

Highlights of the Evidence (Amendment) Act 2023

Introduction

On 12 June 2023, the President of the Federal Republic of Nigeria signed the Evidence (Amendment) Act 2023 (the “Act/Amendment”) into law. It is important to note that the Amendment does not repeal the Evidence Act 2011 (the “2011 Act”) and is intended to reflect technological advancements in evidence-taking, particularly in court proceedings.

This document highlights notable changes introduced by the Act and its significance for the conduct of trial proceedings in Nigerian courts.

Notable Changes Introduced by the Act

1. Electronic Records

Prior to the Amendment, documents produced by computers were regarded as computer generated evidence and are admissible as evidence of facts stated in them, provided that certain conditions are met. A party seeking to rely on such documents is required to show that the computer was generally in good order, and that the document was produced from information regularly supplied to the computer, as provided in Section 84(2) of the 2011 Act. The Amendment, however, introduces a new element – the admissibility of statements in “electronic records”.¹

Section 10 of the Amendment defines an electronic record as “data, record or data generated, image or sound stored, received, or sent in an electronic form or microfilm”.² It is admissible under similar conditions as are applicable to computer generated documents. Interestingly, practical realities dictate that if an electronic record is to be admitted as evidence, it must be tendered in the form of a document.³ Under the 2011 Act, a “document” includes discs, tapes, films and negatives. Data generated or received electronically cannot be presented in court as evidence, unless presented in a tangible, readable form.

In effect, an electronic record must be printed, taped, etc. Per the provisions of the newly inserted Section 84B of the 2011 Act, such printed, recorded or copied electronic record is also a document, and without proof of the original, the document is admissible as evidence of facts stated in it, provided the conditions specified in the Act are satisfied.

2. Digital Signatures

The Amendment also recognises digital signatures as a means of authenticating electronic records.⁴ A digital signature is an electronically generated signature attached to an

¹ Sections 2 and 3 of the Act, which amend Section 84 of the 2011 Act.

² Section 10 of the Act amends Section 258 of the 2011 Act.

³ Section 258(1) of the 2011 Act.

⁴ Section 3 of the Amendment, which inserts a new Section 84C in the 2011 Act.

electronically transmitted document in order to verify its contents and the sender's identity.⁵ The intention of the statute is that digital signatures now have the same effect as a signature appended physically on a hardcopy document. An electronic record may also be authenticated by other means.

The Amendment further creates specific provisions to ensure the integrity of digital signatures by providing that such digital signature or other form of authentication must be reliable or fulfil other conditions specified in the statute. An authentication in this sense is considered reliable if it is linked to the authenticator or signatory alone and any alteration of the information after the authentication or of the signature itself can be detected.⁶ In addition, where it is alleged that a person's digital signature has been affixed to an electronic record, it must be proven that it is the digital signature of that person.⁷

3. Electronic Oath-taking

The Act also allows for electronic depositions: a major development in oath-taking. The Act introduces amendments which permit the deposition of affidavits electronically through audio-visual means. A copy of such an affidavit may be filed at a court registry and relied upon by a party in court.⁸ Where the oath in an affidavit deposed to by a blind or illiterate person is sworn to by audio-visual means, the electronic record shall state the audio-visual method used for the oath-taking and date on which the method was used.⁹

4. Electronic Gazettes

Another provision introduced by the Amendment is the use of electronic gazettes. An electronic gazette is simply an official gazette published in electronic form.¹⁰ Where a law requires the publication of a rule, notification or other matter in the Federal Government Gazette, the requirement is met if the rule, notification or other matter is published in an electronic gazette.¹¹

Conclusion

The Evidence (Amendment) Act is a welcome development as it seeks to adapt to global trends and match the pace of technological advancements in the world today. Not only does it mirror developments in the use of information technology, it enhances ease and convenience in commerce.

With the introduction of digital signatures, the issue of admissibility of electronically executed agreements has been put beyond question. The provisions on electronic oath-taking are also notable. If effectively utilised, a deponent will no longer need to be physically present in a court registry in order to depose to an affidavit. For litigants as well as members of the general public who require affidavits for personal or official purposes, this should be a welcome development.

This amendment also caters to the needs of physically disabled persons and generally gives an increased access to justice.

The various changes to the 2011 Act, as introduced by the Amendment, advance the Nigerian legal system and bring certain procedural mechanisms in the system in touch with global realities. The changes introduced by the Act will also go a long way to reduce the reliance by practitioners on

⁵ Section 10 of the Amendment.

⁶ Newly inserted Section 84C(3) of the 2011 Act.

⁷ Newly inserted Section 84D(1) of the 2011 Act.

⁸ Section 5 of the Act.

⁹ Section 8 of the Act.

¹⁰ Section 10 of the Act.

¹¹ Section 9 of the Act.

objections based on 'technicalities'. It is hoped that these changes, if embraced and effectively deployed by all stakeholders, will ultimately lead to quicker dispensation of justice.

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