconnection cost.

The interconnection requirement is vital to reduce barriers to entry for new entrants in digital services trade. The Gambian mobile telecommunications market has four leading players: Africell (foreign owned), Comium (foreign owned), Gamtel (state owned) and Qcell (private, domestic), with Africell having a dominant position at a market share of over 60 per cent.¹⁵ The Information and Communication Act (ICA) of 2009 contains

¹⁴ <https://www.pura.gm/interconnection/>.

¹⁵ <https://www.businesswire.com/news/home/20190819005438/en/Gambia-Telecoms-Mobile-Broadband-Statistics-Analyses-2019>.

robust anticompetition provisions to forestall monopolistic manoeuvres.¹⁶ However, Gamtel owns the fibreoptic cable that runs across the country and controls the country's connection to the international internet via the Africa Coast to Europe submarine cable system. This creates monopolistic control over connection access that can discourage investment flows to the sector by new entrants.

Finally, the data protection legal framework is practically non-existent, and future data protection policy is still being drafted. It is crucial to conclude a robust data protection framework to guarantee the smooth flow of cross-border data.

Electronic transactions

The electronic transaction regulatory framework is paramount for facilitating digital trade. The Gambia does not have a specific domestic electronic transactions law. Since 2009, the Gambia has been a signatory to the 2001 United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Signatures and the 1996 UNCITRAL Model Law on Electronic Commerce, but it is not a signatory to the 2005 United Nations Convention on the Use of Electronic Communications in International Contracts. The country uses the UNCITRAL model laws to support efforts to tap the digital economy's potential by regulating electronic transactions.

There appears to be no policy or regulatory bottleneck in the Gambia for electronic transactions. Further, through the Central Bank of the Gambia, the government has mandated interconnection between mobile money providers, an intervention that has removed cross-platform transaction barriers and increased mobile financial transactions. However, instead of relying on general law, the government needs a specific law regulating electronic transactions. It is also important for the laws to explicitly protect confidential business information and offer an online mechanism for the settlement of cross-border trade disputes.

Payment systems

Payment systems are major components of digital trade integration. The National Payment System Act¹⁷ and the Electronic Money Regulations¹⁸ regulate the digital payment systems in the country. The law does not discriminate against specific payment settlement methods if they abide by the laws. Further, the law does not set restrictions on internet banking or insurance transfers but allows financial service providers to set limits. The Mobile Money Regulations of 2011¹⁹ also regulate and protect the rights of customers, while setting healthy regulatory rules for mobile money merchants. The Gambian law also allows for interbank fund transfer services to make it easier for buyers to pay sellers without having to rely on manual or third-party bank deposit services. Regulations also facilitate the provision of

¹⁶ <https://www.wipo.int/edocs/lexdocs/laws/en/gm/gm006en.pdf>.

¹⁷ Central Bank of the Gambia Act, 2018, Part VIII – Operations, Section 61 – Payment System (<https://www.cbg.gm/downloads-file/a548e776-f379-11e9-876c-02e599c15748>).

¹⁸ The Gambia Mobile Money Regulation 2011 s.2.2 (<https://www.cbg.gm/downloads-file/b2064e61-f37b-11e9-876c-02e599c15748>).

¹⁹ The Gambia Mobile Money Regulation 2011 s.2.2 (<https://www.cbg.gm/downloads-file/b2064e61-f37b-11e9-876c-02e599c15748>).

electronic payment services while ensuring consumer protection and risk management and without compromising the safety and efficiency of the national payment system.

Intellectual property rights

Intellectual property rights (IPR) regulations are the primary determinant of digital trade investment. Better IPR laws ensure the protection of trademarks, trade secrets, copyrights and other IPRs. The Gambia Industrial Property Act 12 of 1989,²⁰ the Berne Convention and the African Regional Intellectual Property Organization Agreement regulate intellectual property rights in the country. The laws offer trademark and copyright protection for foreign and local firms without discrimination. The law stipulates judicial enforcement measures and remedies, as well as criminal enforcement proceedings and penalties. A company that believes that its IPRs are being threatened or infringed on may institute proceedings in the Gambia.

Other barriers affecting trade in digitally enabled services

There are no significant regulatory barriers to digital trade in the Gambia. There are no strict performance requirements for engaging in digital trade, no limitations on downloading and streaming affecting cross-border digital trade, no limitations on online advertising and no explicit discrimination provisions against foreign companies in terms of a local and commercial presence requirement to provide cross-border services. There is a proper redress system against foreign and local companies for anticompetition strategies. The Single Business Registration Act of 2013²¹ requires only that all companies, foreign and local, register with the Companies Registry and the tax authorities before commencing business operations in the Gambia, except for micro-businesses.

²⁰ <https://www.aripo.org/wp-content/uploads/2019/05/Industrial-Property-Act-Amendment-2015-Gambia.pdf>.

²¹ <https://mofea.gm/company-law>.

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 measures

The Gambia is not a signatory to the 1996 World Trade Organization (WTO) Information Technology Agreement and its expansion. Trade contingency measures in the Gambia (antidumping, countervailing and safeguard measures) are governed only by the rules of the Economic Community of West African States. The Gambia notified the WTO in 2014 that it had not established a competent authority to undertake antidumping or countervailing duty investigations, nor does it anticipate taking any actions in the foreseeable future.

Foreign direct investment

Creating a conducive environment for foreign investors is essential in boosting private sector investments and contributions to economic growth. Partnerships between foreign and local investors are highly desirable to ensure that some benefits of FDI remain in the country and for capacity building. The Gambia has laws and processes to facilitate a one-stop shop for FDI, such as the Single Business Registration Act of

2013.²² There are no restrictions on the total equity share that foreign firms may hold in the Gambia except in mining and petroleum exploration, which are considered strategic industries. There is no mandatory screening of any kind for foreign firms prior to entering the Gambian market, and foreign investors are not required to engage in joint venture agreements.

The government welcomes foreign investment in various sectors, especially in procurement, but gives priority to local companies. However, section 29 (d) of The Gambia Public Procurement Authority Regulations of 2019²³ provides that procurement of goods, services or works from foreign companies operating in a local government authority or region may be considered only when a local company is not present there. Therefore, foreign firms are invited to bid only when there are no local firms, which may discourage foreign bidding. The government prefers joint partnership between local and foreign bidders to encourage the growth of local companies.

Domestic data policies

Domestic data policies are vital to safeguard personal and business data. Investors and consumers feel more confident about investing in or using digital services when data safety is guaranteed by law. The Gambia does not have a data protection authority that acts as an independent supervisory administrative institution with powers of investigation and intervention. Section 138 of the ICA of 2009 empowers PURA to monitor, intercept and store data commu-

nications for surveillance purposes without judicial oversight when exercising its powers relating to frequency monitoring. This means that government surveillance can be conducted without court orders.

Gambian national security agencies and investigating authorities such as the police also have the unregulated power to monitor, intercept and store data communications for surveillance purposes without judicial oversight (Section 138, ICA 2009). Again, this means that government surveillance can be conducted without court orders. In December 2019, the attorney general and minister of justice introduced amendments to the ICA to provide judicial oversight and monitoring of government surveillance, but parliament rejected the amendments. This stance appears to be politically motivated, especially for enabling surveillance operations on government critics, but the lack of judicial oversight and court orders has an adverse effect on digital trade.

Intermediary liabilities and content access

Intermediary liability protection is the critical foundation of digital trade policies in the platform economy. A basic legal framework on intermediary liability is absent in the Gambian law and jurisprudence, and there are no specific safe harbour provisions concerning intermediary liability. However, the ICA of 2009²⁴ provides that information and communications service providers should take appropriate technical and organizational measures, jointly with other service providers, if necessary to protect against any

²² <https://www.mofea.gm/downloads-file/business-registration-and-company-law>.

²³ <https://mofea.gm/downloads/laws-regulations>.

²⁴ <https://www.pura.gm/wp-content/uploads/2018/01/IC-Info-Comms-Act-2009.pdf>

unauthorized attempt to intercept, store or monitor data communications. Also, internet service providers are required to have an operating license.

Standards

Gambian standards generally require local testing and certification of electrical and electronic products, both domestic and foreign, by The Gambian Standards Bureau (TGSB). Audio-visual products such as television sets and LCD panels and similar apparatus marketed in the Gambia must be tested locally. Audio-visual products can be certified only after conformity assessments have been carried out by TGSB and thus self-certification by foreign business is not allowed. Also, Gambian laws do not allow self-certification of telecommunications, radio and wireless equipment. Certification by TGSB is intended to ensure compliance with the published national standards on electro-technical products, which follow the specifications of the International Organization for Standardization and the International Electrotechnical Commission. However, test certificates from foreign laboratories are accepted by the TGSB for accreditation due to the limitations of local testing laboratories.

Online sales and transaction

Because online sales and transactions are an important component of regional trade integration, having proper mechanisms and interoperability is essential to facilitate international trade. In the Gambia, companies require only an ordinary business license,

not a separate license, to engage in e-commerce. The Gambia has no restrictions on online sales and advertising, and there is a low de minimis threshold of US\$100. The Electronic Transaction Act²⁵ poses no restrictions on the delivery of legal products, but the importer must pay the required taxes and there is no de minimis on digital trade. Further, businesses must register to qualify for the local domain designation of “.gm.”

The Consumer Protection Act of 2014 covers e-commerce.²⁶ The act contains provisions on distance selling, which includes internet-based commerce. Sellers are required to provide certain information prior to the conclusion of a contract (such as the price of the goods including taxes and delivery costs), and customers have a right of cancellation and the ability to review and correct orders. In addition, the ICA of 2009 contains provisions granting protection rights with respect to contractual terms and dispute resolution and for consumers of information service societies. However, the PURA and security agencies have unregulated access and control of telecommunications users' data.

The study revealed gaps in legislation that are likely to impede digital services trade and integration in the Gambia. The study suggests that to enhance digital trade competitiveness, the government needs to update its legislation. For instance, the government has yet to enact data protection laws needed to create a more conducive environment for digital services trade, which is crucial to boosting investment, facilitating inter-

²⁵ See <https://moici.gov.gm/sites/default/files/2021-05/IC%20Act%202009.pdf>.

²⁶ <https://www.dataguidance.com/sites/default/files/gambia-consumer-protection-act-2014.pdf>

CONCLUSION AND RECOMMENDATIONS

national trade and guaranteeing consumer safety and confidence in the digital markets. Efforts are still needed to boost and attract investment in digital trade. The following laws and policies should be considered:

- Consider fast tracking the drafting and enactment of a data protection law, which is crucial to protect personal data (processing of data and movement of data).
- Establish a clear policy and domestic law on standards for electronic goods and self-certification for electronic goods importers.
- Review and reform the Procurement Act to remove discrimination against foreign investors/bidders.
- Further liberalize the highly restrictive legal environment for government gateway services from Gamtel by granting more international data transmission licenses to private telecommunications operators.
- Address inefficient bureaucracies and nepotistic and preferential practices by government officials through regulations curbing such practices.
- Make it easier and less expensive to register internet service providers and mobile service providers.



Printed in Addis Ababa, Ethiopia by the ECA Printing and Publishing Unit.
ISO 14001:2015 certified. Printed on chlorine free paper.