

EVIDENCE (AMENDMENT) ACT, 2023

EXPLANATORY MEMORANDUM

This Act amends the Evidence Act No. 18, 2011 to bring its provisions in accordance with global technological advancements in evidence taking which shall be applicable to all judicial proceedings in or before courts in Nigeria.

EVIDENCE (AMENDMENT) ACT, 2023

Arrangement of Section

Section:

1. Amendment of Act No. 18, 2011
2. Amendment of section 84
3. Insertion of new sections 84A-84D
4. Amendment of section 93
5. Substitution for section 108
6. Amendment of section 109
7. Amendment of section 110
8. Amendment of section 119
9. Substitution for section 255
10. Amendment of section 258
11. Citation

EVIDENCE (AMENDMENT) ACT, 2023

A Bill

For

An Act to amend the Evidence Act, No. 18, 2011 to bring its provisions in accordance with global technological advancements in evidence taking which shall be applicable to all judicial proceedings in or before courts in Nigeria; and for related matters.

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria —

1. The Evidence Act, No. 18, 2011 (in this Act referred to as "the Principal Act") is amended as set out in this Act. Amendment of Act No. 18, 2011
2. Section 84 of the Principal Act is amended — Amendment of section 84
 - (a) in subsection (2) (a), by inserting after the word "document", the words "or electronic records";
 - (b) in subsection (2) (b), by substituting for paragraph (b), a new paragraph "(b)" —
"(b) that during the period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the activities";
 - (c) in subsection (2) (c), by inserting after the word "document", the words "or electronic records";
 - (d) in subsection (2) (d), by inserting after the word "statement", the words "or electronic records";
 - (e) in subsection (4) (a) and (b), by inserting after the words "document", the words "or electronic record"; and
 - (f) in subsection (5) (c), by inserting after the word "document" the words "or electronic records".

3. (1) Insert after section 84 of the Principal Act, new sections "84A"—"84D" — Insertion of new sections 84A-84D

"Information in electronic form

84A. Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then,

notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is —

- (a) rendered or made available in an electronic form; and
- (b) accessible so as to be usable for a subsequent reference.

Records in a computer to be admissible

84B. Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media or cloud computing or database produced by a computer shall be deemed to also be a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceeding, without further proof or production of the original, as evidence or any contents of the original or of any fact stated in it of which direct evidence would be admissible.

Authentication of electronic record

- 84C.** (1) Subject to the provisions of this section any person may authenticate an electronic record by affixing his digital signature on it.
- (2) A person may authenticate any electronic record by such digital signature or electronic authentication technique which —
- (a) is considered reliable; or
 - (b) may be specified by this Act.
- (3) For the purpose of this subsection (2), any digital signature or electronic authentication technique will be considered reliable if —
- (a) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory or, as the case may be, the authenticator and of no other person;
 - (b) any alteration to the digital signature made after affixing such signature is detectable;
 - (c) any alteration to the information made after its authentication by the digital signature is detectable; and

(d) it fulfils such other conditions which may be prescribed.

Proof of digital signature

84D. (1) Except in the case of a secure digital signature, 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 person must be proved.

(2) A digital signature shall be deemed to be secure if the signature creation data —

(a) at the time of affixing the signature, was under the exclusive control of the signatory and no other person; and

(b) was stored and affixed in such exclusive manner as may be prescribed.”

4. Section 93 of the Principal Act is amended in subsections (1) — (3), by inserting after the words "electronic signature" the words "or digital signature". Amendment of section 93

5. Substitute for section 108 of the Principal Act, a new section "108" — Substitution for section 108

“Affidavit to be filled.

108. (1) Before an affidavit is used in the court for any purpose, the original shall be filed in the court and the original or an office copy shall alone be recognised for any purpose in the court.

(2) Notwithstanding subsection (1), where the affidavit is deposed to electronically before any person duly authorised to take affidavits, a copy shall be filed at the court registry and may be recognised for any purpose in the court.”

6. Section 109 of the Principal Act is amended by inserting after the word, "Nigeria", the words, "whether in person or through audio-visual means." Amendment of section 109

7. Section 110 of the Principal Act is amended by inserting after the word, "Nigeria", the words, "whether in person or through audio-visual means." Amendment of section 110

8. Section 119 (2) of the Principal Act is amended by inserting after paragraph (b), a new paragraph "(ba)" — Amendment of section 119

“(ba) if the affidavit is taken via audio-visual means, then the electronic record shall state which audio-visual method was used and the date on which it was used.”

9. Substitute for section 255 of the Principal Act, a new section "255" —

Substitution for
section 255

"255. (1) The Minister charged with responsibility for justice may make regulations generally prescribing further conditions with respect to admissibility of any class of evidence that may be relevant under this Act.

(2) Where a law provides that a rule, regulation, notification, or any other matter be published in the Federal Government Gazette, the requirement shall be deemed to have been satisfied if the rule, regulation, notification, or any other matter is published in the Federal Government Gazette or Electronic Gazette."

10. Section 258 of the Principal Act is amended by inserting in alphabetical order the interpretations of —

Amendment of
section 258

"audio-visual communication" means being able to see, hear and communicate with another individual in real time, using electronic means;

"cloud computing" means the delivery of different services through the internet, including data storage, servers, databases, networking, and software;

"computer" means any device for storing and processing information, including mobile phones, and any reference to information being derived from it by calculation, comparison, or any other process;

"digital signature" means an electronically generated signature which is attached to an electronically transmitted document to verify its contents and the sender's identity;

"Electronic Gazette" means official Gazette published in the electronic form;

"electronic record" means data, record or data generated, image or sound stored, received, or sent in an electronic form or microfilm;

"electronic signature" means authentication of any electronic record by a subscriber by means of the electronic technique specified in the Second Schedule and includes digital signature;

"magnetic media" includes cassette tapes, hard disks, floppy disks, video, and computer tapes; and

"optical media" means DVD, CD and Blu-ray."

11. This Act may be cited as the Evidence Act (Amendment) Act, 2023.

Citation

I, CERTIFY, IN ACCORDANCE WITH SECTION 2 (1) OF THE ACTS AUTHENTICATION ACT, CAP. A2, LAWS OF THE FEDERATION OF NIGERIA, 2004, THAT THIS IS A TRUE COPY OF THE BILL PASSED BY BOTH HOUSES OF THE NATIONAL ASSEMBLY.



SANMAGAJI TAMBAWAL, fca
CLERK TO THE NATIONAL ASSEMBLY

9th
... DAY OF *June*, 20*23*...

SCHEDULE TO THE EVIDENCE (AMENDMENT) BILL, 2023

SHORT TITLE OF THE BILL	LONG TITLE OF THE BILL	SUMMARY OF THE CONTENTS OF THE BILL	DATE PASSED BY THE SENATE	DATE PASSED BY THE HOUSE OF REPRESENTATIVES
Evidence (Amendment) Bill, 2023	An Act to amend the Evidence Act, No. 18, 2011 to bring its provisions in accordance with global technological advancements in evidence taking which shall be applicable to all judicial proceedings in or before courts in Nigeria; and for related matters.	This Bill amends the Evidence Act, No. 18, 2011 to bring its provisions in accordance with global technological advancements in evidence taking which shall be applicable to all judicial proceedings in or before courts in Nigeria.	17th May, 2023	22nd December, 2023

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004.


SANI MAGAJI TAMBAWAL, fcna
 Clerk to the National Assembly


 ... Day of June, 2023



BOLA AHMED TINUBU, GCFR
 President of the Federal Republic of Nigeria

I ASSENT.


 ... Day of June, 2023