

Nigeria

Aina Blankson LP

Regulating e-commerce

Several jurisdictions have, since the adoption of the Uncitral Model Law on Electronic Commerce in 1996, implemented national legislation to remove barriers to electronic commerce, including the United States through the Uniform Electronic Transactions Act 1999, New Zealand by the Electronic Transactions Act 2002, Australia through the Electronic Transactions Act 1999 with recent amendments in the Electronic Transactions Amendment Act 2011, and Malaysia with the Electronic Commerce

Act 2006. Nigeria, like many of these jurisdictions, now wishes to remove the barriers to electronic commerce through proposed legislation before the Nigerian legislature, the Electronic Commerce (Provision of Legal Recognition) Bill 2011.



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The Bill has as its principal objective the need to ensure that records and documents used in electronic commerce are not considered invalid solely by the reason of the fact that they exist in electronic form.

Like Malaysia's Electronic Commerce Act, the Bill upon passage will apply to commercial transactions conducted through electronic means including those of the federal and state governments in Nigeria. The term "commercial transactions" is defined as any single communication or multiple communications of a commercial nature, whether or not contractual, including any matters relating to supply or exchange of goods and services, agency, investments, finance, banking and insurance.

This definition does not, however, cover all aspects of commercial transactions. For instance, transactions relating to execution of power of attorney, creation of wills and codicils, and creation of trust and negotiable instruments are removed from the scope of the Bill.

The Bill permits formation of contracts through electronic messages, so that a

contract will not be invalidated by the mere fact that it was formed through an electronic medium. From the wording of the Bill, however, it would appear that such contract or agreement existing in electronic form is protected only at the time of formation. It is unlikely that electronic exchanges made after the formation of the contract, such as any notices of defective performance, offers to pay or recognition of debt, would be protected under the Bill.

In recognition of the absence of an electronic signature statute in Nigeria, the Bill provides for the use of electronic signatures in commercial transactions. To be valid, the signature must be capable of being linked to the person purporting to have signed it. In addition, alterations made to the electronic signature or document after execution must be capable of being detected.

Further, the Bill removes the requirement for production of originals in commercial transactions so long as the integrity of the information contained in an electronic message is assured and the records appropriately kept. When implemented, it is hoped that this provision will complement the provisions of section 84 of the Nigerian Evidence Act 2011 which permits admissibility of statements in documents produced by computers.

The Bill does not contain any provisions on the weight of evidence to be attached to records existing only in the form of electronic records.

Similarly the Bill fails to adopt the more comprehensive provision in the Uncitral Model Law with respect to the time an electronic communication will be deemed to have been received, which is as follows: (i) if the addressee has a designated information system for receiving data messages, receipt occurs when the data message enters the designated system; (ii) if sent to a system that is not the designated information system, when the data message is retrieved by the addressee; or (iii) if the addressee has not designated an information system, receipt occurs when the data message enters an information system of the addressee.

Instead, the provisions of the Bill in this regard may occasion delay. A party may be forced to wait indefinitely for an electronic message to come to the knowledge of the addressee where the addressee has not designated a system for retrieving data messages.

The Bill has the potential of becoming extremely useful to persons engaged in

commercial transactions in Nigeria. It is hoped that the important areas of concern will be resolved before the Bill becomes law.

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