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Overview of the Digital Code in Benin Republic

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Overview of the Digital Code Act in Benin Republic

Benin Republic is one of the first African States to pass a Digital Code that contains all legal provisions applicable to digital industry. Here the author provides background information on the new Act, explains what the Digital Code will mean in practice and highlights key issues.

Background on the Digital Code

The rapid development of information and communication technology, the access to Internet and the creation of mobile applications via smartphones have led to the emergence of digital economy on which Benin Republic would like to rely to boost its development. As a sound investment sector, the digital economy is now recognized as a vehicle for growth, productivity and competitiveness of companies and countries. Globalization and new ways of sharing information that are increasingly sophisticated require new rules of transparency.

Moreover, some Regional Organizations have published standards for the digital sector. On 27 June 2014, the African Union adopted a convention on cyber security and protection of personal data, which provides security rules to be followed for a trusted digital ecosystem in the Member States. Also, technology legislation emanating from Community bodies (Economic Organization of West African States, West African Monetary Union, and Organization for the Harmonization of Business Law in Africa) and including acts, regulations, directives, resolutions, recommendations are directly enacted in the domestic law of the Member States.

In this background, the Bill No. 2017-20 has been passed into Digital Code Act of Benin Republic on Tuesday, June 13, 2017 by the National Assembly, and subsequently brought into conformity with the Constitution on Friday, January 05 2018, following the Constitutional Court decision No DCC 17-223 of 02 November 2017. The Act of Parliament received the assent of the Head of State on the 23rd April, 2018.

Description of the Digital Code

Benin Digital Act consists of the codification of existing pieces of legislation as amended for necessary updating on the one hand, and the adoption of additional legislation in new matters on the other hand.

The Digital Code is 247 pages, and has 647 articles distributed into seven (07) Parts:

- Preliminary Part entitled “Definitions and purpose” defines some key concepts and other terms used in the Code (articles 1 to 02).
- Part I entitled “Electronic communications networks and services”, deals with electronic communications activities and the legal status of telecom operators (Articles 03 to 265);

- Part II entitled “Electronic Seals and Writings”, deals with the legal value of digital instruments such as electronic writings, signatures, time-stamping and archiving, as well as the authentication of Internet sites (articles 266 to 304);

- Part III entitled “Certification Service Providers”: this Part sets out the legal status, the obligations and sanctions of certification service providers (Articles 305 to 325);

- Part IV entitled “Electronic Commerce”: this Part applies to any order, contract or transaction concluded online for the supply of goods or services, as well as electronic commercial activities (articles 326 at 378);

- Part V entitled “Protection of personal data”: this Part aims at setting up a legal framework for the protection of privacy following the collection, processing, transmission, storage and use of personal data (Articles 379 to 490);

- Part VI entitled “Cyber criminality and cyber security”: the provisions of this Part set out the rules and proceedings for the fight against cyber criminality. They also set out the institutional framework, rules and procedures for the use of cryptology (Articles 491 to 639);


**Changes under the Digital Code**

The Digital Code results from the fact that existing legislation has long been outdated and unsuitable not only to the requirements of development but also unsatisfactory for the dynamics of trade and technology. In this respect, lawmakers have improved the legal environment and strengthened the institutional framework of digital activities.

The noteworthy changes are:

- The Digital Code revamps the legal regimes in the telecommunications sector, improves the functioning of the Electronic Communications Regulatory Authority, and clarifies issues relating to the regulation of competition among operators.

- The Digital Code establishes the use of electronic seals and the regime applicable to certification service providers, establishes an attractive legal framework to improve the Internet of Things (IoT), and clarifies the responsibility of the actors of Internet.

- The Digital Code secures the conclusion of online contracts, anticipates future uses of personal data, adapts criminal law to cyber criminality, and creates a National Agency for Security and Information Systems as well as a Central Office for the fight against cyber criminality.
Benin Digital Code is intended to provide the legal security required for public and private partners, local start-ups as well as international investors. This is likely to accelerate the development of very high speed broadband infrastructures throughout the country, deploy online services for the benefit of consumers and lead to digital economy, a vector of inclusive growth. We expect that the new legislation would allow the country to achieve its ambition to become the “digital leader of the African continent”.

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