



# MEMORANDUM

THE ELECTRONIC  
COMMUNICATIONS AND TRANSACTIONS

**ACT NO. 4 OF 2021**

**31st March 2021**

# MEMORANDUM ON THE ELECTRONIC COMMUNICATIONS AND TRANSACTIONS ACT NO. 4 OF 2021

## Executive Summary

On 24th March 2021, the Zambian legislature enacted the Electronic Communications and Transactions Act No. 4 of 2021 (the “ECT Act 2021”). Please note that the ECT Act 2021 is not yet operational and shall only come into effect on the date appointed by the Minister by statutory instrument. We shall keep you updated once it comes into effect. The ECT Act 2021 repeals and replaces the Electronic Communications and Transactions Act No. 21 of 2009 (the “Repealed Act”).

We now highlight below significant aspects of the ECT Act 2021 which include, but are not limited to, the following:

- 1) Legal requirements for data messages;
- 2) The National Public Key Infrastructure;
- 3) Consumer Protection;
- 4) Repealed Provisions; and
- 5) Our Limitations.

## Introduction

Please take note that this Memorandum is not to be relied upon in making any legal decisions relating to your business as a result of the enactment of the Act. This Memorandum further does not address the legality of the enactment of the Act and whether the Act is indeed valid law. Any decisions to be made should be made after seeking professional legal advice relating to the Act and its application which legal advice, we are available to provide.

### **The legal requirements for data messages**

Under the ECT Act 2021, data has legal force and effect if the data is wholly or partly in the form of a data message and it is not contained in the data message purporting to give legal effect but is merely referred to in that data message. A requirement in law that a document or information shall be in writing is satisfied where the document or information is in the form of a data message and is accessible and capable of being retained

in a manner usable for subsequent reference. The ECT Act 2021 permits the use of electronic signatures

### **The National Public Key Infrastructure**

The ECT Act 2021 gives the Zambia Information and Communication Authority the power to perform the functions of the National Root Certificate Authority. The purpose of this body is to regulate national public key infrastructure. Its functions include, but are not limited to, the following:

# Consumer Protection



- i. Licencing of certification authorities and time stamping service providers;
- ii. Registration of cryptography service providers;
- iii. Monitoring the conduct, systems and operations of certification authorities, time stamping service providers and cryptography service providers;
- iv. Appointment of independent auditing firms to conduct periodic audits of certification authorities to ensure compliance with the Act; and
- v. Regulation of the provision of secure signature creation devices

Persons are not permitted to provide certification services or timestamping services without a licence issued under the ECT Act 2021. Any person who does so without a licence is liable, upon conviction, to a fine not exceeding one million penalty units (ZMW 300,000.00) or to imprisonment for a term not exceeding ten years or to both.

## Consumer Protection

Suppliers offering goods or services for sale, hire or exchange by way of electronic transactions are required to make available to consumers information that includes, but is not limited to, the following:

- i. The supplier's full name and legal status;
- ii. The supplier's physical address and telephone number;
- iii. In the case of a legal person, its registration number, the name of its office bearers and the place of registration;
- iv. A description of the main characteristics of the goods or services offered by the supplier in order to enable a consumer to make an informed decision on the proposed transaction;
- v. The full price of the goods or services, including transport costs, taxes and any other fees or costs;
- vi. The manner of payment for the goods or services;
- vii. The terms of agreement that apply to the transaction;
- viii. The time within which the goods will be dispatched or delivered or within which the services will be rendered;
- ix. The return, exchange or refund policy of the supplier; and
- x. Health and safety information.



# Repealed Provisions

The protection provided to consumers under the ECT Act 2021 is applicable irrespective of the legal system applicable to the agreement in question.

## Repealed Provisions

The following are the key provisions from the Repealed Act that have since been repealed by the ECT Act 2021:

- i. Part VII – Protection of Personal Information: it appears that provisions pertaining to the protection of personal information have been specifically addressed in the Data Protection Act No. 3 of 2021, thus references to protection of personal information have been repealed by the ECT Act 2021.
- ii. Part XV – Cyber Crime: the Cyber Security and Cyber Crimes Act No. 2 of 2021 was passed by the legislature on 23rd March 2021. The same provides for issues pertaining to cyber security in Zambia, thus references pertaining to cyber security have been included in the Cyber Security and Cyber Crimes Act and excluded from the ECT Act 2021.

While the Electronic Communications and Transactions Act No. 21 of 2009 has been repealed, the ECT Act 2021 provides that all legal proceedings commenced or pending under the Repealed Act shall continue as if they were instituted under the ECT Act 2021

## OUR LIMITATIONS

Kindly note that this brief is not exhaustive and does not constitute legal advice. In the event that you would like us to render a comprehensive legal opinion, kindly contact our

- Mr. Michael M. Mundashi, SC: [mmundashi@mmlp.co.zm](mailto:mmundashi@mmlp.co.zm)
- Mr. Mulenga Chiteba: [mchiteba@mmco.co.zm](mailto:mchiteba@mmco.co.zm)

Alternatively, you may call any of the following numbers:  
Tel: +260 211 254248/50 | Direct: +260 211 254266.