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TEMPLARS Legislative Watch:

Evidence (Amendment) Act 2023: Nigerian Evidence Law Accommodates Technological Advancements

Introduction

On 12 June 2023, President Bola Ahmed Tinubu signed the Evidence (Amendment) Act 2023 into law (“**the Act**” or “Amendment Act”). The Act does not repeal the Evidence Act 2011 (“**the Principal Act**”) but introduces key innovations to bring the Principal Act in line with global realities and technological advancements in evidence taking.

The Act amends several provisions in the Principal Act, introduces electronic oath taking and electronic gazettes and expands the scope of computer-generated evidence and authentication of electronic records. Under the new regime introduced by the Act, electronic records that are stored, recorded or copied in optical or magnetic media or cloud computing database produced by a computer, are now generally considered to be documents and will be admissible in any judicial proceeding before Nigerian courts, without further proof or production of the original, in so far as the conditions that are stated in the Act are satisfied.

We have in this legislative update, examined the changes introduced to the Evidence (Amendment) Act 2023 and assessed the potential impact that its implementation will have on judicial proceedings before Nigerian courts.

Key changes introduced by the Evidence (Amendment) Act 2023

1. Amendment of the Computer-Generated Evidence provisions:

a. Introduction of “Electronic Records”

In line with global technological advancements, the Act has made provision for electronic record and its admissibility in courtroom proceedings. Under the Act, electronic record is defined to include “*data, record or data generated, image or sound stored, received, or sent in an electronic form or microfilm*”¹. The term “electronic record” has been specifically inserted after the word “document” throughout the section on computer-generated evidence in the Principal Act. Accordingly, by the introduction of electronic record in the Act, documents or electronic record (as defined by the Act) are now directly admissible as evidence where such document or electronic record satisfies the conditions in the Act.

¹ Section 10 of the Act (Amendment of Section 258 of the Principal Act being the Interpretation Section)

b. Admissibility of records in a computer

Electronic records that are printed on paper, stored, recorded or copied in optical or magnetic media or cloud computing database produced by a computer, are now generally considered to be documents and will be admissible in any judicial proceeding before Nigerian courts, without further proof or production of the original, if the conditions that are stated in the Act are satisfied².

c. Introduction of "Digital Signature"

The Act also recognizes the use of digital signatures in court documents or legal processes. Digital Signature is defined under the Act as a signature that is generated electronically and attached to a document that is electronically transmitted in order to verify the contents or authenticity of the document and the identity of the sender³.

d. Reliability and Proof of an Electronic Record/ Digital Signature

In addition to the above, authentication of an electronic record can now be done electronically by affixing the digital signature of the maker on the record⁴. However, such digital signature will only be considered reliable where, the signature creation data can be linked to the signatory and no other person; any alteration to the digital signature after affixing is detectable; and, any alteration to the information made after its authentication by the digital signature is detectable⁵. However, if the digital signature of any person is alleged to have been affixed to an electronic record, the fact that such digital signature is the digital signature of the signatory must be proved⁶. And to prove the authenticity of the digital signature, it is sufficient to show that at the time of affixing the signature, the signature creation data was under the exclusive control of only the signatory⁷.

2. Introduction of Electronic Oath Taking

With respect to Affidavits and other documents that require oath taking⁸, the Act has made provision for electronic oath taking. Affidavits can now be deposed to electronically and this will be helpful in saving judicial time and generally expedite courtroom proceedings⁹. Additionally, the Act allows for affidavits to be deposed to electronically through audio-visual means but only through persons that are authorized to take affidavits, and a copy of the affidavit is to be filed at the court's registry¹⁰.

3. Introduction of Electronic Gazette

The Act further provides for an "Electronic Gazette" which is simply an electronic official gazette of rules, regulations or notifications that have been officially published by the Federal Government¹¹. It is stated in the Act that where it is required for any rule, regulation, or notification to be published in a Federal Government Gazette, it will be sufficient if the Federal Government of Nigeria publishes such rules or regulations in an electronic gazette.

4. Definitions and interpretations

Finally, the Act amends the Principal Act by inserting definitions for audio visual communications, cloud computing, computer, digital signature, electronic gazette, electronic record, electronic signature, magnetic media and optical media.

² Section 3 (1) of the Act (Insertion of Section 84A – 84D in the Principal Act)

³ Section 10 of the Act (Amendment of Section 258 of the Principal Act being the Interpretation Section)

Impact on judicial proceedings before Nigerian courts

The innovations that have been introduced by the Amendment Act certainly brings the judiciary and the Nigerian legal system a step closer to the fast-paced advancement of technology as compared to other legal jurisdictions globally. Accordingly, it is expected not only to ease the plights of the lay man in the typical court setting in Nigeria, but also to influence businesses on both a national and international scale on a going forward basis. This is especially because most individuals will no longer have to travel within or into Nigeria to either simply depose to affidavits or sign court documents.

Furthermore, the recognition of digital signatures and the introduction of the use of audio-visual means in oath taking are welcome innovations that may promulgate more technological advancements even beyond the ambits of the Nigerian courts and legal system, to possibly the regulatory agencies within the country that use court affidavits in their processes. With the use of digital signatures, lawyers can file documents faster and evidence will be presented more effectively. Deployment of these technological innovations in judicial proceedings will also eliminate administrative bottlenecks, help in reducing the workload and stress on judges and annihilate undue delay in justice dispensation.

Overall, considering that the legal and judicial process largely entails various levels of information gathering and communication between stakeholders and practitioners, it is extremely important that technological innovations are taken on board in judicial proceedings to allow for easier information gathering, storage, retrieval and effective data management. The innovations in the Act are indeed strategic and extremely valuable to the Nigerian judicial system, and particularly courtroom proceedings.

Conclusion

With the changes introduced in the Act, it is expected that the boundaries of litigation before Nigerian courts and other quasi-judicial proceedings that involve evidence taking will be significantly improved. It is therefore imperative for dispute resolution practitioners and judicial officers in Nigeria to be abreast with these changes to enhance the efficiency and timeliness of proceedings before Nigerian courts. The innovations in the Act are truly commendable and strategic to the growth of Nigeria's procedural jurisprudence.

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⁴ Section 3(1) of the Act

⁵ Section 3(1) of the Act

⁶ Section 3 (1) of the Act (insertion of 84D (1) to the Principal Act)

⁷ Section 3(1) of the Act

⁸ Such as written depositions of witnesses in judicial proceedings

⁹ Section 5 of the Act (Substitution of section 108 of the Principal Act)

¹⁰ Section 6 & 7 of the Act

¹¹ Section 9 of the Act (substitution of section 255 of the Principal Act)