

Electronic Transactions and Cyber security Act

Malawi

Data Governance

Definitions of Data:

data means 'electronic presentation of information in any form'.

Main Focus of Document:

The Act makes provision for the use of electronic transactions and also for matters relating to cyber security and misuse of data.

Target Beneficiaries or Sectors:

n/a

Key Elements:

The objective of the Act is to ensure that information and communication technology (ICT) users are protected from undesirable impacts of ICT, including cyber crime and digital fraud, and to also put in place mechanisms for breach of privacy and misuse of information. Key sections include:

4. The following principles shall, at all times, be adhered to in the implementation and application of this Act:
 - (a) e-transactions shall benefit from a secure legal framework that recognizes the legal value of electronic transactions and electronic documents; (b) freedom of communication over electronic networks shall be promoted, with the exception of specific reasons as provided for in this Act; (c) there shall be clear and fair specification of responsibilities of intermediaries and editors; and (d) consumer's rights shall be respected, protected and upheld.
5. Notwithstanding the contrary intention of any written law, where a law requires that certain information or any other matter be in writing, typewritten or printed form, the requirement shall be satisfied if the information or the matter is
 - (a) rendered or made available in an electronic form; (b) accessible; and (c) capable of being retained for a subsequent reference.
6. (1) An electronic message shall be considered to be that of the sender, if it was sent
 - (a) by the sender personally; (b) by an agent of the sender; or (c) by an information system programmed by the sender or on behalf of the sender to send electronic messages automatically. (2) The recipient of an electronic message shall justifiably consider that the electronic message came from the sender and act accordingly if
 - (a) the recipient properly applied a procedure previously agreed with the sender for this purpose; or (b) the electronic messages received by the recipient results from the actions of a person whose relationship with the sender or with an agent of the sender, enabled the recipient to gain access to a method used by the sender to identify an electronic message as that of the sender. (3) Where parties have not agreed on a procedure of ascertaining the sender of an electronic message, the sender shall be presumed to be the person who objectively appears to be the sender.

ELECTRONIC COMMERCE 33. (1) A supplier of goods or services through electronic commerce (in this Act otherwise referred to as a "supplier") shall make available the following information to consumers

- (a) full name and legal personality; (b) postal and physical address and telephone number; (c) website address and e-mail address; (d) in case of a corporate entity, its registration number, name of its office bearers and its place of registration; (e) if the supplier is subject to a tax on consumer goods and services, his tax personal identification number; (f) details of membership to any regulatory or accreditation body to which the supplier belongs or subscribes to, and contact information of such body; (g) if the activity of the supplier is subject to any professional regulation, reference to the applicable professional rules, his professional title, the place where such title was granted, or organization to which the person is registered; (h) if the supplier belongs to a self-regulatory body, to a professional association, to an organisation for dispute settlement, or to any other relevant certification organization, the supplier shall provide adequate information and ensure easy means of verification of such belonging and of access to the codes and practices applicable to that body, association or organisation; and (i) physical address where the supplier receives service of legal documents. (2) A supplier shall, before conclusion of a contract, provide to consumers the following information regarding the terms, conditions and costs associated with the transaction:
 - (a) sufficient description of goods or services subject of the contract; (b) instructions for use and, in particular, the warnings related to security and health; (c) restrictions, limitations or conditions related to the purchase, such as an agreement of a parent or of a guardian, and any territorial or temporal restrictions; (d) details of full costs, including taxes and costs of shipping and delivery to be paid by the consumer, and terms and conditions of payment; (e) conditions of delivery or execution such as the time of delivery of goods or provision of services Provided that
 - (i) unless otherwise agreed by the parties, the supplier shall be bound to deliver the goods or to provide the services immediately upon conclusion of the contract; and (ii) where the supplier fails to deliver the goods and provide the services as stipulated in subparagraph (i), the consumer shall be entitled to terminate the contract; (f) mode of payment; (g) information regarding available after-sale service; (h) details and conditions of withdrawal, denunciation, return, cancellation or reimbursement,

35. (1) A consumer shall be entitled to exercise the right of withdrawal from a contract concluded by electronic means without giving reasons and without penalties
- (a) with respect to goods, within seven days of receipt of the goods or a period as agreed by the two parties in the agreement; (b) with respect to services, within seven days of the formation of the contract or a period as agreed by the two parties in the agreement. (2) Where a consumer has cancelled a contract under this section, the consumer may, if necessary, bear return costs for the goods supplied or services rendered. (3) After a consumer has cancelled a contract under this section, a supplier shall, within fourteen days of cancellation of the contract by the consumer, reimburse to the consumer all sums paid. (5) A supplier shall reimburse to a consumer, all sums due, in a payment mode agreed by the parties: Provided that in the event that the parties fail to agree on the mode, the reimbursement shall be made in the same mode in which the consumer paid the supplier. (6) Notwithstanding subsection (1), a consumer shall not withdraw from a contract concluded by electronic means where:
- (a) the provision of services started with the consumer's consent, before the end of the seven day period; (b) the price of the goods or services depends on the fluctuations of financial market rates and the price is not in the control of the supplier; (c) the provision of goods was made according to the consumer's own specifications or clearly personalised, or goods which by their nature cannot be returned or are liable to deteriorate rapidly;

Consent Data Electronic commerce Electronic networks

Policy/regulation mirrored:

Countries: