



# **EVIDENCE (AMENDMENT) ACT 2023 – ALIGNING EVIDENCE TAKING IN JUDICIAL PROCEEDINGS WITH TECHNOLOGICAL ADVANCEMENTS**

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## EVIDENCE (AMENDMENT) ACT 2023 – ALIGNING EVIDENCE TAKING IN JUDICIAL PROCEEDINGS WITH TECHNOLOGICAL ADVANCEMENTS

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### Introduction

The Evidence (Amendment) Act, 2023 (“the **Amendment Act**”) was passed into law to amend the existing Evidence Act, No. 18, 2011. The essence of the amendment is to bring the provisions of the subsisting Evidence Act in accordance with global technological advancements. The notable amendments to the Evidence Act, 2011 includes the expansion of admissible electronic records, proof of digital signature, amendment of the interpretation section with the inclusion of

definitions of terms such as “audio-visual communications”, “cloud computing”, “Electronic Gazette”, Optical Media, Magnet Media, etc. With the burgeoning pace of digitization and its indelible prints on how business is transacted, the Amendment Act, 2023, ensures that electronic records, digital signatures, electronic Affidavits, etc. are recognized and admissible in judicial proceedings in Nigeria.

This Paper highlights the significant innovations brought about by the Amendment Act 2023 and their

implications for judicial proceedings in Nigeria:

**1. Electronic records as admissible evidence:** Section 2 of the Amendment Act amends the Section 84 (2)(a) (c), (4)(a), (b) and (5) (c) of the Evidence Act 2011, by inserting the words "electronic records" after the word "document," and by inserting the words "electronic records" after the word "statement" in subsection (2)(d) of the Evidence Act 2011 along with the new definition of "electronic records" in subsection (2) paragraph (b) (interpretation paragraph) which broadens the classification of the varying forms of electronic records which exist today and can be

"...the Evidence Act 2011 with a new Section 84 (2) (b), bringing significant changes to the admissibility of evidence at trial in relation to computer generated evidence...."

considered as admissible before any court of law<sup>1</sup>.

This amendment serves to align the Evidence Act with the rapid pace of digitization within the last decade and recognizes the various ways in which information is stored and processed, all of which will now be considered as admissible as evidence during trial.

**2. Records on computers:** A notable

change is the replacement of Section 84 (2) (b) of the Evidence Act 2011 with a new Section 84 (2) (b), bringing significant changes to the admissibility of evidence at trial in relation to computer generated evidence. With this change the admissibility of electronic records now

<sup>1</sup> Section 2 Evidence (Amendment) Act 2023



considers as part of a computer system's ordinary course of business the regular feeding of information. It also recognizes that electronic records can be created or modified through direct input, such as data entry, uploading files, or other means of feeding information into the computer<sup>2</sup>.

in electronic form), B (Records in a computer to be admissible), C (Authentication of electronic record) and D (Proof of digital signature), the admissibility of any information contained in an electronic record such as cloud computing or database produced by a computer.



### 3. **Reliability of digital signatures:**

Section 3 of the Amendment Act recognizes by the insertion of section 84 (4) A (Information

It also recognizes the use of digital signature or electronic authentication as a valid means of authentication of electronic records<sup>3</sup>. These

<sup>2</sup> Section 2 Evidence (Amendment) Act 2023

<sup>3</sup> Section 3 (1) Evidence (Amendment) Act 2023

provisions establish the legal recognition of digital signatures as a means of authenticating electronic records. It provides a framework for determining the reliability of digital signatures and electronic authentication techniques, ensuring their acceptance as valid evidence in court.

- 4. Digital signatures:** In line with the general purpose of the amendments to the Evidence Act, 2011, the

amendment introduced under Section 4 of the Amendment Act is to the effect that a digital signature is also admissible towards satisfying any requirement of law as regards execution of a document and avoiding consequences where a document is not signed<sup>4</sup>.

"...under Section 4 of the Amendment Act is to the effect that a digital signature is also admissible towards satisfying any requirement of law..."

Furthermore, similar to the rules regarding verification of electronic signatures, to satisfy the reliability of a digital signature, evidence must be adduced of the existence of a procedure which is necessary for a person to undertake in order to proceed with a transaction. It would also suffice to prove that the security procedure for affixing the digital signature was within the control of the signatory.

#### **5. Introduction of Electronic Depositions:**

Section 5 of the Amendment Act also amends section 108 of the Evidence Act, 2011 by providing the innovative option of deposing to Affidavits electronically before duly authorized persons<sup>5</sup>. This would ensure the decongesting of the Court Registries nationwide. If this practice is coupled with the e-filing procedures

<sup>4</sup> Section 4 Evidence (Amendment) Act 2023

<sup>5</sup> Section 5 Evidence (Amendment) Act 2023

adopted in jurisdictions like Lagos, the judicial system will slowly but surely advance towards a regime where court process can be filed from the comfort of the legal practitioner's office.

and 110 of the Evidence Act now allow affidavits sworn before any judge, officer, or authorized person in Nigeria or any other country whether in person or through audio-visual means, to be used in Court.



This improvement simplifies the process and saves witnesses' time as they no longer need to be physically present at the Court Registry to sign documents.

This means that individuals can now provide their affidavits remotely via audio-visual technology, such as video conferencing, rather than being physically present<sup>6</sup>. This innovative amendment allows for greater flexibility and is in tandem with the amendment

## 6. Audio-visual means of deposing to Affidavits: The amendments to Sections 109

<sup>6</sup> Section 6 & 7 Evidence (Amendment) Act 2023

under section 5 of the Amendment Act.

Another benefit of this amendment is that where a party is resident in a foreign country, it is still possible to take part in court proceedings without the need for physical presence before an authorized officer in Nigeria or even deposing to the affidavit physically before a notary public in the foreign country of residence.

"... Another benefit of this amendment is that where a party is resident in a foreign country, it is still possible to take part in court proceedings without the need for physical presence..."

## 7. Amendments to the jurat requirements:

Considering the potential impact of the innovative amendments, particularly depositions via audio-visual means, the amendment made by Section 8 of the Amendment Act inserts a

requirement in Section 119(2) of the Evidence Act that the audio-visual method used and the date on which it was used must be stated<sup>7</sup>. This amendment was introduced in addition to the other requirements where the deponent is illiterate or blind and must be stated under the accompanying jurat as a requirement for its validity.

## 8. Electronic

**Gazettes:** The amendment by Section 9 of the Amendment Act introduces the concept of the "Electronic Gazette"<sup>8</sup>. This recognition also acknowledges the digital age and the importance of electronic publication, ensuring that the legal requirement for publication is

<sup>7</sup> Section 8 Evidence (Amendment) Act 2023

<sup>8</sup> Section 9 Evidence (Amendment) Act 2023

met through electronic means, in addition to the traditional Federal Government Gazette.

for their admissibility during court trials and proceedings.

**9. Amendments to the Interpretation Section:** The inclusion, in Section 258 of the Evidence Act of definitions for terms like "audio-visual communication," "cloud computing," "computer," "digital signature," and others enhances clarity and understanding within the Amendment Act<sup>9</sup>. This ensures that legal professionals and stakeholders have a shared understanding when dealing with evidence and technology-related matters. Additionally, the amendment establishes a framework for recognizing and accepting electronic evidence in courts. Defining terms like "electronic record" and "digital signature" will certainly provide the basis

## Conclusion

The Evidence (Amendment) Act of 2023 marks a significant milestone in the Nigerian legal landscape by aligning the provisions of the Evidence Act 2011 with global technological advancements, while introducing crucial changes that enhance the accessibility and efficiency of the judicial process. One notable impact of these advancements is the simplification of evidence presentation for lay individuals and lawyers alike. Digital signatures eliminate the need for physical document signing, saving time and effort for all parties involved. This benefits witnesses and affiants who can now provide their statements without disrupting their schedules. The implementation of digital signatures also streamlines the filing of documents and presentation of evidence, reducing the workload

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<sup>9</sup> Section 10 Evidence (Amendment) Act 2023



on legal professionals and preventing unnecessary delays. By embracing these transformative changes, Nigeria's judicial system can set a new standard for efficiency and accessibility.

The potential of technology is harnessed to enhance the pursuit of justice, ensuring a brighter future for the legal landscape and the society it serves. The hope is that all stakeholders, including the legal community and the public, readily embrace these innovations, thereby paving the way for a more streamlined and effective judicial process.

Finally, seminars should be held for Judges and lawyers on how to use various electronic devices to obtain electronic records and evidence. This will ensure smooth presentation of these records as evidence during trial.

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