

[SB. 234]

ELECTRONIC COMMERCE (PROVISION OF LEGAL
RECOGNITION) BILL, 2008

ARRANGEMENT OF SECTIONS

Section:

PART I — PRELIMINARY

1. Application
2. Use not mandatory
3. Reference to other written laws

PART II — LEGAL RECOGNITION OF ELECTRONIC MESSAGE

4. Legal recognition of electronic message
5. Formation and validity of contract

PART III — FULFILMENT OF LEGAL REQUIREMENTS BY ELECTRONIC MEANS

6. Writing
7. Signature
8. Seal
9. Witness
10. Original
11. Retention of document
12. Copy
13. Prescribed form
14. Service and delivery

PART IV — COMMUNICATION OF ELECTRONIC MESSAGE

15. Attribution of electronic message
16. Contents of electronic message
17. Each electronic message to be regarded separately
18. Time of dispatch
19. Time of receipt
20. Place of dispatch

C 4796

21. Place of receipt
22. Acknowledgment of receipt

PART V — MISCELLANEOUS

23. Regulations
24. Interpretation
24. Short Title.

A BILL**FOR**

AN ACT TO PROVIDE FOR LEGAL RECOGNITION OF ELECTRONIC MESSAGES IN COMMERCIAL TRANSACTIONS, THE USE OF THE ELECTRONIC MESSAGES TO FULFILL LEGAL REQUIREMENTS AND TO ENABLE AND FACILITATE COMMERCIAL TRANSACTIONS THROUGH THE USE OF ELECTRONIC MEANS AND OTHER MATTERS CONNECTED THEREWITH

Sponsored by SENATOR GANIYU OLANREWaju SOLOMON

Commence-
ment.

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

PART I — PRELIMINARY

1
2 **1.—(1)** Subject to section 2, this Act shall apply to any commercial
3 transaction conducted through electronic means including commercial
4 Transactions by the Federal and State Governments,

Application.

5 (2) This Act shall not apply to the transactions or documents specified in
6 the Schedule.

7 (3) The Minister may by order amend, vary, delete from or add to the
8 Schedule.

9 **2.—(1)** Nothing in this Act shall make it mandatory for a person to use,
10 provide or accept any electronic message in any commercial transaction unless
11 the person consents to the using, providing or accepting of the electronic message.

Use not
mandatory.

12 (2) A person's consent to use, provide or accept any electronic message
13 in any commercial transaction may be inferred from the person's conduct.

14 **3.** The application of this Act shall be supplemental and without prejudice
15 to any other laws regulating commercial transactions.

Reference to
other written
laws.

PART II — LEGAL RECOGNITION OF ELECTRONIC MESSAGE

16
17 **4.—(1)** Any information shall not be denied legal effect, validity or
18 enforceability on the ground that it is wholly or partly in an electronic form.

Legal
recognition of
electronic
message.

19 (2) Any information shall not be denied legal effect, validity or
20 enforceability on the ground that the information is not contained in the electronic

1 message that gives rise to such legal effect, but is merely referred to in that
2 electronic message, provided that the information being referred to is accessible
3 to the person against whom the referred information might be used.

Formation and
validity of
contract.

4 **5.**—(1) In the formation of a contract, the communication of proposals,
5 acceptance of proposals, and revocation of proposals and acceptances or any
6 related communication may be expressed by an electronic message.

7 (2) A contract shall not be denied legal effect, validity or enforceability
8 on the ground that an electronic message is used in its formation.

9 **PART III — FULFILMENT OF LEGAL REQUIREMENTS BY ELECTRONIC MEANS**

Writing.

10 **6.** Where any law requires information to be in writing, the requirement
11 of the law is fulfilled if the information is contained in an electronic message
12 that is accessible and intelligible so as to be usable for subsequent reference.

Signature.

13 **7.**—(1) Where any law requires a signature of a person on a document,
14 the requirement of the law is fulfilled, if the document is in the form of an
15 electronic message, by an electronic signature which—

16 (a) is attached to or is logically associated with the electronic message;

17 (b) adequately identifies the person and adequately indicates the person's
18 approval of the information to which the signature relates; and

19 (c) is as reliable as is appropriate given the purpose for which, and the
20 circumstances in which, the signature is required.

21 (2) For the purposes of paragraph (1) (c), an electronic signature is as
22 reliable as is appropriate if—

23 (a) the means of creating the electronic signature is linked to and under
24 the control of that person only;

25 (b) any alteration made to the electronic signature after the time of signing
26 is detectable; and

27 (c) any alteration made to that document after the time of signing is
28 detectable.

Seal.

29 **8.**—(1) Where any law requires a seal to be affixed to a document, the
30 requirement of the law is fulfilled, if the document is in the form of an electronic
31 message.

1 (2) Notwithstanding subsection (1), the Minister may, by order in the
2 Gazette, prescribe any other electronic signature that fulfils the requirement of
3 affixing a seal in an electronic message.

4 9. Where any law requires the signature of a witness on a document, the
5 requirement of the law is fulfilled, if the document is in the form of an
6 electronic message, by an electronic signature of the witness that complies
7 with the requirements of section 7.

Witness.

8 10.—(1) Where any law requires any document to be in its original form,
9 the requirement of the law is fulfilled by a document in the form of an electronic
10 message if—

Original.

11 (a) there exists a reliable assurance as to the integrity of the information
12 contained in the electronic message from the time it is first generated in its
13 final form; and

14 (b) the electronic message is accessible and intelligible so as to be usable
15 for subsequent reference.

16 (2) For the purposes of paragraph (1) (a)—

17 (a) the criteria for assessing the integrity of the information shall be
18 whether the information has remained complete and unaltered, apart from
19 the addition of any endorsement or any change which arises in the normal
20 course of communication, storage and display; and

21 (b) the standard of reliability required shall be assessed in the light of the
22 purpose for which the document was generated and in the light of all other
23 relevant circumstances.

24 11. Where any law requires any document to be retained, the requirement
25 of the law is fulfilled by retaining the document in the form of an electronic
26 message if the electronic message—

Retention of document.

27 (a) is retained in the format in which it is generated, sent or received, or
28 in a format that does not materially change the information contained in the
29 electronic message that was originally generated, sent or received;

30 (b) is accessible and intelligible so as to be usable for subsequent reference;
31 and

- 1 (c) identifies the origin and destination of the electronic message and the
2 date and time it is sent or received.
- Copy. 3 12. Where any law requires any document to be retained, served, sent or
4 delivered in more than one copy, the requirement of the law is fulfilled, if the
5 document is in the form of an electronic message, by retention, service, sending
6 or delivery of the document in one copy.
- Prescribed
form. 7 13. Where any law requires any document to be in a prescribed form, the
8 requirement of the law is fulfilled by a document in the form of an electronic
9 message if the electronic message is—
10 (a) formatted in the same or substantially the same way as the prescribed
11 form;
12 (b) accessible and intelligible so as to be usable for subsequent reference;
13 and
14 (c) capable of being retained by the other person.
- Service and
delivery. 15 14.—(1) Where any law requires any document to be served, sent or
16 delivered, the requirement of the law is fulfilled by the service, sending or
17 delivery of the document by an electronic means if an information processing
18 system is in place—
19 (a) to identify the origin, destination, time and date of service, sending or
20 delivery; and
21 (b) for the acknowledgment of receipt, of the document.
- 22 (2) This section does not apply to—
23 (a) any notice of default, notice of demand, notice to show cause, notice
24 of repossession or any similar notices which are required to be served prior
25 to commencing a legal proceeding; and
26 (b) any originating process, pleading, affidavit or other documents which
27 are required to be served pursuant to a legal proceeding.
- 28 PART IV — ATTRIBUTION OF ELECTRONIC MESSAGE
- Attribution of
electronic
message. 29 15.—(1) An electronic message is that of the originator if it is sent by the
30 originator himself.
31 (2) As between the originator and the addressee, an electronic message is

1 deemed to be that of the originator if it is sent by—

2 (a) a person who has the authority to act on behalf of the originator in
3 respect of that electronic message; or

4 (b) an information processing system programmed by, or on behalf of, the
5 originator to operate automatically.

6 (3) As between the originator and the addressee, the addressee is entitled
7 to regard an electronic message as being that of the originator, and to act on
8 that presumption, if—

9 (a) the addressee properly applies an authentication method agreed between
10 the originator and the addressee for ascertaining whether the electronic
11 message was that of the originator; or

12 (b) the electronic message as received by the addressee resulted from the
13 actions of a person whose relationship with the originator or any agent of the
14 originator enabled that person to gain access to an authentication method
15 used by the originator to identify electronic message as its own.

16 (4) Subsection (3) does not apply if—

17 (a) the addressee has received a notice from the originator that the
18 electronic message is not that of the originator and has reasonable time to
19 act accordingly; or

20 (b) the addressee knew or should have known that the electronic message
21 was not that of the originator had he exercised reasonable care or used any
22 authentication method agreed between the originator and the addressee.

23 **16.** Where an addressee receives an electronic message, the addressee is
24 entitled to regard the electronic message as being what the originator intended
25 to send, and to act on that presumption, unless the addressee knew or should
26 have known, had he exercised reasonable care or used any agreed procedure,
27 that the transmission resulted in any error in the electronic message as received.

28 **17.** Where an addressee receives an electronic message, the addressee is
29 entitled to regard each electronic message received as a separate electronic
30 message and to act on that presumption, unless the addressee knew or should
31 have known, had he exercised reasonable care or used any agreed procedure,

Contents of
electronic
message.

Electronic
message to be
regarded
separately.

- 1 that the electronic message was a duplicate.
- Time of
dispatch. 2 18. Unless otherwise agreed between the originator and the addressee, an
3 electronic message is deemed sent when it enters an information processing
4 system outside the control of the originator.
- Time of
receipt. 5 19. Unless otherwise agreed between the originator and the addressee, an
6 electronic message is deemed received—
7 (a) where the addressee has designated an information processing system
8 for the purpose of receiving electronic messages, when the electronic message
9 enters the designated information processing system; or
10 (b) where the addressee has not designated an information processing
11 system for the purpose of receiving electronic messages, when the electronic
12 message comes to the knowledge of the addressee.
- Place of
dispatch. 13 20. Unless otherwise agreed between the originator and the addressee, an
14 electronic message is deemed sent from the originator's place of business,
15 and—
16 (a) where the originator has more than one place of business, from the
17 place of business that has the closest relationship with the transaction or
18 where there is no place of business that has the closest relationship with the
19 transaction, from the originator's principal place of business; or
20 (b) where the originator does not have a place of business, from the
21 originator's ordinary place of residence.
- Place of
receipt. 22 21. Unless otherwise agreed between the originator and the addressee, an
23 electronic message is deemed received at the addressee's place of business,
24 and—
25 (a) where the addressee has more than one place of business, at the place
26 of business that has the closest relationship with the transaction or where
27 there is no place of business that has the closest relationship with the underlying
28 transaction, at the addressee's principal place of business; or
29 (b) where the addressee does not have a place of business, at the addressee's
30 ordinary place of residence.
- Acknowledgment
of receipt. 31 22.—(1) This section applies where, on or before sending an electronic

1 message, or in the electronic message, the originator has requested or agreed
2 with the addressee that receipt of the electronic message is to be acknowledged.

3 (2) Where the originator has requested or agreed with the addressee that
4 receipt of the electronic message is to be acknowledged, the electronic message
5 is treated as though it has never been sent until the acknowledgment is received.

6 (3) Where the originator has not agreed with the addressee that the
7 acknowledgment be given in a particular form or by a particular method, an
8 acknowledgment may be given by—

9 (a) any communication by the addressee, automated or otherwise; or

10 (b) any conduct of the addressee sufficient to indicate to the originator
11 that the electronic message has been received.

12 (4) Where the acknowledgment has not been received by the originator
13 within the time specified or agreed or, if no time has been specified or agreed,
14 within a reasonable time, the originator may—

15 (a) give notice to the addressee stating that no acknowledgment
16 has been received and specifying a reasonable time by which the acknowledgment
17 must be received; and

18 (b) if the acknowledgment is not received within the time specified in
19 paragraph (a), give notice to the addressee to treat the electronic message
20 as though it had never been sent and exercise any other rights he may have.

21 (5) Where the originator receives the addressee's acknowledgment of
22 receipt, it is presumed that the addressee received the related electronic message.

23 (6) Where the received acknowledgment states that the related electronic
24 message fulfils technical requirements, either agreed upon or set forth in
25 applicable standards, it is presumed that those requirements have been fulfilled

26 PART V — MISCELLANEOUS

27 23. The Minister may make such regulations as are necessary or expedient Regulations.
28 for giving full effect to the provisions of this Act.

29 24. In this Act, unless the context otherwise requires— Interpretation.

30 "electronic" means the technology of utilizing electrical, optical,
31 magnetic, electromagnetic, biometric, photonic or other similar technology;

1 "Minister" means the Minister charged with the responsibility for
2 Commerce;

3 "electronic message" means an information generated, sent, received or
4 stored by electronic means;

5 "originator" means a person by whom or on whose behalf, the electronic
6 message is generated or sent;

7 "addressee" means a person who is intended by the originator to receive
8 the electronic message;

9 "information processing system" means an electronic system for
10 generating, sending, receiving, storing or processing the electronic message;

11 "electronic signature" means any letter, character, number, sound or
12 any other symbol or any combination thereof created in an electronic form
13 adopted by a person as a signature; "commercial transactions" means a
14 single communication or multiple communications of a commercial nature,
15 whether contractual or not, which includes any matters relating to the supply
16 or exchange of goods or services, agency, investments, financing, banking
17 and insurance.

Short Title.

18 **25.—(1)** This Act may be cited as the Electronic Commerce (Provision of
19 Legal Recognition) Bill, 2008.

EXPLANATORY MEMORANDUM

This Bill seeks to provide for legal recognition of commercial transactions through the use of Electronic means.

It further seeks to provide for the use of electronic messages to fulfil legal requirements amongst others.