

DIGITAL TRADE REGULATORY INTEGRATION

COUNTRY PROFILE

Zimbabwe



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 Zimbabwe.

¹ See <https://arii.uneca.org/>.

DIGITAL TRADE REGULATORY INTEGRATION

The advent of the internet and digital technology has changed the way that goods and services are traded worldwide. Recent years have witnessed an accelerated shift from traditional paper-based trade to online platforms.² Discussions around trade facilitation at the World Trade Organization have also focused on how transactions for trade in goods and services are conducted.³

While Africa has low internet penetration and high broadband costs, it has not been left totally behind in the digital revolution.⁴ Most Internet penetration in Africa has

come through the mobile phone,⁵ which is the case in Zimbabwe.

Indeed, because of economic challenges, Zimbabwe's economy has been virtually cashless for a decade and a half, with most transactions taking place via mobile phones. Mobile internet penetration has created a platform for digital trade, but as depicted in this study, digital trade regulation remains patchy and inadequate. Non-contact commerce has increased further during the Covid-19 pandemic.

2 United Nations Conference on Trade and Development. Value Creation and Capture: Implications for Developing Countries in Digital Economy Report. 2019, United Nations, Geneva, pp. 1–4. Available at: https://unctad.org/system/files/official-document/der2019_en.pdf.

3 United Nations Conference on Trade and Development. What is at Stake for Developing Countries in Trade Negotiations on E-Commerce? The Case of the Joint Statement Initiative, United Nations, Geneva, 2021, p. 8. Available at: https://unctad.org/system/files/official-document/ditctncd2020d5_en.pdf.

4 GSMA. Mobile Internet Connectivity 2020: Sub-Saharan Africa Factsheet. Available at: www.gsma.com/r/wp-content/uploads/2020/09/Mobile-Internet-Connectivity-SSA-Fact-Sheet.pdf.

5 International Telecommunication Union. Measuring digital development Facts and Figures 2020, p. 5. Available at www.itu.int/en/ITU-D/Statistics/Documents/facts/FactsFigures2020.pdf.

RESTRICTIVENESS OF THE REGULATORY REGIME FOR DIGITAL SERVICES TRADE

To assess the degree of restrictiveness of digital services trade in Zimbabwe, 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

Interconnectivity in Zimbabwe is regulated by the Postal and Telecommunications Regulatory Authority. Service providers are expected to have good faith discussions on rates in a way that does not distort the market. Public interest, good faith and inclusivity are the main principles guiding interconnectivity between service providers in the telephony sector. There is a general expectation that service providers will accede to

requests for interconnectivity in the public interest. As a result, while service providers have been granted autonomy in such negotiations, public interest is an implied consideration in their decision-making. Zimbabwe makes no provision for vertical separation in its laws and guidelines.

Market analysis of the telecommunication sector reveals that TelOne, a state-owned operator, has 100 per cent market share in the fixed telephony market, which accounts for 1.9 per cent of the telecommunication sector⁶. Econet is dominant in the voice telephony market, with a 61 per cent market share. Comparative figures for the telecommunication market share (fixed and mobile subscribers), as supplied by the regulator in 2012, are as follows: TelOne (fixed) 2.9 per cent, Econet (mobile) 61.2 per cent, NetOne (mobile) 15.7 per cent and Telecel Zimbabwe (mobile) 20.1 per cent.

Zimbabwe has, on occasion, restricted the use of communication services. The authorities have generally justified such restrictions on national security grounds, and

⁶ <https://www.potraz.gov.zw/wp-content/uploads/2022/06/Abridged-Sector-Performance-Report-Q1-2021.pdf>

the legislation under which platforms such as Facebook, WhatsApp and Twitter have been disrupted concerns national security. The government of Zimbabwe has blocked online content under the Interception of Communications Act of 2007,⁷ although the High Court has declared this unlawful.

Zimbabwe has no legislation regulating the transfer of personal data across borders. However, the Cybersecurity and Data Protection Bill of 2019,⁸ which is currently before Parliament, would provide a framework under which personal data can be shared across borders.

There are no legal or regulatory provisions on the storage of data in Zimbabwe. The National Information and Communications Technology Policy Paper of 2016 envisions future regulation of data storage, referencing the creation of a national data centre and a framework and physical infrastructure for data storage, which is expected to take place through a public-private partnership.⁹

The closest Zimbabwe comes to regulating the storage of data is the Access to Information and Protection of Privacy Act of 2003, which specifies that information must be created and stored in a safe way, including trade secrets of a public body or the state and any financial, commercial, scientific and technical information with monetary value belonging to a public body or the state.¹⁰ Private storage is not regulated by the current regulatory framework, nor is there any regulation or requirement for data to be stored locally.

Electronic transactions

Zimbabwe is, to a large extent, a cashless economy. However, this does not mean that e-commerce is conducted in the same way as in more technologically advanced jurisdictions. Cash has instead been replaced by mobile or plastic money. Nonetheless, the country does have a legal and regulatory framework for conventional e-commerce transactions, although the legislation governing e-commerce has multiple ambiguities. For example, it is not clear if e-commerce service providers require a license. Zimbabwe is not a party to the United Nations Convention on the Use of Electronic Communications in International Contracts or the United Nations Convention on Contracts for the International Sale of Goods.

Payment systems

Zimbabwe has a fairly developed payment system that is regulated by the central bank. The Reserve Bank of Zimbabwe regulates, approves, operates, encourages the development of and oversees or supervises payment, clearing and settlement systems in the country. It is thus empowered to oversee all payment systems, including mobile money payments.

Businesses that accept online payments must also comply with the standards and regulations of credit card companies. The oversight powers of the Reserve Bank allow it to impose limits on any kind of transaction to be executed by specific instruments, such as internet banking, card and mobile

7 <https://www.law.co.zw/download/interception-of-communications-act/>.

8 http://veritaszim.net/sites/veritas_d/files/Cyber%20Security%20and%20Data%20Protection%20Bill.pdf.

9 https://en.unesco.org/creativity/sites/creativity/files/qpr/zimbabwe_national_policy_for_ict_2016_-_final_1.pdf.

10 <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/62408/122046/F-2068636523/ZWE62408.pdf>.

payments, and on the thresholds and number of transactions permitted within a certain period for individual instruments.

Intellectual property rights

Zimbabwe has a functional intellectual property protection regime, but it needs to be improved. The country is a signatory to several international intellectual property protection treaties, including 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. It is also an active member of the African Regional Intellectual Property Organization trademark system.

Foreign nationals are protected and receive the same treatment as nationals, provided that their country is also a party to the Berne Convention. Works of foreign nationals are also protected as provided for in the reciprocal agreements signed by the copyright societies with societies in foreign countries. Zimbabwe is not, however, a signatory to either the World Intellectual Property Organization (WIPO) Copyright Treaty or the WIPO Performances and Phonograms Treaty.

Rather than having a single law that directly regulates trade secrecy, intellectual property law in Zimbabwe is fragmented. For instance, the Industrial Designs Act of 2018 provides for secrecy and confidentiality.¹¹

Intellectual property and consumer rights can be enforced by recourse to the courts in the event of infringement. The courts have the power to order compensation of the copyright owner for loss of profits and damage caused by infringement. The courts also have the power to order the seizure or destruction of infringing goods and to order interim relief to stop the infringement.

Other barriers affecting trade in digitally enabled services

Zimbabwe has various performance requirements in its legislation regulating digital trade. The National Information and Communications Technology Policy Paper of 2016 contains measures on the introduction of local content requirements in the sector, including for software.¹² Zimbabwe has set prohibitive licensing fees for data-casting, webcasting and video on demand. Licensees must be Zimbabwean nationals, permanent residents or firms incorporated in the country. Content must be 75 per cent sourced in Zimbabwe. This has the effect of prohibiting foreign content. Furthermore, only companies incorporated in Zimbabwe and majority-owned by Zimbabwean citizens or permanent residents can be granted broadcasting licenses, including for streaming, videocasting and webcasting services. Foreign firms therefore have to partner with local entities for both service provision and content creation.

¹¹ <https://www.aripo.org/wp-content/uploads/2018/12/IndustrialDesignsAct2001.pdf>.

¹² https://en.unesco.org/creativity/sites/creativity/files/qpr/zimbabwe_national_policy_for_ict_2016_-_final_1.pdf.

INDICATORS OF DIGITAL TRADE INTEGRATION

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

Zimbabwe has stringent performance requirements in the ICT sector. While there are no screening requirements, the Broadcasting Services Act permits broadcasting licenses, including on ICT platforms, to be issued only to entities that are majority-owned or -controlled by Zimbabweans.¹³ Broadcasting is broadly defined to include webcasting, videocasting and streaming services, for which local registration and licensing are required. Similarly, the Postal and Telecommunications Act of 2015 provides that only Zimbabwean nationals and permanent residents may be issued a license to operate such businesses.¹⁴

Zimbabwean citizens and permanent residents must have a controlling stake in legal

¹³ https://www.itu.int/ITU-D/projects/ITU_EC_ACP/hipssa/Activities/SA/docs/SA-1_Legislations/Zimbabwe/Broadcasting_Services_Act.PDF.

¹⁴ https://www.potraz.gov.zw/wp-content/uploads/2015/04/Postal_Act.pdf.

persons through majority shareholding, majority share capital, more than a 50 per cent of share value or a voting majority. Under the Investment and Development Agency Act of 2019, investors may employ senior managers of any nationality.¹⁵ However, investors must obtain investment licenses issued by the Investment and Development Agency Board.

Cross-border data policies

Zimbabwe has no legislation regulating cross-border data transfers, but the Cybersecurity and Data Protection Bill of 2019,¹⁶ which is before Parliament, establishes a framework for the cross-border transfer of data. Under the terms of the proposed legislation, data may be transferred to countries that offer adequate protection if it is in the public interest to do so and if the subject of the data consents to the transfer, although that consent may be implied or offered ambiguously.

Domestic data policies

Zimbabwe has a patchwork of data protection laws. The Cybersecurity and Data Protection Bill seeks to consolidate the data protection regime, but it does not address many of the commercial aspects of the data economy and e-commerce.¹⁷ Data access still overwhelmingly favours the state. There is general securitization of data and an enforceable legal regime on data storage and retention.

The Postal and Telecommunications Act of 2015 requires ICT service providers to obtain, record and store the personal information of legal and natural persons registered with them in a subscriber register.¹⁸ The register must be submitted without delay to the Postal and Telecommunications Regulatory Authority of Zimbabwe or any state agency upon request. The regulations also provide for the establishment of a central subscriber database as the consolidated portal for personal information gathered from subscribers.

Legislation grants the state substantial powers to access personal data. The Interception of Communications Act of 2007 provides wide-ranging powers to the security agencies of the state to access personal data.¹⁹ Considerable discretion is given to the executive arm of government to determine whether the intelligence, defence, police and prison services can be allowed to intercept and access personal data. The Interception of Communications Act also instructs internet service providers to install surveillance technologies and intercept any content that the state requests. In addition, data service providers and processors are required to cooperate with the state to enable data access. To this end, data processors are instructed to capture and regularly update full personal information and to use technologies that can be intercepted. The Monitoring of Interception of Communications Centre has been established to oversee traffic on all tele-

15 <https://investmentpolicy.unctad.org/investment-laws/laws/325/zimbabwe-zimbabwe-investment-and-development-agency-act>.

16 http://veritaszim.net/sites/veritas_d/files/Cyber%20Security%20and%20Data%20Protection%20Bill.pdf.

17 http://veritaszim.net/sites/veritas_d/files/Cyber%20Security%20and%20Data%20Protection%20Bill.pdf.

18 https://www.potraz.gov.zw/wp-content/uploads/2015/04/Postal_Act.pdf.

19 <https://www.law.co.zw/download/interception-of-communications-act/>.

communication services and to intercept phone calls, emails and faxes.

Warrants allowing the monitoring and interception of communications are issued at the discretion of the minister for information. There is no adequate judicial oversight or other independent safeguard against abuse, and the extent and frequency of monitoring remain unknown.

Intermediary liability and content access

Zimbabwe does not currently have a safe harbour regime, but the Cybersecurity and Data Protection Bill does include safe harbour provisions.²⁰ It states that internet service providers shall not be liable if they have not initiated the transmission, selected the receiver of the transmission or modified the information in the transmission. Most important, internet service providers and intermediaries will not be liable for data carried on their platforms if they remove or disable them following a court order to do so or if they remove the data when it comes to their attention that the information is illegal.

Quantitative restrictions

The Zimbabwe licensing regime divides internet service providers into two categories: Class A, which is authorized to sell international bandwidth and provide services such as voice over internet protocols and videos, and Class B, which provides domestic internet services. This distinction is also reflected in the licensing fees: Class A licensees pay \$5.5 million, while Class B licensees

pay \$2.75 million. Mobile license costs are higher, with an establishment fee of \$137.5 million. The fee is much higher than the \$7 million fee in South Africa, for example.

State-owned service providers can go for years without paying the annual fees, while the same leeway is not granted to privately owned entities. Regulations require the licensing of narrowcasting, datacasting and webcasting, but only entities that are owned or controlled by Zimbabweans qualify for such licenses. The state authorities use this regulatory provision to require payment for licensing video-on-demand and live-streaming services (such as YouTube, Facebook and Netflix). Because most of these companies cannot fulfil the localization requirements, smaller businesses must obtain licenses, which cost between \$2,500 and \$20,000. These measures are restrictive to businesses and act as barriers to entry.

Online sales and transactions

Zimbabwe does not place restrictions on online sales and advertising. Online sales are allowed under consumer protection laws. Zimbabwe is not a signatory to the United Nations Commission on International Trade Law model laws on e-commerce and electronic signatures, but it has codified the Model Law on Electronic Commerce through the Electronic Transactions and Electronic Commerce Bill of 2013.²¹ The bill creates legal certainty and enforceability of electronic transactions by recognizing, defining and regulating electronic signatures, electronic contracts and e-commerce transactions more broadly.

²⁰ http://veritaszim.net/sites/veritas_d/files/Cyber%20Security%20and%20Data%20Protection%20Bill.pdf.

²¹ <http://www.techzim.co.zw/wp-content/uploads/2016/08/Zimbabwes-draft-Electronic-Transactions-Electronic-Commerce-Bill.pdf>.

The country relies heavily on the use of mobile money for business transactions. Users are restricted to just one mobile wallet account per person and a daily transfer limit of 5,000 Zimbabwe dollars (US\$50). In addition, users can no longer transact through mobile money agents. As a result, some 50,000 mobile money agents have lost their source of income. This is most likely to affect customers in rural areas who depended on the agents to access mobile money services. These agents gave rural consumers the opportunity to be integrated into the financial

system. The de minimis threshold currently stands at \$10 for general goods.

The country has weak digital services infrastructure and no properly constituted internet exchange points. The National Information and Communications Technology Policy Paper of 2016 sets out steps to rectify this anomaly.²² A local domain name can be registered only through a local entity or local representation. The regulations are under review with a view to harmonizing and modernizing the system.

²² https://en.unesco.org/creativity/sites/creativity/files/qpr/zimbabwe_national_policy_for_ict_2016_-_final_1.pdf.

CONCLUSION AND RECOMMENDATIONS

Zimbabwe has a fairly liberalized telecommunication sector, and the legislative framework generally supports the integration and interconnectivity of service providers. For example, telecommunication service providers are expected to engage in good faith discussions among themselves on appropriate interconnection fees; the state is concerned only that agreed rates do not harm the consumer. The telecommunication sector—at least the mobile telephony to which digital infrastructure is linked—is moderately liberalized, although one dominant operator accounts for about 60 per cent of market share.

The existing data protection framework has a security dimension, but the data economy is unregulated from an economic and commercial perspective. The Cybersecurity and Data Protection Bill that is currently before Parliament establishes a framework for the protection of data and, to an extent, the cross-border transfer of such data. This is a departure from the current system, which envisages such transfers as taking place between law enforcement agencies. If the bill is passed into law, it will revolutionize the data and digital trade economy of Zim-

babwe and harmonize its data regime with that of the Southern African Development Community, which includes South Africa.

The Reserve Bank of Zimbabwe oversees a predictable and robust payments system, especially for large transactions. Apart from adherence to international standards, the strength of the system can be attributed to a reasonably well integrated and strong payments system within the Southern African Development Community. Legislation on consumer protection and online transactions is also fairly well developed. Consumer legislation provides adequate protection to consumers engaged in online purchases, including a clearly articulated dispute settlement mechanism. E-commerce legislation is currently being developed. The Electronic Transactions and Electronic Commerce Bill of 2013 seeks to harmonize and modernize the country's e-commerce regulatory system.

Zimbabwe has a good foundation for digital trade. The fact that it already operates a virtually cashless economy provides a base for the development of a more robust digital trade regime. Much of the regulatory frame-

work for digital trade requires updating, however, through amendments to existing legislation and the introduction of new legislation.

With regard to foreign investment in the digital economy, Zimbabwe makes a distinction based on nationality and residency that is implemented through the licensing regime. In addition, commercial and local presence requirements constitute barriers to foreign investment in the telecommunication sector. Data protection is weak because there is no legislative framework. There is deliberate misuse of security legislation to interfere with data privacy. Zimbabwe has no legislation governing the cross-border transfer of data other than in the framework of the exchange of information by law enforcement agencies engaging in a criminal investigation. The pending Cybersecurity and Data Protection Bill provides the opportunity to introduce a modern data protection regime in Zimbabwe, but it has problematic aspects, such as implied consent sufficing for the sharing of personal data. The intellectual property protection regime is outdated and does not offer adequate protection. The domain name system is also inadequate.

Areas requiring particular attention include:

- The intellectual property rights regime.
- A clear electronic communication law.
- Modernization of the consumer protection law to reflect contemporary digital transaction practices and online sales.
- Modernization of the postal and telecommunication regulatory regime, which has a solid basis.

The digital economy of Zimbabwe would also benefit from separating security considerations from data protection and information access regimes. Infrastructure around digital payment systems reflects a system that was once resilient, but whose formerly robust checks and balances may have been compromised by a high turnover owing to depressed economic activities. The foreign investment framework is too restrictive and discourages foreign investors: the commercial and local presence requirements should be removed. Licensing fees should be lowered to facilitate market entry, especially for small and medium-size enterprises.



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