

Legal Alert April 2007 - **Emails' Evidential Value Of In Nigeria**

In this Issue:-

1. Legal Alert for April 2007 ? Electronic Mails & their Evidential Value in Nigeria.
2. Subscribe & Unsubscribe to Legal Alerts.
3. Disclaimer Notice.

Legal Alert ? Electronic Mails & Their Evidential Value In Nigeria.

The advent of the internet and the use of electronic mails (e-mails) have been an invaluable tool to humanity in promoting and advancing business and social life. At the same time, the internet and e-mails are also becoming a medium for various criminal activities deserving of your treatment of this medium with wisdom, some caution and circumspect.

It is a fact that many people negotiate their transactions via the internet without been aware that correspondence or communications exchanged via the internet may not on their own alone be conclusive neither are they by themselves alone, admissible in a Court of Law should a dispute arise in relation to them. This is particularly true of Nigeria where there is no specific legislation on the admission of electronic mails in civil or criminal proceedings and where the rigid rules discouraging the admission of secondary and hearsay evidence have not been relaxed.

This Legal Alert is therefore meant to assist you with background information on how to manage and secure the admission of your electronic mails.

Admission of Documents in Evidence in Nigeria

Under the Nigerian Evidence Act, only the original document, in hard copy form, which is relevant to the subject matter of the dispute and which is pleaded by a party, is admissible in evidence. Where the original document is not available or is lost or is part of a larger document that cannot be conveniently moved to Court, a clear and true authenticated copy that is not forged may be admitted if prior convincing oral evidence is given to show that the original document in fact exist or existed and that it is not available for good reason.

Secondary evidence, of which electronic mails arguably belong to, may also be admitted under Nigerian Law where (i) its existence has already been admitted by the opposite party; (ii) notice to produce the original document is given and the original is still not produced; (iii) the original is a public document; (iv) the original is an entry in a Banker's Book; etc.

Evidential Value of Electronic Mails Globally

The challenge with electronic mails is that in the hands of a criminally minded individual or individuals, they can be forged in part or parts or in the whole document. The delivery/transmission of electronic mails can equally be deliberately manipulated or disrupted by

unauthorised and or unknown persons.

All electronic mails fortunately leave an electronic digital trail that can be audited by experts in this area. The digital trail usually should contain information about the sender of the mail, the service providers and the server(s) from which the mail originates and terminates, the time zones of the sender and the recipient, among other information. In spite of the availability of digital trails for electronic mails, electronic mails are still open to unauthorised interference from criminally minded persons with the necessary skills.

Some countries already have national legislations - on the treatment of electronic mails ? or have adopted the United Nations Electronic Transaction Act (UETA) or the European Union Electronic Signatures Directives or the South African Computer Evidence Act for civil proceedings or the Amended Criminal Procedure Act for criminal proceedings. These various legislations permit the admission of electronic mails in these countries and ascribe to electronic mails the same evidential value that hard copy documents are given.

Conclusiveness of Electronic Mails?

Where however the authenticity of an electronic mail is challenged, most of the above legislations require that the party relying on the electronic mail must provide scientific data which proves beyond all reasonable doubt that the electronic mail was sent and received by the opposite party. The requirement for proof of delivery of electronic mails beyond all reasonable doubt is an onerous burden, which you can mitigate against by you ensuring that hard copies of your agreements are also exchanged with the opposite party in the transaction.

Conclusion

There is no Law on the direct admission of electronic mails in Nigeria. It is doubtful if electronic mails by themselves alone can be tendered and admitted in evidence under Nigerian Laws or rules of Court on procedure without rigorous objections from the opposite party. Such objection would cause further delays and costs to an already very expensive litigation process.

Other corroborative evidence like the subsequent affirming conduct of the parties, exchange of consideration or value, admission of the transaction in another medium, etc may be provided in order for an electronic mail to be admitted in evidence in a Nigerian Court. In spite of this possibility and the onerous standard of proof, we strongly recommend that all your transactions concluded by means of electronic mail should be followed-up immediately by a hard copy agreement or correspondence duplicating and affirming the electronic agreement.

You may also consider an investment in various software programs which claim to secure the transmission of your mails and provide you with electronic evidence that the mail was sent and delivered and or received by the intended recipient. Some of these software programs are on

electronic signatures/digital seals, registered email (RPOST), etc. There is no conclusive evidence however that these softwares' are full-proof from interference of electronic mails by unknown and unauthorised persons.

Ultimately, when doing business in Nigeria, always transcribe your electronic mails to hard copies and always obtain physical acknowledgement on delivery of the hard copy.

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