

DIGITAL TRADE REGULATORY INTEGRATION

COUNTRY PROFILE

Sierra Leone



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 Sierra Leone.

¹ See <https://arii.uneca.org/>.

CONTEXT



As in other countries, the role of information and communications technology (ICT) in social and economic development cannot be overemphasized in Sierra Leone. ICT offers opportunities for innovation, job creation and economic growth and development. However, ICT penetration in Sierra Leone is still limited. Unique mobile broadband subscriptions in 2019 were 26.6 per 100 inhabitants, and just 2.8 per cent of adults used a mobile phone or the internet to access a financial account in the past year.²

To move Sierra Leone towards a digitally driven economy, the government has set up legislative, regulatory and policy frameworks that include, among others, the Telecommunications Act of 2006,³ the Copyright Act of 2011,⁴ the Electronic Transactions Act of 2019,⁵ the Telecommunications (Licensing)

Regulations of 2020⁶ and the Cybercrime Act of 2020.⁷

Sierra Leone has made progress in some areas. By 2019, 2G network coverage had reached 80 per cent of users, 3G had reached 65 per cent and 4G had reached 35 per cent, according to the 2019 Annual Report of the National Telecommunications Commission (NATCOM) of Sierra Leone.⁸ The progress in network coverage helped boost mobile cellular subscriptions from 0.26 (per 100 people) in 2000 to 86.30 in 2020.⁹ The proportion of the population using the internet also increased from 0.12 per cent in 2000 to 16.8 per cent in 2019.¹⁰ These developments have encouraged local and foreign investments in telecommunications and digital trade in Sierra Leone. According to the International Trade Center, e-marketplace traffic in Sierra Leone surged

2 <https://openknowledge.worldbank.org/bitstreams/d058ccb8-1359-5091-bae0-22b9f36f79d8/download>.

3 <http://natcom.gov.sl/wp-content/uploads/2020/06/The-Telecommunications-Act-2006.pdf>.

4 <https://www.aripo.org/wp-content/uploads/2018/12/Sierra-Leone-Copyright-Act.pdf>.

5 <https://old.sierralii.org/sl/legislation/act/2019/89-0>.

6 <https://www.natcom.gov.sl/wp-content/uploads/2021/02/The-Telecommunications-Licensing-Regulations-2020.pdf>.

7 <http://www.sierra-leone.org/Laws/2020-Cybercrime%20Act.pdf>.

8 <https://www.natcom.gov.sl/wp-content/uploads/2022/01/natcom-annual-report-2019.pdf>.

9 <https://data.worldbank.org/indicator/IT.CEL.SETS.P2?locations=SL>.

10 <https://data.worldbank.org/indicator/IT.NET.USER.ZS?locations=SL>.

between 2017 and 2019, growing 8,100 per cent.¹¹ Social media platforms such as Facebook, WhatsApp, and Instagram operate in the country and have been leveraged for online trading and e-commerce. Sierra Leone buyers and sellers participate in African and international online marketplaces such as eBay, Jumia, Marketplace Africa, Afribaba and BidOrBuy.

Although the information technology and digital economy sectors are still underdeveloped, the government has prepared an ambitious 10-year National Innovation and Digital Strategy 2019–2029¹² to leverage digitalization for socioeconomic transformation. While this is a step in the right direction, there is need to create an enabling environment to attract investment and remove barriers to digital trade.

11 https://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/B2C-marketplaces-20201221_final_Low-res.pdf.

12 <https://www.dsti.gov.sl/wp-content/uploads/2019/11/Sierra-Leone-National-Innovation-and-Digital-Strategy.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 and connectivity

Having appropriate infrastructure is critical to the smooth operation of the telecommunications sector and to the development of digital trade and the digital economy. In this sense, a regulatory framework that provides for infrastructure connectivity is an important step towards creating an environment conducive to digital trade. Infrastructure connectivity has four aspects: interconnec-

tion, vertical separation, market dominance and cross-border data flow.

The regulatory framework in Sierra Leone mandates that all public telecommunications operators fully open their networks without discrimination of any kind. This is intended to reduce entry barriers and promote competition. Interconnection agreements are subject to approval by NATCOM. Africell Sierra Leone has over 60 per cent of the market share in mobile voice subscription, but NATCOM has not explicitly pronounced it the dominant firm.

Electronic transactions

A regulatory framework for electronic transactions is vital to facilitate digital trade. Although Sierra Leone does not have a general e-commerce law, the Electronic Transactions Act of 2019¹³ authorizes contracts consummated through electronic means. There are also provisions that protect proprietary information and trade secrets. However, improvements are needed in some areas. For example, the law provides

¹³ <https://old.sierralii.org/sl/legislation/act/2019/89-0>.

for the taxation of non-residents, including suppliers of telecommunications services, but there is no provision for online tax registration and declaration, a major constraint to digital trade. Further, the Consumer Protection Act¹⁴ provides for dispute resolution between consumers and suppliers but offers no specific mechanism to resolve disputes arising from cross-border digital trade. Furthermore, while Sierra Leone is a signatory to the United Nations Convention on the Use of Electronic Communications in International Contracts, it has yet to ratify or domesticate it.

Payment system

Payment systems are an integral part of digital trade. The payment system in Sierra Leone is governed by the Payment System Act of 2009.¹⁵ The act does not discriminate against specific payment settlement methods, but it requires that the rules governing any payment system be fair, equitable and transparent for both participants and users.

The act also does not restrict payment systems to any specific type or impose any unnecessary conditions on electronic payment systems relative to conventional payment systems. The limits on payment amounts in the Guideline for Mobile Money Services¹⁶ are not related to the payment method but are in support of anti-money laundering regulations. The Bank of Sierra Leone is empowered to define compliance standards for designated payment systems, including

standards related to mobile and electronic money in the areas of systems, safety, data backup and recovery, and prevention of theft and fraud. Although there are no specific requirements that these standards align to any specific standards or to international standards (such as ISO/IEC 7816, ISO/IEC 14443 and ISO/IEC 27001), there is evidence that some Sierra Leonean banks comply with international standard ISO/IEC 27001.

Intellectual property rights

Intellectual property rights are major drivers of investment in digital trade, since they protect innovation and invention. Intellectual property rights also enable inventors to realize the largest benefit from their investment in digital technology. Intellectual property rights in Sierra Leone are regulated by the Copyright Act of 2011,¹⁷ the Patents and Industrial Design Act of 2012¹⁸ and the Trademarks Act of 2014.¹⁹ Foreign firms are not discriminated against in trademark registration and protection but are subject to being represented in the registration process by a legal agent resident that practices in Sierra Leone.

The law recognizes and protects foreign intellectual property rights holders provided that at least one of the corporate or individual rights holders is legally recognized by a country that is party to an international agreement or treaty to which Sierra Leone is also a party. Sierra Leone is a party to the

14 <http://www.sierra-leone.org/Laws/2020-07.pdf>.

15 https://www.bsl.gov.sl/Payments_System_Act_2009_03_pdf_12842.pdf.

16 https://www.bsl.gov.sl/GUIDELINES_MOBILE_MONEY2015.pdf.

17 <https://www.aripo.org/wp-content/uploads/2018/12/Sierra-Leone-Copyright-Act.pdf>.

18 <http://www.sierra-leone.org/Laws/2012-10.pdf>.

19 <https://www.lrcsl.gov.sl/sites/default/files/2019-08/the-trade-marks-act-2014-08.pdf>.

Agreement on Trade-Related Aspects of Intellectual Property Rights but is not a party to the Berne Convention for the Protection of Literary and Artistic Works, the World Intellectual Property Organization (WIPO) Copyright Treaty or and the WIPO Performances and Phonograms Treaty. Sierra Leone's laws have provisions for the use of copyrighted materials without the authors' authorization in specific circumstances, in line with international rules. They also set out judicial and administrative enforcement measures and remedies, provisional measures and criminal enforcement proceedings and penalties for violation of intellectual property rights.

Other barriers affecting trade in digitally enabled services

Other issues may also constrain or facilitate the development of digital trade and services. Sierra Leone has no requirements for the use of local software or technology in payment systems or for technology

transfer. The Right to Access Information Act of 2013²⁰ allows unrestricted access to information, including online information and contents, with exemptions only for information related to national security and defence, investigations and law enforcement. There are also no restrictions on online advertisement except in the case of bait advertisement and advertisement of unsafe and prohibited goods and services. These are positive factors that facilitate the development of digital trade and services.

However, some other measures can impede digital trade, such as the requirement for a local commercial presence in order to provide cross-border digital services. Also, there is currently no competition law in Sierra Leone, except for some sector-specific laws or regulations. For example, the Telecommunications Act²¹ empowers the regulator to ensure fair competition among operators, but there is no specific provision indicating that firms can seek redress when competitors' business practices restrict competition.

²⁰ <http://www.sierra-leone.org/Laws/2013-02.pdf>.

²¹ <https://www.natcom.gov.sl/wp-content/uploads/2021/02/The-Telecommunications-Licensing-Regulations-2020.pdf>.

INDICATORS OF DIGITAL TRADE INTEGRATION

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

- Tariff and trade defence on measures applied to intraregional imports of 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.

Tariff and trade defence mechanisms

Defensive trade measures in the form of tariff and non-tariff barriers can impede regional trade integration. Sierra Leone currently does not have any trade defence measures against ICT goods from other countries. Imports and exports of certain goods are prohibited only for reasons such as protecting the health, environment, public morals, national treasures and national security. However, the country is not a signatory to the 1996 World Trade Organization (WTO) Information Technology Agreement (ITA) or its 2015 expansion (ITA II).

Public procurement

Restrictions on public procurement constitute a barrier to regional trade integration. International competitive bidding procedures are employed in Sierra Leone only when the estimated contract amount is higher than a specified threshold (for procurement of goods, works or services) or when the goods, works or services are not available under competitive price and other conditions from three or more sup-

pliers in Sierra Leone. First consideration and special advantages are given to Sierra Leonean companies, materials, products or goods, subject to the requirements stipulated in the Public Procurement Act of 2016.²² There is no requirement for foreign firms to surrender source codes or trade secrets or to incorporate the use of specific encryption standards in order to participate in the local tendering processes. Sierra Leone is neither a party nor an observer to the WTO Government Procurement Agreement.

Foreign direct investment

There are no restrictions on FDI in key sectors pertinent to digital trade or the digital economy. Any investor, domestic or foreign, may invest in any legitimate business enterprise in the country. There is also no formal joint venture requirement for telecommunications service licenses. Foreign companies are permitted to own a 100 per cent share of a business in Sierra Leone (except investments in small-scale mining of less than \$500,000, which require a Sierra Leone national to hold at least a 25 per cent stake). There are no provisions for screening FDI, especially with respect to its economic benefits or its impact on national security.

Intellectual property rights

There are no discriminatory terms for the registration of foreign patents, but foreign applicants need to provide evidence of the acceptance or rejection of any application outside Sierra Leone. Also, applicants whose ordinary residence or principal place of business is outside Sierra Leone have to be rep-

resented by an agent based in Sierra Leone. The Copyright Act of 2011²³ contains clear provisions on permitted use of copyrighted materials in line with international standards and rules. Intellectual property laws provide for civil remedies and criminal sanctions for unauthorized use of copyrighted materials, but there are still cases of piracy of protected works in the country, due in part to weak legal protection, limited enforcement of intellectual property and capacity limitations. The laws also protect business trade secrets. Sierra Leone is a party to the Patent Cooperation Treaty but is not a signatory to the Berne Convention for the Protection of Literary and Artistic Works.

Telecommunications infrastructure and competition

The telecommunications sector is liberalized, and the legal framework for the sector mandates that NATCOM promote fair competition among telecommunications operators. There are four mobile network operators in the country (Africell, Orange, Qcell and Sierratel) and a government-owned fixed network operator, Sierratel, which is the only provider in the fixed segment of the industry. A major obstacle for affordable broadband internet in Sierra Leone is the de facto monopoly and inefficient operation of the international gateway by the state-owned Sierra Leone Cable Limited (SALCAB). The Telecommunications Act was amended in 2015 with the aim of liberalizing the international gateway to lessen the monopoly hold of the incumbent Sierratel, but there have been delays in liberaliza-

²² <http://www.sierra-leone.org/Laws/2016-01.pdf>.

²³ <https://www.aripo.org/wp-content/uploads/2018/12/Sierra-Leone-Copyright-Act.pdf>.

tion of the gateway. Telecommunications operators are required to obtain licenses. Agreements between local companies do not require NATCOM approval, but there is additional scrutiny of agreements between local and foreign public telecommunications companies, which are subject to NATCOM approval.

Cross-border data policies

Sierra Leone does not have a comprehensive data protection law, which is also essential for regulating cross-border data flows. Data protection rules are fragmented and guided by sectoral laws and regulations (for example, in telecommunications and banking). Regulations for the telecommunications sector specify that personal data may be processed only with the consent of the data subject and may be transferred outside Sierra Leone only with NATCOM's prior approval. Personal data and the personal registration files of residents must be maintained and retained within Sierra Leone. The data of telecommunications service subscribers are to be kept at a central electronic database maintained by NATCOM. The cross-border transfer and use of data require justification for the data use, approval by NATCOM and assurances of the security and confidentiality of the data.

Domestic data policies

There is no economywide data protection law. However, there are provisions for data protection in the legal frameworks governing the operation of some sectors. For example, telecommunications service providers are required to take reasonable steps

to ensure the security and confidentiality of subscriber's registration information and to prevent corruption, loss or unauthorized disclosure of the information. Telecommunications service providers are also required to transmit all subscriber information to NATCOM at regular intervals, but they are not required to have a data protection officer or conduct data protection impact assessments. Law enforcement can access traffic data for criminal investigations only with the authorization of a judge of the High Court, but personal subscriber data may be released to law enforcement agencies with simply a written request from a senior officer of a security or law enforcement agency, without any judicial procedure. Electronic data can also be sent abroad for investigation purposes without a judicial process.

Intermediary liability and content access

The Electronic Transactions Act of 2019²⁴ includes a safe harbour rule. Intermediaries are exempted from the legal responsibilities and liabilities associated with any illegal and harmful activities performed by their users on their platforms or through their networks if they are unaware of these activities, do not financially benefit from them and if they remove or restrict the content within a reasonable time after discovering the activities. There is a requirement to register the details of new and existing subscribers. There is no law that gives government the power to block or filter web content, especially commercial content. The only instance of internet blockage was shortly after the 2018 general elections, when the internet was

²⁴ <https://old.sierralii.org/sl/legislation/act/2019/89-0>.

shut down for few hours to prevent violence pending announcement of the results.

Quantitative trade restrictions

Sierra Leone has no import bans or restrictions on ICT goods and digital services nor any law that bans imports of any type of digital goods. There are also no strict or non-transparent import licensing schemes and similar procedures for importing ICT goods and digital services. Local-content requirements do not apply to the ICT sector. There are also no restrictions on exporting digital goods.

Standards

Telecommunications service operators are consulted in the setting of standards. Type-approval certification from the regulator is required before telecommunications companies can import electronic communications equipment to be used on their networks. All imports to Sierra Leone may be inspected by the Sierra Leone Standards Bureau. Self-certification and third-party testing for imported goods, including ICT goods such as radio transmission, electromagnetic interference or electromagnetic compatibility, have not been allowed since

1 July 2009, when a requirement for destination inspection was enacted.

There is no requirement to disclose sensitive proprietary information in the encryption product certification processes.

Online sales and transactions

No law prohibits or restricts online sales, delivery and advertising. Sales, advertisement and marketing of goods and services are allowed as long as the goods and services are not illegal. The e-payment system is underdeveloped in terms of access, infrastructure and regulatory framework, but there are no restrictions on online payment. The Electronic Transaction Act of 2019²⁵ includes provisions for consumer protection in electronic transactions, and no local presence is required for domain name registration. The government has not adopted any de minimis threshold for taxes or duties on imports of digital goods. The country is a signatory to the United Nations Convention on the Use of Electronic Communications in International Contracts and the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce (1996), but not the UNCITRAL Model Law on Electronic Signatures (2001).

25 <https://old.sierralii.org/sl/legislation/act/2019/89-0>.

INTRODUCTION

Sierra Leone has made considerable progress in enacting legislation and establishing regulations and policies to promote digital trade services and integration. However, there are still gaps that can undermine efforts to achieve a digital economic transformation. For example, the country has not yet enacted a data protection law, despite its importance in promoting investment in the digital trade service sector and in easing privacy concerns in digital markets. Similarly, it has not yet adopted or ratified some international standards on intellectual property rights, payment systems and electronic transactions. Thus, there is still work to be done in establishing legislative frameworks to support digital trade:

- Rapidly enact a comprehensive economywide data protection law to address the gaps in sectoral data protection provisions. This is necessary to protect personal data as well as cross-border data policies. In the meantime, the existing laws, especially the Cyber Crime Act and Telecommunications Subscribers Identification and Registration Management Regulations, may be amended to en-

sure that law enforcement and top government officials have access to the personal data of subscribers only with the authorization of a judge of the High Court.

- Amend the Consumer Protection Act to make provisions for how to resolve disputes between consumers and suppliers, specifically in the context of cross-border digital trade.
- Draft and enact a competition law that offers pathways for market participants and operators to seek redress when competitors' business practices restrict competition.
- Adopt online tax registration and declaration to make it easier to register for and declare taxes, including for non-resident entities.
- Consider reinstating self-certification and third-party testing for selected imported goods. The requirements for destination inspection increase the time and costs for importers, with adverse consequences for trade development, including digital trade.
- Consider adhering to international standards on key issues such as intellectual property rights and payment

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systems by becoming a party to the UNCITRAL Model Law on Electronic Signatures, Berne Convention for the Protection of Literary and Artistic Works, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, and consider ratifying the United Nations Convention

on the Use of Electronic Communications in International Contracts and the UNCITRAL Model Law on Electronic Commerce.

- Consider adopting a de minimis threshold to stimulate digital services trade and digital trade integration.

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