

DIGITAL TRADE REGULATORY INTEGRATION

COUNTRY PROFILE

Mozambique



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 Mozambique.

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

This pillar covers measures on communications infrastructure essential to engaging in digital trade. Policies on interconnection, vertical separation, dominant firm in the market and cross-border data flows are explored.

The legal framework for telecommunications in Mozambique supports a consoli-

dation of its liberal market and competition policy. Regulations now require convergence of networks and services. Since the Telecommunications Act of 2016,² interconnection has been legally treated as mandatory. The requirement applies not only to dominant telecommunication firms, as it did under the 2004 Telecommunications Act³ (now repealed), but also to other service providers that benefit from interconnection solely through coordination with a major service provide.

Equality, transparency, non-discrimination and cost-reflective tariffs strengthen access to infrastructure and other network facilities for both fixed and mobile networks. According to the Telecommunications Act of 2016, firms must provide information on interconnection, must allow access to and share infrastructure where required and must make available applicable technical and price offers.

Although it is the prerogative of the Mozambique Telecommunications Regulatory

² <https://www.arecom.gov.mz/index.php/legislacao/legislacao-telecomunicacoes>.

³ <https://www.arecom.gov.mz/index.php/legislacao/legislacao-telecomunicacoes>.

Authority to analyse the national market, the authority has not identified any dominant players. However, it is clear that Tmcel, a state-owned company (formerly known as TDM), holds a monopoly on fixed lines.

Regarding cross-border data flows, no legislation governs the processing of personal data in Mozambique, apart from provisions in the Electronic Transactions Act of 2017⁴ and the resolution ratifying the African Union Convention on Cyber-Security and Personal Data Protection.

Electronic transactions

This pillar focuses on issues such as licenses for e-commerce activities and online tax registration and declarations for non-resident firms. It also considers conformity to internationally accepted rules on electronic contracts, measures affecting the use of electronic authentication (such as electronic signatures) and the availability of dispute settlement mechanisms.

The Electronic Transactions Act of 2017 requires special approval or licensing to engage in e-commerce.⁵ Firms must obtain approval from the Ministry of Commerce and the National Institute of Information and Communication Technologies.

Neither the Mozambique Tax Authority nor the framework for legal taxation address-

es online registration or tax declaration for non-resident digital service providers. However, the taxation framework allows service providers to be subject to taxation in Mozambique. If so, the provider of services must self-assess any tax due and complete the tax declaration on behalf of the non-resident provider. If self-assessment is not possible, the non-resident provider must appoint a resident tax representative in Mozambique to complete the declaration and pay any tax due on its behalf.

Mozambique is not a party to all key conventions that promote international standardized rules on cross-border electronic contracts. However, the country did adopt the Model Law on Electronic Commerce of the United Nations Commission on International Trade Law in 2017.

Under the Electronic Transactions Act of 2017, electronic signatures are legally accepted as equivalent to handwritten signatures.⁶ From a practical perspective, however, better dissemination and enforcement of the law might be needed because some notaries public have resisted accepting e-signatures as valid.

Several legal instruments widely protect confidential information and commercial secrets. These protections are granted primarily by the Constitution, but the Civil Code,⁷

4 <https://www.inage.gov.mz/wp-content/uploads/2018/05/LEI-DE-TRANSACC%C3%95ES-ELECTR%C3%93NICAS.pdf>.

5 <https://www.inage.gov.mz/wp-content/uploads/2018/05/LEI-DE-TRANSACC%C3%95ES-ELECTR%C3%93NICAS.pdf>.

6 <https://www.inage.gov.mz/wp-content/uploads/2018/05/LEI-DE-TRANSACC%C3%95ES-ELECTR%C3%93NICAS.pdf>.

7 <http://invest.apiex.gov.mz/wp-content/uploads/sites/4/2019/07/Civil-Code-47.344.pdf>.

Commercial Code⁸ and Intellectual Property code⁹ also provide guidance.

Under the Electronic Transactions Act and the Intellectual Property code, disputes can be settled through courts (judicial or administrative, depending on the object in conflict) or arbitration.

Payment systems

This pillar captures measures that affect payments made by electronic means. It includes measures on access to payment methods, the adoption of international security standards for domestic payment transactions and other restrictions on internet banking.

In Mozambique, the Exchange Control Act of 2009 guarantees access to payment methods and financial transactions on a non-discriminatory basis.¹⁰ The Central Bank of Mozambique, which regulates the banking and financial system, has fostered the implementation of international security standards by investing in appropriate infrastructure and by building staff capacity to control operational and systemic risks and ensure immediate, automatic and unconditional security throughout the financial system.

Central Bank regulations limit the size of online payments. The Central Bank can grant an exception to the limit on a case-by-case basis for entities that need to transfer a larger amount.

Further, before paying for imports using onshore bank accounts, Mozambican firms need to justify their payment to the Central Bank and receive its authorization. The bureaucratic procedures take considerable time to complete.

Intellectual property

This pillar concerns domestic policies that protect the intellectual property rights accorded to foreigners under copyright and trademark conventions and laws. It also explores enforcement mechanisms to address copyright and trademark infringement.

Mozambique is part of the Agreement on Trade-Related Aspects of Intellectual Property Rights, the Patent Cooperation Treaty, international protocols (such as the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks) and the Berne Convention for the Protection of Literary and Artistic Works. Thus, Mozambican law recognizes and protects foreign patents, including on works of art. No discriminatory laws or rules against foreign firms exist with respect to registering and protecting intellectual property rights and copyrights.

The Mozambican Copyright Act of 2001 broadly defines exceptions and limitations to copyright protection.¹¹ These exceptions are in line with the three-step test of the Berne Convention, which allows third parties to use copyrighted work without prior

8 <https://www.ipi.gov.mz/legislacao/nacional/151-decreto-n-4-2006-codigo-da-propriedade-industrial> (revised 2015).

9 <http://invest.apiex.gov.mz/wp-content/uploads/sites/4/2019/07/Civil-Code-47.344.pdf>.

10 <https://bancomoc.mz/Files/DES/LegilacaoCambial%2002.pdf>.

11 <https://wipo.int/edocs/lexdocs/laws/pt/mz/mz002pt.pdf>.

permission or license from the author under certain conditions.

Mozambique has a reciprocity regime for recognizing trademarks and intellectual property rights registered in other countries. Foreign firms whose intellectual property rights are not registered in Mozambique can register them through a treaty between the home country and Mozambique or a reciprocity regime. Mozambican intellectual property rights holders have access to the same benefit without discrimination.

Both rights holders and authors have at their disposal legal means to file claims over alleged violations of their rights.

Other barriers affecting trade in digitally enabled services

According to the World Trade Organization's Integrated Trade Intelligence Portal, Mozambique has not implemented defence measures (anti-dumping, countervailing duties or safeguards) against information and communication technology (ICT) goods imported from other countries, but it has erected technical trade barriers.¹²

In addition, general rules on customs clearance of goods declare that some trade defence measures such as anti-dumping and countervailing duties and the like apply to all imported goods. None of the rules specifically cover ICT goods but mention only a general approach to all products.

¹² https://www.wto.org/english/res_e/statis_e/itip_e.htm.

INDICATORS OF DIGITAL TRADE INTEGRATION



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

Foreign direct investment

Mozambique does not have restrictions on foreign equity shareholding in any sector related to digital trade, although some other sectors do (such as construction, extractives, the army and real estate previously nationalized by the Mozambican state). Under investment law,¹³ beneficiaries of tax incentives are assessed on whether investment projects have improved conditions in surrounding communities and generated economic and social advantages. These assessments are transparent, non-discriminatory, based on the law and applicable to all applicants and investors.

Mozambique also does not have any specific regulation governing the public procurement of ICT goods and digital services.

¹³ <http://invest.apiex.gov.mz/wp-content/uploads/sites/4/2019/08/Leis-e-Regulamentos-Relacionados-com-Investimento-Directo-Estrangeiro.pdf>.

Rather, the country relies on a generalized regime, meaning that both national and foreign firms and natural persons can bid to supply goods or render services to public entities without local content restrictions or the need to surrender patents, source codes or trade secrets.

Domestic data policies

Mozambique has no requirements to store banking, financial or public procurement data locally. However, laws covering other sectors, such as the Telecommunications Network Security Regulation,¹⁴ require personal data on residents of Mozambican territory to be stored within national borders and to be governed by national laws. In exceptional situations, such as the operator of a public telecommunications network storing consumer data in the cloud outside national territory, the regulation insists that data be subject to Mozambique's national jurisdiction.

Intermediary liability and content access

The law in Mozambique does not establish safe harbour for intermediary service providers. The legal framework obligates intermediaries to monitor their users for harmful activities. The law also ensures appropriate technical and organizational measures for network integrity and risk reduction with respect to user activities.

Online sales and transactions

According to the Global Express Association, the de minimis limit for customs duties or taxes in Mozambique is \$12, which means that goods valued at \$12 or less should not be subject to customs duties or taxes.¹⁵

Mozambique's legal framework for e-commerce took on new contours in 2017 with the adoption of the Model Law on Electronic Commerce and subsequent enactment of the Electronic Transactions Act.¹⁶ In addition, to allow business to be conducted smoothly, Mozambique follows the African Union Convention on Cyber-Security and Personal Data Protection and the Telecommunications Network Security Regulation. A business can transfer data abroad with prior approval from the relevant authorities when both the transferor and transferee country have substantively similar privacy protection laws.

The limit on the size of online payments by Mozambique's financial regulator is legally seen as part of the Central Bank's prudential supervision. Despite this, the private sector and other stakeholders are lobbying to increase the maximum allowable size of online payments, notwithstanding that the legal regime allows for approval of money transfers above the maximum on a case by case basis.

On internet domain names, it is not mandatory to use the top-level local domain ".mz" to conduct electronic business in Mozambique. But companies that use it must have a commercial presence in the country.

¹⁴ <https://www.incm.gov.mz/index.php/legislacao/legislacao-telecomunicacoes>.

¹⁵ See https://global-express.org/assets/files/GEA%20De%20Minimis%20Country%20information_4%20November%202021.pdf

¹⁶ <https://www.inage.gov.mz/wp-content/uploads/2018/05/LEI-DE-TRANSACC%C3%95ES-ELECTR%C3%93NICAS.pdf>.

CONCLUSION AND RECOMMENDATIONS

To reduce the restrictiveness of Mozambique's regulatory regime for digital services trade and improve digital integration, the following actions are recommended:

- Increase access to digital tools and education and include all communities in the country by implementing free digital (and internet) access squares in cities and rural areas. These access squares can train young people and assist anyone without digital literacy in registering a company and contacting producers elsewhere in Africa.
- Strengthen data protection laws by building on the African Union Convention on Cyber-security and Personal Data Protection framework and fortifying existing infrastructure to secure stored data and prevent cyberattacks.
- Adopt an electronic taxation system that allows non-resident companies or entities to register, submit tax returns and pay taxes online. This will facilitate e-commerce while enlarging the tax base.
- Adhere to the United Nations Convention on Contracts for the International Sale of Goods, the Convention on Electronic Communication and other relevant conventions in order to provide a mature and robust legal framework for digital trade.
- Harmonize policy between Mozambique and other African countries, in the spirit of the AfCFTA and the African Union Digital Transformation Strategy, so that interested parties in varying jurisdictions face the same set of policies and requirements regardless of location.
- Increase investment in the institutions that govern Mozambique's digital framework to enable them to disseminate information and build capacity among its people to achieve the objectives of the AfCFTA and the Sustainable development Goals.

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