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INFORMATION TECHNOLOGY BILL, 2021

THE INFORMATION TECHNOLOGY BILL, 2021

MEMORANDUM

This Bill seeks to provide a legal framework for the development and use of information technology in Malawi. The current legal framework does not provide the Government, private sector and citizens with a sufficiently regulated and standardized information technology ecosystem in spite of its vital importance in the implementation of all of Malawi's development goals and plans. The Bill therefore complements the Electronic Transactions and Cyber Security Act (Act No.33 of 2016) in regulating the information and communications technology ("ICT") sector and provides for the establishment of a regulatory body for the sector.

The Bill takes into account the National ICT Policy, the Digital Government Strategy, the role of the Department of E-Government in the Electronic Transactions and Cyber Security Act, among other things, and provides for the establishment of the Malawi Information Technology Authority (MITA). The MITA shall be the key IT regulator for both the public and private sectors under the National ICT Policy. In the current legal framework landscape, there is neither regulation of ICT service providers, IT hardware and software nor the enforcement of use of ICT in delivery of Government services. The Electronic Transactions and Cyber Security Act is limited to the recognition of electronic signatures, protection of online users, authenticity of electronic documents and admissibility of electronic evidence, to name a few, while the Communications Act is limited to telecommunications and related matters.

These legal gaps need to be filled through the development of a legislation which recognizes, standardizes and accelerates national ICT progress. The Bill is intended to address the existing gaps by providing the centralization of ICT regulatory functions in MITA for the good of both the public and private sectors. In addition, the Bill will align Malawian electronic government regime with the relevant international regulatory framework and best practices on electronic government and ICT acceleration. In the light of globalization, and its attendant need for countries to increase their ICT responsiveness in the information age coupled with the quest to implement only best ICT practices, the Bill is vital for creating a conducive legal framework for integrating Malawi into the global information society.

The Bill is divided into ten parts as follows –

PART I contains preliminary provisions including definitions of terms used in the Bill and the objectives of the Bill. The Bill will commence once a date of commencement has been appointed by the Minister.

PART II of the Bill establishes the Malawi Information Technology Authority. This Authority shall be an independent Authority with a governing Board duly appointed by the Minister. The Authority shall implement the provisions of the Electronic Transactions and Cyber Security Act related to the information technology. In such respect, the Authority shall promote the standardization in the planning, acquisition, implementing, delivery, support and maintenance of information technology equipment and services to ensure equality and uniformity, adequacy and reliability of information technology usage throughout Malawi. This Part also makes provision for the Secretariat of the Authority, its Director General, their duties and responsibilities as well as other staff and provisions necessary for the running of the Authority.

PART III of the Bill provides for the funds of the Authority, requirements for its accounting and auditing and the need for the content and provision of annual reports within the specified time periods.

PART IV of the Bill makes provision for E-Government information technology infrastructure. The Authority shall set standards for information technology to be used in public institutions. All public institutions shall obtain prior approval from the Authority before using information technology which is not prescribed by the Authority.

PART V of the Bill makes provision for inspection and investigation of information technology projects and systems. The Authority shall conduct inspections of information projects to ensure compliance with this Act. Where findings of an inspection indicate noncompliance with the Act, the public institution in charge of the project shall ensure that recommendations are implemented within a prescribed time frame.

PART VI makes provision for E-Government services by providing for the use of information technology in the delivery of government services. It also requires that in the use of information technology for e-government services, regard must be paid to the use of reliable and citizen-centric technologies.

PART VII makes provision for fees, levies and charges to be payable under the Act.

PART VIII makes provision for the enforcement powers of the Authority by providing for enforcement notices and cancellation of such notices. It also gives the providers of information technology services the option to request for the assessment of the Authority where necessary. The Authority is given powers to also make determinations based on its findings and issue appropriate sanctions where service providers fail to comply with its notice.

PART X makes provision for offences, penalties and Miscellaneous

PART X1 makes provision for transitional provisions.

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INFORMATION TECHNOLOGY BILL, 2021

ARRANGEMENT OF SECTIONS

PART I—PRELIMINARY

1. Short title and Commencement
2. Interpretation
3. Objects of the Act

PART II— THE MALAWI INFORMATION TECHNOLOGY AUTHORITY

4. Establishment of the Authority
5. Functions of the Authority
6. Powers of the Authority
7. Composition of the Authority
8. Appointment of members of the Authority
9. Tenure of office of members of the Authority
10. Vacancies
11. Filling of vacancies
12. Meetings of the Board
13. Disclosure of interest
14. Declaration of registrable interests
15. Committees of the Authority
16. Allowances
17. Director General
18. Duties and responsibilities of the Director General
19. Tenure of Director General
20. Other staff of the Authority
21. Oath of Secrecy
22. Immunity of members and staff of the Authority

PART III—FINANCIAL PROVISIONS

23. Funds of the Authority
24. Accounts and audit
25. Annual Report

PART IV—E-GOVERNMENT INFRASTRUCTURE

26. Approval of information technology infrastructure
27. Optimization of infrastructure
28. Issuance of recommendations
29. Sourcing of Government information technology owned resources
30. System development standards
31. Approval of new systems
32. Criteria for integrated systems
33. Conditions and terms for services and facilities
34. Institutional information technology committees

PART V—INSPECTION AND INVESTIGATION
ON INFORMATION TECHNOLOGY PROJECTS AND SYSTEMS

35. Inspection
36. Cyber Inspectors
37. Conduct of Inspection
38. Inspection observations

PART VI—E-GOVERNMENT SERVICES

39. Promotion and Use of information technology to deliver Government services
40. Reliable and citizen- centric e-Government services

PART VII—FEES AND CHARGES

41. Fees, Levies and Charges

PART VIII—ENFORCEMENT

42. Enforcement notice
43. Cancellation of enforcement notice
44. Request for assessment
45. Determination by the Authority
46. Failure to comply with notice

PART IX—OFFENCES, PENALTIES & MISCELANEOUS

47. Offences and penalty
48. Regulations

PART X—TRANSITIONAL ISSUES

49. Transitional provisions

INFORMATION TECHNOLOGY BILL, 2021

An Act to provide for the establishment of the Malawi Information Technology Authority and its administration; the regulation of information and communications technology; implementation and management of information technology and e-Government services; and to provide for related matters.

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title and commencement **1.** This Act may be cited as the Information Technology Act, 2021 and shall come into operation on a date to be appointed by the Minister by Notice published in the Gazette.

Interpretation **2.** In this Act, unless the context otherwise requires—

“Authority” means the Malawi Information Technology Authority established under this Act;

“Chairperson” means the Chairperson of the Authority appointed under Section 8 of this Act;

“Director General ” means the Director General of the Authority, appointed under section.....;

“data” means information converted, recorded, stored or transmitted in binary digital form;

“disaster recovery plan” means a documented and structured approach with instructions for responding to unplanned incidents that impacts on e-services offered by public institutions;

“electronic commerce” means any economic activity provided by electronic means, including remote services and products, particularly services that consist of providing online information, commercial communications, research tools, or access to, or downloading of, online data, access to a communication network or the hosting of information;

“e-government service” means a public service provided by

electronic means;

“e-transaction” means exchange of information, sale or purchase of goods or services between businesses, households, individuals, governments, and other public or private organizations, conducted over computer-mediated networks;

“Information Technology (IT)” means the science of collecting and using information by means of computer systems and refers to computers, ancillary or peripheral equipment such as printers and scanners, software and firmware services including support services, and related resources and includes any equipment or interconnected systems that are used in the acquisition, storage, manipulation or processing, management, movement, control, display, transmission or reception of data or information; but does not include telecommunications.

“institutional IT committee” means the Institutional Information Technology Committee established in terms of Section 37 of the Act;

“open source based software” means a software whose source code is publicly accessible and can be modified and shared;

“Public institution” means Government Ministry, Department or Agency;

“shared Government infrastructure” means a Government information technology resource for use by public institutions collaboratively under specified terms and conditions;

“shared services” means generic services that are jointly used by public institutions in different business processes of various public institutions;

“technology neutral solutions” means solutions which are not tied with a specific technology; and

Objects of the Act

3. The objects of the Act are to —

- (a) to promote standardisation in the planning, acquisition, implementation, delivery, support and maintenance of information technology

- equipment and services, to ensure uniformity in quality, adequacy and reliability of information technology usage throughout Malawi;
- (b) provide for the promotion of cooperation, coordination and rationalisation among users and providers of information technology services at national and local levels so as to avoid duplication of efforts and ensure optimal utilisation of scarce resources; and
 - (c) to provide for the establishment of the Malawi Information Technology Authority (MITA).

PART II— THE MALAWI INFORMATION TECHNOLOGY AUTHORITY

Establishment
of the
Authority

4.—(1) There is hereby established a body known as the Malawi Information Technology Authority.

(2) The Authority shall—

- (a) be a body corporate with perpetual succession and a common seal;
- (b) be capable of acquiring, holding and disposing of real and personal property;
- (c) be capable of suing and being sued in its corporate name; and
- (d) perform such acts and exercise such powers bodies corporate may, by law, do or perform.

(3) The Authority shall be subject to the general supervision of the Minister.

Functions of
the Authority

5.—(1) The functions of the Authority are to—

- (a) perform any and all functions of the Authority under this Act, and the Electronic Transactions and Cyber Security Act No. 33 of 2016;
- (b) coordinate all national information technology programmes in line with national priorities;
- (c) coordinate and facilitate the sustainable development of information technology infrastructure and personnel in Malawi;
- (d) identify and advise Government on all matters of information technology development, utilisation, usability, accessibility and deployment including networking, systems development, information technology security, training and support;

- (e) co-ordinate, supervise and monitor the utilisation of information technology across all sectors including rural community access, e-government and businesses in the public and private sectors;
- (f) develop, set, monitor and regulate standards for information technology planning, acquisition, implementation, delivery, support, organisation, sustenance, disposal, risk management, security and contingency planning;
- (g) promote and provide technical guidance for the establishment of e-Government, e-commerce and other e-transactions in Malawi;
- (h) act as an authentication center for information technology training in Malawi in conjunction with the Ministry responsible for Education and the National Council for Higher Education;
- (i) provide guidance on the establishment of an infrastructure for information sharing by Government and related stakeholders;
- (j) provide guidance in information technology audit services to Government;
- (k) undertake and commission research as may be necessary to promote the objects of the Act; and

(2) In discharging its functions, the Authority shall apply best practices including taking into account the following—

- (a) principles of transparency, accountability, and proportionality and , and
- (b) needs of persons who are physically challenged, elderly and those of low incomes living in both urban and rural areas.

Powers of the Authority

6. In carrying out the functions specified in Section 5, the Authority shall have the powers to—

- (a) issue enforcement notices;
- (b) approve plans for the operations of the Authority; and
- (c) charge fees for services provided by the Authority or charge levies for information technology related works and services.

Composition of the Authority

7.—(1) The Authority shall consist of the following seven members who shall be independent members appointed based on their qualifications and levels of expertise—

- (a) one member nominated by the ICT association or society with the largest membership by number;

- (b) one member nominated by an organization representing consumer welfare ;
- (c) one member representing the academia;
- (d) the following Ex-officio Members—
 - (i) the secretary responsible for Education or his designated representative;
 - (ii) the Secretary to the Treasury or his designated representative;
 - (iii) the most senior officer responsible for information technology in the office of the president and Cabinet or his designated representative;
 - (iv) the Solicitor-General or his designated representative.

(2) Members of the Board shall not, by virtue only of their appointments to the Board, be deemed to be officers in the public service but shall comply with Part IV of Public Officers (Declaration of Assets, Liabilities and Business Interests) Act, 2013, (Act No.22 of 2013).

Appointment
of members of
the Authority

8.—(1) The Minister shall appoint members of the Authority other than ex-officio members and each appointment shall be on the recommendation of their respective professional bodies.

(2) The Minister shall appoint the Chairperson of the Authority

(3) A person shall not be appointed a member of the Authority if that person—

- (a) is not a Malawian citizen;
- (b) is adjudged or declared bankrupt;
- (c) has been, subject to any law on spent convictions, convicted of a offence involving fraud or dishonesty or other;
- (d) has been, subject to any law on spent convictions, convicted of an offence under any written law and sentenced to a term of imprisonment without the option of a fine; or
- (e) holds a political office or is an active member of a political party.

Tenure of
office of
members
of the
—

9.— A member of the Authority shall hold office for a term of three years and shall be eligible for re-appointment for one further and final term:

Provided that, when making the appointment after the expiry of three years, the Minister shall have regard to the need for continuity in the membership of the

Board so that at least half of the appointed members whose terms have expired are re-appointed for another term of office.

Vacancies

10.—(1) The office of a member of the Authority shall become vacant when holder of the office—

- (a) resigns;
- (b) dies;
- (c) is adjudged or declared bankrupt;
- (d) is convicted of an offence involving fraud or dishonesty or an offence under any written law and sentenced to a term of imprisonment without the option of a fine;
- (e) fails, without good and justifiable reasons, to attend three consecutive meetings of the Board of which he had notice;
- (f) is certified by a medical practitioner to be incapacitated by reason of physical or mental disability;
- (g) is removed by the Minister in accordance with subsection (3); or
- (h) where a situation arises that if he had not been appointed he would have been disqualified from appointment to the Board for failure to comply with Part IV of Public Officers (Declaration of Assets, Liabilities and Business Interests) Act, 2013, (Act No.22 of 2013).

(2) A member of the Board, other than an *ex-officio* member, may resign from office by giving one month written notice to the Minister

(3) The Minister may remove an appointed member from office on grounds of—

- (a) misconduct that is likely to bring the office of the member into disrepute;
- (b) incompetence; or
- (c) being compromised to the extent that the ability to impartially and effectively perform the duties of the office is seriously in question.

Filling of vacancies

11. – (1) A vacancy in the membership of the Authority shall be filled by the Minister appointing a new member.

(2) A person appointed to fill a vacancy shall serve for the remainder of a term of office but no person may be appointed to fill a vacancy of the remainder of a term of office where the remainder of the term is less than six months.

(3) The period served by a person appointed under subsection (1) shall not be regarded as a term for purposes of section 9(1).

(4) A vacancy in the membership of the Authority shall not affect its decisions, the performance of its functions or the exercise of its powers under this Act or any other written law.

Meetings of
the Board

12.—(1) The Board shall meet, at least once every three months, for the dispatch of business at a place and at a time determined by the chairperson.

(2) The Chairperson shall convene ordinary meetings of the Board by giving the members of the Board at least fourteen days' written notice.

(3) Notwithstanding sub section (2), the Chairperson may on his own motion and shall at the written request in writing of not less than one third of the members of the Authority, convene an extra-ordinary meeting of the Authority by giving at least seven days written notice of the meeting which shall be held at a place and time as he may, in consultation with the Director General, determine.

(4) The quorum at every meeting of the Board or a committee shall be-five members.

(5) The Chairperson shall preside at all meetings of the Authority.

Provided that in the absence of the chairperson and the deputy chairperson at a meeting, the members present and forming a quorum shall elect one of their number to preside over the meeting of the Authority.

(6) Matters before the Authority shall be decided by a majority of the members present and voting and, in the event of an equality of votes, the person presiding over a meeting shall have a casting vote.

(7) The Authority may co-opt a person to attend a meeting of the Authority or any of its committee but the person shall not vote on a matter for decision at the meeting.

(8) The proceedings of the Board shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

(9) A member of the Authority or committee shall not attend a meeting of the Board or committee by proxy and, where the member is unable to attend any meeting of the Board or committee, he may request that apologies for failure to attend be recorded.

(10) The Authority shall determine its own procedure for meetings and may make rules to regulate its proceedings and business or the proceedings and business of any of its committee.

Disclosure of interest

13.—(1) Where a member of the Authority or a committee of the Authority is present at a meeting of the Authority or at a meeting of a committee at which any matter which is the subject of consideration is a matter in which the member has an interest ~~or his immediate family member or his professional or business partner is directly or indirectly interested~~, he shall, as soon as practicable, after the commencement of the meeting, disclose his interest and the member shall not take part in any consideration or discussion of, or vote in, any question relating to the matter.

(2) A disclosure of interest by a member of the Authority or a committee shall be recorded in the minutes of the meeting at which it is made.

(3) A member who contravenes subsection (1) ceases to be a member.

(4) For purposes of this section, a person has interest where he or his family member, professional or business partner has a direct or indirect financial or other interest.

Declaration of registrable interests

14.—(1) Each member of the Authority shall comply with the Public Officers (Declaration of Assets, Business Interests and Liabilities) Act.

(2) A member of the Board who fails to comply with subsection (1) within three months from the date of appointment to the office of member or chair shall cease to be a member of the Board.

Committees of the Authority

15.—(1) The Authority may, for purposes of performing its functions, establish such committees and delegate to those committees such functions and powers as it determines appropriate.

(2) A committee may be composed of only members or include non-members as the Authority shall determine as appropriate

(3) The Chairperson of a committee shall be a member of the Authority but the Chairperson of the Authority shall not be a member of a committee.

(4) Section 13 on meetings of the Authority shall apply *mutatis mutandis* to committees of the Authority.

Allowances **16.**—(1) Members of the Board and members of a committee shall be paid such allowances as the Board may determine from time to time, subject to approval by the Minister responsible for statutory corporations.

(2) The Board may make provision for the reimbursement of any reasonable expenses incurred by a member in connection with duties as a member.

Director General **17.**—(1) The Authority shall appoint the Director General of the Authority through an open and competitive process on terms and conditions the Authority may, in consultation with the Minister, determine.

Duties and responsibilities of the Director General **18.**—(1) Subject to the general and special directions of the Authority, the Director General shall be responsible for—

- (a) the day to day management and operations of the Authority;
- (b) provision of secretarial services to the Authority;
- (c) implementing decisions of the Authority;
- (d) the management of the funds, property and business of the Authority;
- (e) the effective administration and implementation of the provisions of this Act; and
- (f) the appointment, promotion, training and disciplining of the officers and staff of the Authority below the grade of director in accordance with their terms and conditions of appointment.

Tenure of the Director General **19.**—(1) The Director General shall hold office for a term of five years and shall be eligible for re-appointment for one final term.

(2) The Authority may remove the Director General from office on the following grounds—

- (a) misconduct;
- (b) incompetence to carry out the functions of the office;
- (c) abuse of office;

- (d) physical or mental incapacity as certified by a medical practitioner;
- (e) bankruptcy; or
- (f) for conviction of an offence involving moral turpitude or a felony.

(3) The Authority may suspend the Director General from exercising the function of his office for up to sixty days pending investigations to determine whether or not he should be removed from office.

(4) Where the Director General is suspended, the Authority shall appoint the next most senior officer to act as Director General:

Provided that such person shall not act in that capacity for a period of more than one year.

Other staff of the Authority

20. – (1) The Authority may appoint such other officers of the Authority subordinate to the Director General, on such terms and conditions as determined by the Authority.

(2) The Director General shall appoint other subordinate staff of the Authority as determined by the Authority.

(3) The staff of the Authority shall be appointed after public advertisement based on qualifications, experience and capacity relevant to the functions of the Authority.

Oath of secrecy

21. Every—

- (a) member of the Authority;
- (b) member of a committee of the Authority; and
- (c) member of staff or service provider of the Authority or authorized person,

shall, upon assumption of office, take oath of secrecy in the form set out in the Schedule to this Act and the oath shall be administered by a commissioner for oaths.

Immunity of members and staff of the Authority

22. (1) Every member of the Authority, member of committee of the Authority, member of staff or other employee of the Authority shall not in his personal capacity, be liable in civil or criminal proceedings in respect of any act of omission done in good faith in the performance of his functions under this Act

(2) Where, in any proceedings, a question arises on whether or not an act or an omission was done in good faith in the course of carrying out the provisions of this Act, the burden of proving that the act was not done in good faith in the course of carrying out the provisions of this Act shall be on the person alleging that it was not so done.

PART III—FINANCIAL PROVISIONS

Funds of the Authority

- 23.**—(1) The funds of the Authority shall consist of—
- (a) fees, levies and charges payable under this Act or the Electronic Transactions and Cyber Security Act;
 - (b) loans, grants and donations received by the Authority for its activities;
 - (c) income derived from the investment of the funds of the Authority; and
 - (d) revenues collected from services rendered by the Authority.

Cap. 37:02

(2) Subject to the provisions of the Public Finance Management Act, the Authority may borrow such sums of money as it may require for the performance and functions under this Act.

(3) All the moneys of the Authority which, at the end of each financial year, are in excess of the Authority's budgetary requirements for that year, shall be paid into the Consolidated Fund, but the Authority may be entitled to retain such sums as it reasonably requires for its operations.

Accounts and audit
Cap. 37:01
Cap. 37:02

24.—(1) The Authority shall cause to be kept proper accounts and other records in respect of its funds and shall, in every respect, comply with the provisions of the Public Finance Management Act and the Public Audit Act.

(2) The accounts of the Authority shall be audited by the Auditor-General or by an auditor appointed by the Authority with the written approval of the Auditor General in accordance with the Public Audit Act.

(5) The Minister shall lay the financial report of the Authority before Parliament.

Annual report

25.—(1) The Authority shall, within six months after the end of a financial year, submit to the Minister a report of the activities of the Authority in that financial year.

- (2) The annual report shall include –
- (a) audit report; and
 - (b) such information as the Minister may require.

(3) The Minister shall lay the annual report of the Authority before Parliament.

PART IV—E-GOVERNMENT INFRASTRUCTURE

Approval of
information
technology
infrastructure

26.— (1) The Authority shall set standards for information technology infrastructure to be used in public institutions.

(2) For the purpose of sub-section (1), the Authority shall maintain and make available to public institutions, database of all information technology infrastructure approved for use by public institutions.

(3) The Authority shall approve information technology infrastructure of a public institution to ensure their compliance with prescribed specifications and standards of computers and other related equipment and tools.

(4) Where a public institution has a need to use an information technology infrastructure not provided for in accordance with the regulations governing the detailed specifications and standards, the public institution shall submit to the Authority, a request which justifies use of the information technology infrastructure.

(5) The Authority may return a justification request to a public institution with appropriate written recommendation necessary for consideration and resubmission by the public institution.

(6) Where satisfied with the justification, the Authority may authorize the use of the infrastructure in sub section (4) .

Optimization
of
infrastructure

27.—(1) A public institution shall, for the purpose of optimization of information technology infrastructure, ensure that—

- (a) data and information exchange between it and another public institution is done through a secured Government network or infrastructure approved by the Authority; and
- (b) internet connectivity or connectivity with an institution other than a Government institution is done through an infrastructure approved by the Authority

(2) A public institution that intends to use shared Government infrastructure shall request to the Authority for sharing of Government information technology infrastructure in a manner and format as prescribed by the Minister.

(3) Where a prescribed shared infrastructure does not fit a public institution requirement, the public institution shall, prior to acquisition, deployment or use

of another infrastructure, seek approval from the Authority for use of other infrastructure.

Issuance of recommendations

28.—A public institution intending to undertake construction or development of information technology related infrastructure shall, before commencement of a project, submit to the Authority, the ~~the related~~ information technology design for approval.

(2) The Authority shall, not later than thirty days from receipt of the design from a public institution undertaking construction, issue its approval or recommendations to the public institution.

Sourcing of Government information technology owned resources

29. Subject to provisions of the Public Procurement and Disposal of Assets Act, a public institution shall, as far as practicable and during sourcing of information technology systems, apply vendor and technology neutrality principles and use approved home grown solutions as a priority and approved open source-based software.

Cap. 37:03

(2) For purposes of this section –
“home grown solutions” means information technology solutions or systems developed by Malawian citizens who are based in Malawi;
“open source-based solutions” means computer software that is released under a license in which the copyright holder grants users the rights to use, study, change, and distribute the software and its source code to anyone and for any purpose.

System development standards

30. – (1) The Authority shall set standards for systems development.

(2) A public institution shall, during information system development, deployment, operations and maintenance, comply with guidelines issued by the Authority

Approval of new systems

31.—(1) The Authority shall issue guidelines, procedures and criteria for approval of new information communications technology systems and best practices.

(2) A public institution shall adhere to guidelines and procedures for approval of new systems.

Criteria for integrated systems

32. A public institution shall—

(a) in attaining organization interoperability—

- (i) collaborate with a respective public institution and the Authority in the development, deployment and delivery of e-Government services;
 - (ii) define its shared services; and
 - (iii) consider interoperability during business process re-engineering;
- (b) ensure data from various applications is in compliance with this Act; and
- (c) ensure that all the hardware and software components of the network and information system communicate and transfer information successfully and in compliance with the Act and Regulations.

Conditions and terms for services and facilities

33.— (1) The Authority shall issue guidelines specifying the terms and conditions upon which specified facilities or services rendered in the information technology sector shall be provided to public institutions.

(2) The Authority may terminate a service rendered to a public institution where the public institution, upon receipt of a one-month notice and a reminder thereof fails to comply with the terms and conditions for use of the facility and service.

Institutional information technology committees

34.— (1) The controlling officer of every public institution shall establish an institutional information technology committee whose function shall be to provide technical guidance on implementation of information technology initiatives.

(2) The institutional information technology committee shall be composed of a minimum of seven members from the public institution as follows—

- (a) head of information technology as the Chairperson;
- (b) head of accounting who shall be the secretary to the committee;
- (c) head of planning;
- (d) head of procurement;
- (e) internal auditor; and
- (f) two representatives from technical units of the public institution.

(3) The institutional information technology committee shall perform the following functions—

- (a) review and approve information technology policy and strategy of the institution in accordance with the overall approved national information technology policy and strategy;

- (b) review and provide advice on information technology investment portfolio and priorities to the public institution;
- (c) ensure alignment of information technology with the organization’s business needs;
- (d) ensure e-Government guidelines and standards are implemented by the institution;
- (e) ensure continuous monitoring and evaluation of institutional information technology projects;
- (f) review and approve institutional disaster recovery plan and ensure its effective implementation;
- (g) approve any other institutional e-Government sub-committee as may, from time to time, be constituted and address specific information technology related matters;
- (h) prepare and submit quarterly e-Government progress report to the Authority; and
- (i) perform such other functions as may be directed by the accounting officer or the Authority.

**PART V—INSPECTION AND INVESTIGATION
OF ICT PROJECTS AND SYSTEMS**

Inspection

35.—The Authority shall conduct regular and ad hoc inspections of projects under this Act.

Cyber inspectors

36. – The Authority shall appoint cyber inspectors as it determines necessary to conduct inspections of projects and ensure compliance with this Act.

Conduct of inspection

37.—(1) The Authority shall in writing, serve a public institution a fourteen days’ notice of its intention to conduct inspection:

Provided that in the case of an ad hoc inspection, the Authority may forego the required notice period where there is a just cause so to do.

(2) A cyber inspector shall collect information through examination of relevant documents with direct access, interviews and observation of activities, equipment and conditions in the inspected areas.

(3) Where the public institution refuses to grant access to records or copying of documents or there is any withholding of documents or denial of access to areas to which the inspector has legal access, the inspector shall record the refusals and include in the inspection observations.

Inspection observations

38.—(1) All cyber inspection observations shall be documented by a cyber inspector who conducted the inspection, and where appropriate, copies shall be made of records containing inconsistencies or illustrating non-compliance.

(2) The inspector shall review all observations at the conclusion of an inspection to determine which observations are to be reported as non-compliance or quality system deficiencies, and documented in a clear, concise manner together with supported evidence.

(3) The cyber inspector shall submit a report of inspection with recommendations for approval.

(4) The institution shall implement the recommendations of the Authority within sixty days.

Promotion of use of ICT to deliver Government Services

PART VI—E-GOVERNMENT SERVICES

39. A public institution shall, for the purposes of delivery of government services through the use of ICT—

- (a) provide public awareness of all available e- Government services through available channels of communication with wider outreach; and
- (b) continuously improve the e- Government services to cope with emerging changes in the environment including changes in technology.

Reliable and citizen-centric e- Government Services

40. A public institution shall, for the purpose of ensuring that the e- Government services rendered are reliable and citizen- centric—

- (a) implement business continuity management including operationalizing a disaster recovery plan submitted to the Authority in accordance with Regulation made under this Act and which shall cover such systems which facilitate the rendering of e- Government services;
- (b) use the approved information technology infrastructure to host its information technology systems that deliver e-Government services as prescribed in the Regulations under this Act;
- (c) Make sure that all its e-government services are offered in English and one other local language.

PART VII—FEES, LEVIES AND CHARGES

Fees and Charges

41.—(1) The Authority shall, for the purpose of ensuring efficient and effective e-Government infrastructure and system operations, collect fees and charge and levies for service rendered by the Authority or levies on information technology goods and services prescribed by the Minister responsible for finance.

(2) The Minister may, upon advice of the Authority, vary or waive any fees, levies or charges.

PART VIII- ENFORCEMENT

Enforcement
notice

42. (1) Where the Authority is satisfied that a service provider has contravened or is contravening any of the provisions of this Act, the Authority shall serve the service provider with an enforcement notice to require that service provider to do any of the following -

- (a) to take or refrain from taking the steps specified within the time stated in the notice; or
- (b) to refrain from undertaking any acts of the description specified in the notice.

(2) In deciding whether to serve an enforcement notice, the Authority shall consider whether the contravention has caused or is likely to cause damage to any person.

(3) An enforcement notice issued pursuant to subsection (1) may also require a service provider to rectify, block, erase or destroy an information technology infrastructure or system.

(4) Where –

- (a) an enforcement notice requires the data controller to rectify, block, erase or destroy an information technology service or infrastructure; or
- (b) the Authority is satisfied that information technology service or infrastructure which has been rectified, blocked, erased or destroyed was processed in contravention of this Act, the Authority may require the service provider to notify a third party affected by such interventions.

(5) An enforcement notice shall contain a statement of the provision of the Act which the Authority is satisfied has been contravened and the reasons for that conclusion.

(6) An enforcement notice shall not require any of the provisions of the notice to be complied with before the end of the period within which an appeal may be brought against the notice and, if the appeal is brought, the notice may not be complied with pending the determination or withdrawal of the appeal.

(7) Notwithstanding subsection (6), the Authority may in exceptional circumstances, order that an enforcement notice be implemented immediately.

Cancellation of enforcement notice

43. The Authority may on its own motion or on an application made by a person on whom a notice is served, cancel or vary a notice issued under section 42.

Request for assessment

44. (1) A person who is affected by the provisions of this Act may, on that person's own behalf or on behalf of another person, request the Authority to make an assessment as to whether the provision of an information technology infrastructure or service is in compliance with the provisions of this Act.

(2) On receiving a request, the Authority may make an assessment in the manner that the Authority considers appropriate.

(3) The Authority may consider the following in determining whether an assessment is appropriate—

- (a) the extent to which the request appears to the Authority to raise a matter of substance;
- (b) the time of submission of the application; and
- (c) whether or not the person making the request is entitled to make an application in respect of the Act.

(4) The Authority shall not publish the report of any finding unless—

- (a) the request is accompanied with the prescribed fee, or
- (b) the Authority waives payment based on proven pecuniary challenges of the applicant.

Determination by the Authority

45. Where at any time it appears to the Authority that information technology infrastructure or service is inconsistent with the provisions of this Act, the Authority shall make a determination and give a notice of the determination to the service provider.

Failure to comply with notice

46. (1) A person who fails to comply with an enforcement notice or an information notice commits an offence and shall on conviction, be liable to a fine of Five million Kwacha (MK 5, 000, 000.00) or to a term of imprisonment of two years or to both and in the case of a continuing offence to a further fine of ten penalty units for each day during which the offence continues after written notice has been served on the offender by the Authority.

(2) A person who, in compliance with an information notice—

- (a) makes a statement which that person knows to be false in a material respect, or;
- (b) recklessly makes a statement which is false in a material respect commits an offence and is liable on summary conviction to a fine of five

million Kwacha or to a term of imprisonment of two years or to both and in the case of a continuing offence to a further fine of ten penalty units for each day during which the offence continues after written notice has been served on the offender by the Authority..

(3) It shall be a defence for a person charged with an offence under sub- section (1) to prove that, that person exercised due diligence to comply with the notice in question.

(4) Notwithstanding subsection (2), the Authority may take any appropriate action against a service provider who fails to comply with a provision of this Act or any other legal or regulatory provision applicable to their activities.

PART X—OFFENCES, PENALTIES & MISCELLANEOUS

Offences and
penalty

47.—(1) A Person who—

- (a) makes a false declaration in an application relating to the provisions of this Act; or
- (b) makes a false declaration in an application for registration of a service under this Act; or
- (c) willfully destroys or damages a register kept under this Act,

commits an offence and shall on conviction be liable to a fine of five million Kwacha or to a term of imprisonment of two years or to both and in the case of a continuing offence to a further fine of ten penalty units for each day during which the offence continues after written notice has been served on the offender by the Authority.

(2) Any person who contravenes or fails to comply with Act commits an offence and shall, on conviction, be liable to a fine of sixty million Kwacha or to imprisonment for a term of five years or to both.

(3) The Authority may, in addition to the penalties provided in subsection (1) and (2), impose regulatory sanctions under this Act.

Regulations

48. – (1)The Minister may, on the advice of the Authority make Regulations on—

- (a) fees and or levies chargeable under this Act;
- (b) forms for applications;

- (c) requirements for licences and approvals for equipment;
- (d) procedures for the conduct of investigations and determination of complaints;
- (e) procedures for the systematic implementation of a national information communications technology policy;
- (f) guidelines and standards to ensure quality of service standards; and
- (g) provide for any matter necessary for the effective implementation of the provisions of this Act.
- (h) waivers under section 60 (2)(2) Notwithstanding the provisions of section 21 of the General Interpretation Act, the Regulations made pursuant to this section may provide for penalties up to thirty million Kwacha.

PART XI— TRANSITIONAL PROVISIONS

Transitional
Provisions

49.—Any person who is required to provide information technology services before the coming into force of this Act shall, within 12 months of the coming into force of this Act, apply to the Authority to obtain the necessary authorizations or approvals as provided under this Act and the Regulations.