To sign or not to sign? EVALUATING THE VALIDITY OF ELECTRONIC SIGNATURES UNDER NIGERIAN LAW PARTICULARLY THOSE AFFIXED THROUGH THE USE OF ELECTRONIC SIGNATURE SOFTWARES

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The coronavirus pandemic and the attendant lockdown of numerous regions and resultantly, reduction of economic activities in many countries around the world has disrupted business operations and transaction mechanisms. Business owners and parties to corporate financing and general commercial transactions ("**Transactions**") have been forced to think of creative ways to mitigate the effect of the lockdown on their operations. A major concern for parties looking to close Transactions during the lockdown and going forward is the delivery of wet ink signature pages of Transaction documents, which is typically a condition precedent to closing Transactions.

Due to the precautions being taken by organisations, the delivery of wet ink signatures have proven difficult. As a result, parties are having to, for the foreseeable future, rely on electronic signatures ("e-Signature") appended to documents and circulated via emails, in lieu of wet ink signatures.

Accordingly, this paper discusses the validity of e-Signatures under Nigerian law particularly those signed through secured e-Signature software such as Docusign, Eversign, SignNow, Adobe DC etc. ("**Secured Platforms**").

What are e-Signatures?

e-Signature means data in electronic form which may be used to identify the signatory in relation to the data message and to indicate the signatory's approval of the information contained in the data message.[1] This also includes signatures generated from secured platforms, which guarantee additional layers of security. Access to these platforms are usually PIN-protected and information with regards to the signatories and any alterations to signature pages can be provided by some of these platforms.

Effect/Validity of e-Signatures Under Nigerian Law

The use of e-Signature is recognized by statute in Nigeria. Under Nigerian law, where a rule of evidence requires a signature or provides for certain consequences if a document is not signed, an e-Signature will suffice.[2] e-Signatures are therefore valid for the purposes of executing transaction documents and accepted as evidence of executed documents in the courts of law.

In a Nigerian court, an e-Signature may be proven in any **manner**, including by showing that a procedure existed by which it is necessary for a person, in order to proceed further with a transaction, to have executed a symbol or security procedure for the purpose of verifying that an electronic record is that of the person.[3]

Whilst there is a dearth of case law on the admissibility and validity of e-Signatures, the courts have iterated the acceptance of electronic or computer generated documents[4] under Nigerian law; provided the conditions for admissibility are duly satisfied[5].

[1] UNCITRAL Model Law on Electronic Signatures (2001)
[2] Section 93 (2) of the Evidence Act 2011
[3] Section 93 (3) of the Evidence Act 2011
[4] Kubor v Dickson (2013) 4 NWLR (pt 1345) 534
[5] See section 84 of the Evidence Act 2011 for the conditions

Regulatory Provisions vis-à-vis the validity of e-Signatures

Unlike foreign jurisdictions such as the United Kingdom which has a more robust e-Signature validity system,[6] there are no principal regulations in Nigeria that sets out the technical or procedural requirements for the validity of e-Signatures.

The Nigerian legal structure is an open one as it is silent on the format, manner and conditions under which the e-Signature can be affixed. Accordingly, e-Signatures in any format, including those affixed using Secured Platforms, are acceptable for Transactions in Nigeria.

Are there exceptions to the Effect/Validity of e-Signatures Under Nigerian Law?

We note that there are exceptions to the validity of e-Signatures in Nigeria. Examples of instances where e-Signatures are not considered valid include:

- Where a document is purported to be executed as a Deed.
- Where the document is a Will.
- Where a Company is required to affix its Seal on the document.
- Where the agreement/corporate resolution document is to be filed before the Probate Registry, Land Registry and Corporate Affairs Commission.

In our experience, most agreements/corporate resolutions required to be filed with regulators in Nigeria are acceptable only when executed in wet ink.

Recommendations

Although the law is currently silent on the submission of documents with e-Signatures to regulatory authorities, it is duly advised that documents which are required to be filed with regulatory bodies be executed in wet ink, given our experience that regulatory bodies only accept documents with wet ink signatures.

Alternatively, some software companies, such as Adobe, provide the opportunity to convert wet ink signatures into electronic format. Whilst this may avoid the hurdle of acceptance by the regulatory authorities, the security of the signature, however, is not guaranteed.

Therefore, where it is permitted to use e-Signatures, parties should endeavour to use Secured Platforms as they offer the additional security and information on signatories which should give comfort to the recipient of the executed document that the risk of fraud is minimised and the signature is true.

Post the pandemic, it is indeed our hope that robust Laws/Regulations, similar to the European eIDAS Regulation (eIDAS), will be put in place to effectively guide the manner of affixing and use of e-Signatures as valid signatures particularly for regulatory filing purposes, in Nigeria.

This article should not be taken as purporting to provide legal advice on any matter. Kindly send an email to enquiries@odujinrinadefulu.com if you need further legal advice in respect of the issues highlighted.

[6] Its principal legislations are the UK Electronic Communication Act and the European eIDAS Regulation.

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