THE ELECTRONIC TRANSACTION BILL, 2015 (SB. 015)

Sponsored by: Senator Hope Uzodinma

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A BILL FOR

AN ACT TO FACILITATE THE USE OF INFORMATION IN ELECTRONIC FORM FOR CONDUCTING TRANSACTIONS IN NIGERIA AND FOR CONNECTED PURPOSES 2015, (SB. 015)

ENACTED by the National Assembly of the Federal Republic as follows:

CLAUSE	PROVISIONS OF THE BILL	JOINT COMMITTEE'S RECOMMENDATIONS	REMARKS
Long tile	A Bill for An Act to Facilitate the Use of Information in Electronic Form for Conducting Transactions in Nigeria and for Connected Purposes, 2015	Retained	
	PART 1 – PRELIMINARY		
1. Objectives of the Act.	(1). This Bill is to provide a legal and regulatory framework for:	Retained	
	(a). conducting transactions using electronic or related media;	Retained	
	(b). the protection of the rights of consumers and other parties in electronic transactions and services;	Retained	
	(c). the protection of personal data; and	Retained	
	(d).facilitating electronic commerce in Nigeria	Retained	

PART 2 – ELECTRONIC RECORDS

2. Application and Scope of Provisions Regarding Electronic Records.	(1) Without prejudice to the provisions of any law or regulation regarding commercial and other transactions or relationship of parties thereto, this Act shall apply to the use of information in the form of electronic or other media.	(1) Without prejudice to the provisions of any law or regulation regarding commercial and other transactions or relationship of parties thereto, this **Bill** shall apply to the use of information in the form of electronic or other media.	
	(2) This Act shall not apply to any law requiring writing or signature in any of the following circumstances:	(2) This **Bill** shall not apply to any law requiring writing or signature in any of the following circumstances:	
	(a) the creation or execution of a will;	Retained	
	(b) the execution of negotiable instruments;	Retained	
	(c) the creation, performance or enforcement of an indenture, declaration of trust or power of attorney with the exception of constructive and resulting trusts;	Retained	
	(d) any contract for the sale or other disposition of immovable property, or any interest in such property;	Retained	
	(e) the conveyance of immovable property or the transfer of any interest in immovable property;	Retained	
	(f) documents of title for movable or immovable property; and	Retained	
	(g) where such application would involve a construction of a	Retained	

	rule of law that is clearly inconsistent with the manifest intent of the lawmaking body or repugnant to the context of the same rule of law, PROVIDED that the mere requirement that information be in writing, written or "printed" shall not by itself be sufficient to establish such intent.		
	(2)Any appropriate regulatory body may prescribe rules, conditions and regulations that shall be complied with in order to meet the provisions of this Act.	**(3)NITDA, in consultation with CBN and the NCC** may prescribe rules, conditions and regulations that shall be complied with in order to meet the provisions of this **Bill.**	Subsections 2-4 renumbered as subsections 3-5
	(3) Notwithstanding anything in the Stamp Duty Act, in relation to this Act, documents whose media are not paper, shall be liable to stamp duties as may be prescribed by the appropriate regulatory body.	Retained as subsection 4	
	(4) Notwithstanding anything contained in the Nigerian Communications Act, or rules made under it, it shall be lawful to transmit and send documents as defined in this Act.	(5) Notwithstanding anything contained in the Nigerian Communications Act, or rules made under it, it shall be lawful to transmit and send documents as defined in this **Bill.**	
3. Validity of Electronic Records.	(1) Information shall not be denied legal effect, validity and enforceability solely on the grounds of: (a) the medium in or on which the information is represented, the technology in which the representation of the information was made in which the information is being communicated;	Retained (a) the medium in or on which the information is represented, the technology in which the representation of the information was made **and** in which the information is being communicated;	

	(b) the Information in the document derives its validity and enforceability by reference to information in another document.	Retained	
	Where the use of a document is required by any law, that requirement shall be satisfied by a document as defined in this Act.	Retained	
	A document shall not be denied admissibility solely on the grounds that the document can neither be confirmed nor denied owing to the medium or technology used	Retained	
	Separate documents on or in the same or separate media and based on the same or separate technologies, even when combined into a single document, for transmission, retention or other purposes, do not lose their distinct nature, if both the integrity of the combined document and the integrity of each separate reconstituted document are ensured by logical structuring elements.	Retained	
4. Documents Required to be in Writing	(1) Where any law requires information to be in writing, that requirement is met if the information is contained in a document as defined by this Act and such information is accessible in a manner useable for subsequent reference.	Retained	
	(2)Subsection (1) applies whether the requirement therein is in the form of an obligation or of this section the law simply provides consequences for the information not being in writing.	Retained	
	(3) The provision of this Section shall not apply,	Retained	
	(a) if the information required by law to be in writing is a	Retained	

	notice of: (i) the cancellation or termination of utility services; (ii) the default, acceleration, possession, foreclosure or eviction or the right secured under a credit agreement, or a rental agreement for a primary residence of an individual; (iii) the cancellation or termination of health insurance or benefit or life insurance benefits excluding annuities; (iv) recall of a product or material failure of a product that risks endangering health or safety; (v) a public notice. (b) To any document required to accompany any transportation or handling of hazardous materials, pesticides or other toxic or dangerous material; (d) To override any rule of law intended for protection of consumers.	Retained Retained Retained Retained Retained Retained **(c)** To override any rule of law intended for protection of consumers	
5. Exclusion of Provisions by parties	Except as otherwise expressly agreed by the parties to an agreement, the provisions of this Bill shall apply in generating, sending, receiving, storing or otherwise processing documents.	Retained	
6. Original Documents	(1) Where an existing law, regulation, rule, practice or procedure, requires information to be presented or retained in its original form, that requirement is met by a	Retained	

	document if:		
	(a) there exists a reliable assurance as to the integrity of the information is preserved from the time when it was first generated in its final form as a document; and	Retained	
	(b) where it is required that information be presented, that information is capable of being displayed to the person to whom it is to be presented.	Retained	
	(2) Subsection (1) applies whether the requirement therein is in the form of an obligation or of this section the law, regulation, rule, practice or procedure simply provides consequences for the information not being presented or retained in its original form.	Retained	
	(3) For the purposes of paragraph (a) of subsection (1) of this section the integrity of information shall be deemed to be reliable assured if:-	Retained	
	(a) If the information has remained complete and unaltered, apart from the addition of any endorsement and any change which arises in the normal course of communication, storage and display; and	Retained	
	(b) In determining whether the information has remained complete and unaltered the purpose for which the information was generated and all the relevant circumstances shall be considered.	Retained	
	(4) Where a document is required to be presented in multiple copies to a single addressee at the same time, that requirement shall be satisfied by the submission of a single document that is capable of being reproduced by that	Retained	

	addressee. (5) This section does not affect immigration and citizenship documents	Retained	
7. Admissibility of Documents	(1)In any legal proceedings, nothing in the application of the rules of evidence shall apply so as to deny the admissibility of any document in evidence: (a) on the sole ground that it is in the form of a document as defined in this Act; or (b) on the grounds that it is not in its paper form. (2) The weight to be attached to the information represented in a document as defined in this Act, shall be determined by the following : (a) the reliability of the manner in which the information was generated, stored or communicated; (b) the reliability of the manner in which the integrity of the information was maintained; (c) the manner in which its originator was identified: and (d) any other relevant factor.	Retained (a) on the sole ground that it is in the form of a document as defined in this **Bill;** or Retained (2) The weight to be attached to the information represented in a document as defined in this **Bill,** shall be determined by the following : Retained Retained Retained Retained **Insert a new subsection 7(3) as follows:** **(3) Without prejudice to section 7(1) of this Bill, this subsection should be read in conjunction with Section 84 (1)-(3) of the Evidence Act 2011.**	This is to take care of any conflict with the Evidence Act 2011.

	Any appropriate regulatory body may by regulation, having due regard to the development of Information Technology, provide that this section or a specified provision of this section, does not apply to a specified requirement, permission, or law. This section does not apply to the practice and procedure of a court or tribunal, where practice and procedure herein includes all matters in relation to which rules of court may be made.	Retained as subsection 4 Retained as subsection 5	
8. Electronic filing	(1) Where any law provides for: (a) the filing of any form, application, or any other document with any office, authority, agency or body corporate; (b) the issue or grant of any license, permit, sanction or approval by whatever name called in a particular manner; (c) the receipt or payment of money in a particular manner, then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of a document as defined in this Act and as may be prescribed by the appropriate regulatory body. (2) The appropriate regulatory body, in pursuance of the objectives of this Act and for the purposes of subsection (1) of this section may by Regulations prescribe: (a) the manner and format in which document or records	Retained Retained Retained Retained Retained Retained	

	shall be filed, created, or issued; (b) the manner or method of payment of any fee or charges for filing, creation or issuance of any document or record under paragraph (a). (c) where the document is to be signed, the type of signature required and the manner and format in which such signature must be attached or associated with the document.	Retained Retained	
9. Electronic Gazette	Where any law provides that any rule, regulation, order, bye-law, notification, or any other matter, shall be published in a Gazette, then, such requirement shall be deemed to have been satisfied if such rule, regulation, order, bye-law, notification or any other matter is published electronically PROVIDED that where any rule, regulation, order, bye-law, notification or any other matter is published in the Gazette or Electronic Gazette, the date of publication shall be deemed to be the date of the Gazette	Retained	
10. Retention of records	(1) Where an existing law, regulation, rule, practice or procedure, requires that certain information, documents or records be retained, that requirement is met by retaining the information in a document as defined in this law, PROVIDED; (a) the information contained therein is accessible so as to be usable for subsequent reference; (b) the document is retained in the format in which it was generated, sent or received, or in a format which can be demonstrated to represent accurately the information	Retained Retained Retained	

	generated, sent or received; and		
	(c)such information, if retained, enables the identification of the origin and destination of the document, the date and time when it was sent or received.	Retained	
	(2) An obligation to retain documents, records or information in accordance with subsection (1) does not extend to any information, the sole purpose of which is to enable the document to be sent or received.	Retained	
	(3) A person may satisfy the requirement referred to in subsection (1) of this section by using the services of any other person, provided that the conditions set forth in paragraphs (a), (b) and (c) of subsection (1) are met.	Retained	
	(4) Nothing in this Bill, shall confer a right upon any person to insist that any Agency or department of the Federal or State Government or any authority or body established by or under any law shall accept, issue, create, retain and preserve any document only in an electronic form or effect any monetary transaction by means of a document.	Retained	

PART 3 – ELECTRONIC SIGNATURE

11. Validity of Electronic Signature	(1) Where the signature of a person is required, that requirement is met in relation to an electronic communication if:	Retained	
	(a) any method is used to identify the person and to indicate the person's approval of the information	Retained	

	communicated; (b) having regard to all the relevant circumstances at the time the method was used, the method was as reliable as was appropriate for the purposes for which the information was communicated; and (c) the person to whom the signature is required to be given consents to that requirement being met by way of the use of the method mentioned in paragraph (a). (2) This section does not affect the operation of any other law that makes provision for or in relation to requiring: (a) an electronic communication to contain an electronic signature however described; (b) an electronic communication to contain a unique identification in an electronic form; and (c) a particular method to be used in relation to an electronic communication to identify the originator of the communication and to indicate the originator's approval of the information communicated (3) This section shall apply to the execution and the use of the electronic signature in closed systems, unless the users of a closed system specify otherwise.	Retained Retained Retained Retained Retained Retained Retained	
12.Administration of Electronic Signature	The administration of electronic signature shall be in accordance with rules, guidelines and standards as may be prescribed by NITDA.	Retained **Insert a new subsection 12(2) as follows:** **(2)In consonance with the Freedom of**	This subsection is to align with the

		Information requirements, NITDA is empowered by this subsection, to review activities, establish, maintain and publish a register of Electronic Signature Certification Services.	tenets of the Freedom of Information Act.
13. Certification Authority	Electronic Signature Certification services shall be provided by a certification authority in accordance with the provisions of the accreditation granted under the electronic signature administration.	Retained	
14. Recognition of Foreign Certification Authority	An electronic signature created or used outside Nigeria shall have the same legal effect in Nigeria as an electronic signature created or used in Nigeria if it satisfies the Nigeria Certification Standards.	Retained	
15. Record Retention by Certification Authority	A certification authority shall maintain for a minimum period as may be prescribed in the certification administration guidelines.	Retained	
	(a) the documentation concerning the organizational, technical and security means used for compliance with the requirements arising from law and from the relevant regulations;	Retained	
	(b) originals of applications for issuance of certificates together with the respective documents proving identity of the applicant;	Retained	
	(c) the documents corresponding to any revoked certificate.	Retained	

16. Liability of Certification Authority	An accredited certification authority shall be liable for any breach of its obligations and shall pay fines as may be specified in the certification administration guidelines.	Retained	
PART 4 – DATA PROTECTION			
17. Scope of Data Protection Provisions	(1) The provisions of this Part shall apply to the processing of personal data wholly or partly by automated means, and to the processing otherwise than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.	Retained	
	(2) The provisions shall not apply to the processing of personal data:	Retained	
	(a) in the course of an activity concerning public safety, defence, national security	Retained	
	(b) concerns the activities of law enforcement, intelligence or prosecuting agencies in areas of criminal law;	Retained	
	(c) by a natural person in the course of personal or domestic activity	Retained	
18. Processing of Personal Data	(1) Personal data shall only be processed if at least one of the following conditions are met:	Retained	
	(a) The data owner has given his consent to the processing.	Retained	
	(b) The processing is necessary for the performance of a contract to which the data owner is a party, or for the taking of steps at the request of the data owner with a view to entering into a contract.	Retained	

	(c) The processing is necessary for compliance with any legal obligation to which the data holder is subject, other than an obligation imposed by contract.	Retained	
	(d) The processing is necessary in order to protect the vital interests of the data owner.	Retained	
	(e) The processing is necessary in the interest of the public and good governance.	Retained	
	(2) Personal data shall be obtained only for specified and lawful purposes, and shall not be further processed in any manner incompatible with those purposes.	Retained	
	(3)Personal data shall be adequate, relevant and not excessive in relation to the purposes for which they are processed.	Retained	
	(4) Personal data shall be provided accurately and, where necessary, kept up to date.	Retained	
	(5) Personal data processed for whatever purpose, shall not be kept for longer than required.	Personal data processed for whatever purpose, shall not be kept for longer than required **for the fulfillment of the purpose for which the data was obtained.**	Amended to avoid ambiguity
	(6) Personal data shall be processed in accordance with the rights of data owners under the laws of the Federal Republic of Nigeria.	Retained	
	(7) Personal data shall not be transferred to a country or territory outside the Federal Republic of Nigeria unless that country or territory provides adequate level of protection for the rights and freedoms of data owners in relation to	Retained	

	the processing of personal data.		
19. Processing of Sensitive Personal Data.	(1) Personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sexual orientation shall not be processed unless: (a) the data owner has given his explicit consent to the processing of those data;	Retained	
	(b) processing is necessary for the purposes of carrying out the obligations and specific rights of the holder in the field of labour law and it is authorized by law and adequate safeguards are provided;	Retained	
	(c) processing is necessary to protect the vital interests of the data owner or of another person where the data owner is physically or legally incapable of giving his consent;	Retained	
	(d) processing is carried out in the course of its legitimate activities with appropriate guarantees by a foundation, association or any other non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed to a third party without the consent of the data owners;	Retained	
	(e) the processing relates to data which are manifestly made public by the data owner or is necessary for the establishment, exercise or defense of legal claims; and	Retained	
	(f) the processing is in the interest of public policy, good governance and national security.	Retained	

	(2).Subsection (1) shall not apply where processing of the data is required for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy.	Retained	
20. Rights of Data Owner.	(1) Subject to the provisions of this Act, an individual shall be entitled to be informed by any data holder where personal data of that individual is the data owner are being processed by or on behalf of that data holder. Such information which may be communicated in an intelligible form shall include:	(1) Subject to the provisions of this **Bill**, an individual shall be entitled to be informed by any data holder where personal data of **which** that individual is the data owner are being processed by or on behalf of that data holder. Such information which may be communicated in an intelligible form shall include:	
	(a) the personal data of which that individual is the data owner,	Retained	
	(b) the purposes for which they are being or are to be processed, and	Retained	
	(c) the recipients or classes of recipients to whom they are or may be disclosed,	Retained	
	(d) any information available to the data holder as to the source of those data.	Retained	
	(2) The right in subsection (1) can only be exercised provided that the data owner has made a request in writing, and paid any required administrative fees.	Deleted	Its against the right to information of data owner to pay fees

21. Rights of Preventing Data Processing	(1) An individual is entitled at any time by notice in writing to a data holder to require the data holder at the end of such period as is reasonable in the circumstances to cease, or not to begin, processing for the purposes of direct marketing, such personal data in respect of which he is the data owner.	Retained	
	(2) If a court of record is satisfied, on the application of any person who has given a notice under subsection (1), that the data holder has failed to comply with the notice, the court of record may order him to take such steps for complying with the notice as the court deems fit.	Retained	
Liability of Data Holder	(3) An individual who suffers damage by reason of any contravention by a data holder of any of the requirements of this Act is entitled to compensation from the data holder for that damage.	(3) An individual who suffers damage by reason of any contravention by a data holder of any of the requirements of this **Bill** is entitled to compensation from the data holder for that damage.	
22. Processing on Behalf of Data Holder	Any person acting under the authority of the holder or of the processor, including the processor himself, who has access to personal data, shall not process such data except on instructions from the holder, unless he is required to do so by law.	Retained	
23. Security of Personal Data	(1) A data holder must implement appropriate technical and organizational measures and exercise reasonable care to protect personal data against accidental or unlawful destruction or accidental loss and against unauthorized alteration, processing, disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.	Retained	

	(2) Having regard to the state of the art and the costs of their implementation, such measures shall ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected.	Retained	
24. Agents of Data Holder	The data holder must, where processing is carried out on his behalf, choose a processor who provides sufficient guarantees in respect of the technical security measures and organizational measures governing the processing to be carried out and must ensure compliance with those measures.	Retained	
25. Guidelines for Data Protection	NITDA may in consultation with any appropriate regulatory body, develop rules and guidelines for Data Protection in Nigeria.	Retained	
	PART 5– ELECTRONIC CONTRACT		
26. Validity of Electronic Contracts.	(1) In the context of contract formation, unless otherwise agreed by the parties, an offer and acceptance may be expressed by means of a document as defined in this Act.	Retained	
	(2) Where a document is used in the formation of a contract, that contract shall not be denied validity or enforceability on the ground that a document was used for that purpose.	Retained	
	(3) A contract may be formed by the interaction of electronic agents, PROVIDED that the interaction results in the agents engaging in operations that confirm or indicate the existence of a contract.	Retained	

	addressee is entitled to regard a document as being that of the originator, and to act on that assumption, if:		
	(a) in order to ascertain whether the document was that of the originator, the addressee properly applied a procedure previously agreed to by the originator for that purpose; and	Retained	
	(b) the document as received by the addressee resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain access to a method used by the originator to identify documents.	Retained	
	(4) Subsection (3) does not apply:	Retained	
	(a) if the addressee has received notice from the originator and had reasonable time to act accordingly;		

	(b) in a case where subsection (3)(b) applies, at any time when the addressee knew or should have known, had he exercised reasonable care or used any agreed procedure, that the document was not that of the originator;	Retained	
	(c) if in all the circumstances of the case, it is unconscionable for the addressee to regard the document as that of the originator or to act on that assumption; and	Retained	
	(d) where a document is that of the originator or is deemed to be that of the originator, or the addressee is entitled to act on that assumption, then, as between the originator and the addressee, the addressee is entitled to regard the document received as being what the originator intended to send, and to act on that assumption, PROVIDED however that the addressee is not so entitled when he knew, or should have known, had he exercised reasonable care or used any agreed procedure, that the transmission resulted in any error in the document as received.	Retained	
	(5) The addressee is entitled to regard each document received as a separate document and to act on that assumption, EXCEPT to the extent that it duplicates another document and the addressee knew or should have known, had he exercised reasonable care or used any agreed procedure, that the document was a duplicate.	Retained	
	(6) Nothing in this section shall affect the law on the formation of contracts.	Retained	
28. Transmission of Documents	(1) Subsections (2) to (4) of this section shall apply where, on or before sending a document, or by means of that	Retained	

	document, the originator has requested or has agreed with the addressee that receipt of the document be acknowledged.		
	(2) Where the originator has not agreed with the addressee that the acknowledgement be given in a particular form or by a particular method, an acknowledgement may be given by:	Retained	
	(a) any communication by the addressee, whether automated or otherwise; or	Retained	
	(b) any conduct of the addressee, sufficient to indicate to the originator that the document has been received.	Retained	
	(3) Where the originator has stated that the delivery of the document is conditional on receipt of the acknowledgement, the document is treated as though it has never been sent, until the acknowledgement is received.	Retained	
	(4) Where the originator has not stated that the delivery of a document is conditional on receipt of the acknowledgement, and the acknowledgement has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed, within a reasonable time, the originator:	Retained	
	(a) may give notice to the addressee stating that no acknowledgement has been received and specifying a reasonable time by which the acknowledgement shall be received; and	Retained	
	(b) if the acknowledgement is not received within the time specified in paragraph (a), may, upon notice to the	Retained	

	addressee, treat the document as though it had never been sent, or exercise any other rights he may have.		
	(5) Where the originator receives the addressee's acknowledgement of receipt, it is presumed, unless contrary evidence is adduced, that the particular document was received by the addressee.	Retained	
	(6) The presumption in subsection (5) above does not imply that the document corresponds to the information received.	Retained	
	(7) Where the received acknowledgement states that the related document met requirements, either agreed upon by the parties or set forth in applicable standards, it is presumed that those requirements have been met.	Retained	
	(8) Except in so far as it relates to the sending or receipt of the document, this section shall apply to the legal consequences that may arise either from that document or from the acknowledgement of its receipt.	Retained	
29. Dispatch of Documents.	(1) Unless otherwise agreed between the originator and the addressee, the dispatch of a document occurs when it enters an information system outside the control of the originator or of the person who sent the document on behalf of the originator.	Retained	
	(2) Unless otherwise agreed between the originator and the addressee, the time of receipt of a document is determined as follows:	Retained	
	(a) if the addressee has designated an information system for the purpose of receiving documents, receipt occurs:	Retained	

	(i) at the time when the document enters the designated information system; and	Retained	
	(ii) if the document is sent to an information system of the addressee that is not the designated information system, at the time when the document is retrieved by the addressee;	Retained	
	(b) if the addressee has not designated an information system, unless otherwise agreed between the originator and the addressee, receipt occurs when the document enters a designated information system.	Retained	
	(3) Subsection (2) applies notwithstanding that the place where the information system is located may be different from the place where the document is deemed to be received under subsection (4).	Retained	
	(4) Unless otherwise agreed between the originator and the addressee, a document is deemed to be dispatched at the principal place of businesses of the originator, and is deemed to be received at the principal place of business of the addressee.	Retained	
	(5) For the purposes of subsection (4): if the originator or the addressee has more than one place of business, the place of business is that which has the closest relationship to the underlying transaction or, where there is no underlying transaction, the principal place of business; if the originator or the addressee does not have a place of business, reference is to be made to his habitual residence.	Retained	
	(6) NITDA or any appropriate regulatory body may by regulation, provide that this section does not apply to a	(6) NITDA or any appropriate regulatory body may by regulation, provide that this section	Regulation cannot supersede the provision of an Act

	specified communication involving documents, or to a specified law.	does not apply to a specified communication involving documents. ~~or to a specified law.~~	
30. Transnational Transactions	Where a contract to which this Act applies is a transnational contract, and a dispute arises out of or in connection with such contract, the following provisions shall to apply:	Retained	
	(1) The dispute shall be decided in accordance with the rule of law designated by the parties as applicable to the substance of the dispute;	Retained	
	(2) Any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to substantive law of that country and not to its conflict of laws rules;	Retained	
	(3) where parties have not designated any law under subsection (1) , the court or arbitral body shall apply the rules of law which it considers to be appropriate given all the circumstances surrounding the dispute;	Retained	
	(4) Where the contract has been concluded with a person who pursues commercial or professional activities in Nigeria or who by any means directs such activities to several countries including Nigeria, such contract shall be subject to Nigerian law;	Retained	
	(5) Where a consumer enters into a contract with a party who is not domiciled in Nigeria but has a branch, agency or other establishment in Nigeria, that party shall, in dispute arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in Nigeria;	Retained	

	(6) In all cases, the court shall rule in accordance with the terms of the contract and shall take into account the usage of the trade applicable to the transaction.	Retained	
	PART 5 – CARRIAGE OF GOODS	**PART 6 – CARRIAGE OF GOODS**	Amended
31. Carriage of Goods.	This Part applies to any action in connection with, or in pursuance of, a contract of carriage of goods, including but not limited to :	Retained	
	(a) (i) furnishing the marks, number, quantity or weight of goods;	Retained	
	(ii) stating or declaring the nature or value of goods;	Retained	
	(iii) issuing a receipt for goods;	Retained	
	(iv) confirming that goods have been loaded;	Retained	
	(b) (i) notifying a person of terms and conditions of the contract;	Retained	
	(ii)giving instructions to a carrier;	Retained	
	(c) (i) claiming delivery of goods;	Retained	
	(ii) authorizing release of goods;	Retained	
	(iii) giving notice of loss of, or damage to, goods;	Retained	
	(d) giving any other notice or statement in connection with the performance of the contract;	Retained	

	(e) undertaking to deliver goods to a named person or a person authorized to claim delivery;	Retained	
	(f) granting, acquiring, renouncing, surrendering, transferring or negotiating rights in goods;	Retained	
	(g) acquiring or transferring rights and obligations under the contract.	Retained	
32. Paper Documents	(1) Subject to Subsection (3), where the law requires that any action referred to in Section 25 be carried out in writing or by using a paper document, that requirement is met, if the action is carried out by using one or more documents.	Deleted	Reference to subsection (3) and cross reference to section 25 is wrong
	(2) Section (1) applies, whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for failing, either to carry out the action in writing or to use a paper document.	Deleted	

33. Information by Vendor	(1) A service provider or vendor shall provide a consumer with sufficient and relevant information to enable informed decisions on the part of that consumer. Such information shall be:	Retained	
	(a) clearly presented in a language the consumer understands;	Retained	
	(b) Accurate;		
	(c) conspicuously displayed at appropriate stages of the consumer's decision making, particularly before the consumer confirms transactions or provides any personal information; and	Retained	
	(d) capable of being saved or printed by the consumer.	Retained	
	(2) A service provider or vendor shall ensure that its marketing practices and information are current, accurate, not deceptive and misleading to the consumer.	Retained	
	(3) A service provider or vendor shall identify itself and provide information about its business policies, and practices stating enquiry, complaint and claim procedures, warranty or other support services related to its goods or services before the commencement of the transaction.	Retained	
	(4) Such information mentioned in subsection (3) shall include:	Retained	
	(a) a description of the goods or services including the quantity to be purchased; the full price, including	Retained	

	(i) the applicable currency; (ii) any shipping charges, taxes, and specific reference to any other charges that the vendor is responsible for collecting; (iii)when the vendor cannot reasonably ascertain the amount of potentially applicable charges including additional taxes, customs fees, custom broker fees and the fact that such charges may apply; and (iv)when the full price cannot be worked out in advance, the method the vendor will use to calculate it, including any recurrent costs and the method used to calculate such costs; (5) A service provider or vendor shall provide the consumer with a record of the transaction within a reasonable time after the transaction has been completed.	Retained Retained Retained Retained Retained	
34. Cancellation of Contract before Processing.	(1) A service provider or vendor shall take reasonable steps to ensure that any consumer who agrees to contract is fully informed of terms of such contract. In particular, the consumer shall be provided with an option to correct or cancel the order before it is accepted or processed. (2) When a service provider or vendor cannot fulfill an obligation to a consumer within the time frame originally specified in the terms of an agreement, the service provider or vendor shall promptly notify the consumer, and provide the option of cancelling the order at no charge, except when doing so would be unreasonable. (3) When a consumer contracts for the ongoing provision of goods or services, and there is a material change in the	Retained Retained Retained	

	goods or services, or contract concerning the goods or services, the service provider or vendor shall:		
	(a) promptly notify the consumer about the change;	Retained	
	(b) provide the consumer with an option to decline further supply of the goods or services, through a simple method of cancellation, without incurring cost or further obligation ; and	Retained	
	(c) provide timely confirmation of any such cancellation.	Retained	
	(4) A service provider or vendor shall not hold the consumer liable for any charges related to a transaction in the following circumstances:	Retained	
	(a) the transaction was not authorized by the consumer;	Retained	
	(b) the goods or services delivered were materially different from those described by the service provider or vendor;	Retained	
	(c) the service provider or vendor failed to provide material information that could affect the decision about the goods or services;	Retained	
	(d) the goods or services were not delivered in the time specified, or under the conditions stated in the original offer; and	Retained	
	(e) there was no option for the consumer to cancel the transaction when the consumer acted in good faith.	Retained	
	PROVIDED that under these circumstances, a service provider or vendor shall refund any payment(s) the	Retained	

	consumer makes, including any reasonable costs the consumer incurred directly in the return of the goods in question to the vendor in good order and within a reasonable time.		
35. Consumers Personal Information	(1) A service provider or vendor shall ensure confidentiality of all personal information collected from the consumer EXCEPT where the consent of the consumer is obtained or where the law demands disclosure.	Retained	
	(2) A service provider or vendor shall make public its privacy policy and make it easily accessible to the consumer prior to the commencement of the contract and whenever personal information is either requested or collected. Information that shall be disclosed as part of the privacy policy includes the following:	Retained	
	(a) the specific kinds and sources of information being collected and maintained in an electronic form, purposes, usage and disclosure;	Retained	
	(b) the choices available to a consumer regarding the collection, use and disclosure of their personal information, how they may exercise and change these choices, and the implications of such choices;	Retained	
	(c) how a consumer may review and correct or remove such information; and	Retained	
	(d) when the service provider or vendor uses computer cookies, how and why they are used and the consequences of consumers' refusal to accept a computer cookie.	Retained	
	(3) A service provider or vendor shall limit its collection, use	Retained	

	and disclosure of personal information to that which a reasonable person would consider appropriate in the circumstances.		
	(4) A service provider or vendor shall not, as a condition for a transaction, require a consumer to consent to the collection, use or disclosure of personal information beyond that necessary to complete the sale.	Retained	
	(5) When a consumer's consent to the collection, use and disclosure of personal information is required, and cannot reasonably be obtained, such consent shall be provided separately in a clearly worded, online opt-in or opt-out process.	Retained	
	(6) When a service provider or vendor transfers a consumer's personal information to third parties, the service provider or vendor shall remain responsible for the protection of that information. Before any such transfer, the service provider or vendor shall ensure, through contractual or other means that the third party complies with the privacy provisions of this Act.	(6) When a service provider or vendor transfers a consumer's personal information to third parties, the service provider or vendor shall remain responsible for the protection of that information. Before any such transfer, the service provider or vendor shall ensure, through contractual or other means that the third party complies with the privacy provisions of this Bill.	
36. Unsolicited Messages.	Any unsolicited electronic messages sent by a service provider or vendor to a consumer shall prominently display a return address and shall clearly provide a simple procedure by which a consumer can notify the sender that he does not wish to receive such messages.	Retained	
PART 8 – LIABILITY OF SERVICE PROVIDERS OR VENDORS			
37. Liability of Service Providers.	(1) A service provider or vendor is not liable for providing access to or for operating facilities for transmitting, routing	Retained	

	or storage of electronic records via an information system under its control, provided the service provider or vendor—		
	(a)does not initiate the transmission;	Retained	
	(b)does not select the addressee;	Retained	
	(c) performs the functions in an automated, technical manner without selection of the electronic record; and	Retained	
	(d) does not modify the electronic record contained in the transmission.	Retained	
	(2) The acts of transmission, routing and of provision of access referred to in subsection (1) include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place;	Retained	
	(a) for the sole purpose of carrying out the transmission in the information system;	Retained	
	(b) in a manner that makes it ordinarily inaccessible to anyone other than the anticipated recipients; and	Retained	
	(c) for a period not longer than is reasonably necessary for the transmission.	Retained	
38. Condition for Liability of Service Providers	A service provider or vendor that transmits an electronic record provided by a recipient of the service via an information system under its control is not liable for the automatic, intermediate and temporary storage of that electronic record, where the purpose of storing such electronic record is to make the onward transmission of the electronic record more efficient to other recipients of the service upon their request, provided the service provider—	Retained	

	(a) does not modify the electronic record;	Retained	
	(b) complies with conditions on access to the electronic record;	Retained	
	(c) complies with rules regarding the updating of the electronic record, specified in a manner widely recognised and used in the industry;	Retained	
	(d) does not interfere with the lawful use of technology, widely recognised and used in the industry, to obtain information on the use of the electronic record; and	Retained	
	(e) removes or disables access to the electronic record it has stored upon receiving a take-down notice.	Retained	
39. Temporary Storage of Records	(1) A service provider or vendor that provides a service that consists of the storage of electronic records provided by a recipient of the service, is not liable for damages arising from the records stored at the request of the recipient of the service, as long as the service provider—	Retained	
	(a) does not have information that the record or activity relating to the record is infringing the rights of a third party;	Retained	
	(b) is not aware of facts or circumstances from which the infringing activity or the infringing nature of the information is apparent; and upon receipt of a take-down notification referred to under section 38, acts expeditiously to remove or to disable access to the information.	Retained	
	(2) The limitations on liability established by this section do	Retained	

	not apply to a service provider unless it has designated an agent to receive notifications of infringement and has provided through its services, including on its web sites in locations accessible to the public, the name, address, phone number and e-mail address of the agent. (3) Subsection (1) does not apply when the recipient of the service is acting under the authority or the control of the service provider.	Retained	
40. Passive Storage of Records	A service provider or vendor is not liable for damages incurred by a person if the service provider refers or links users to a web page containing an infringing electronic record or infringing activity, by using information location tools, including a directory, index, reference, pointer, or hyperlink, where the intermediary or service provider—	Retained	
	(a) does not have information that the record or an activity relating to the electronic record is infringing the rights of that person;	Retained	
	(b) is not aware of facts or circumstances from which the infringing activity or the infringing nature of the electronic record is apparent;	Retained	
	(c) does not receive a financial benefit directly attributable to the infringing activity; and	Retained	
	(d) removes, or disables access to, the reference or link to the electronic record or activity within a reasonable time after being informed that the electronic record or the activity relating to such electronic record, infringes the rights of a person.	Retained	

41. Liability for Links.	(1) For the purposes of this Part, a notification of an offending activity shall be in writing and addressed by the complainant to the service provider or vendor or its designated agent and shall include—	Retained	
	(a) the full names and address of the complainant;	Retained	
	(b) signature of the complainant;	Retained	
	(c)identification of the right that has allegedly been infringed;	Retained	
	(d) identification of the material or activity that is claimed to be the subject of unlawful activity;	Retained	
	(e) the remedial action required to be taken by the intermediary or service provider in respect of the complaint;	Retained	
	(f) telephonic and electronic contact details, if any, of the complainant;	Retained	
	(g) a statement that the complainant is acting in good faith;	Retained	
	(h) a statement by the complainant that the information in the take-down notification is to his or her knowledge true and correct.	Retained	
	(2) Any person who lodges a notification of unlawful activity with a service provider knowing that it materially misrepresents the facts commits an offence and is liable for damages for wrongful take-down as may be prescribed by the appropriate regulatory body.	Retained	
	(3) A Service provider or vendor is not liable for wrongful	Retained	

	take-down in response to a notification.		
42. Processed Records	(1) A Service provider or vendor shall not be required to monitor any record processed by means of its system in order to ascertain whether its processing would constitute or give rise to an infringement. (2) Except as provided by subsection (1), nothing in this section shall relieve a Service provider or vendor from: (a) any obligation to comply with an order or direction of a court or other competent authority; and (b) any contractual obligation.	Retained Retained Retained Retained	
	PART 9 – SUBSIDIARY REGULATION		
43. Authority to make Subsidiary Regulation.	(1) Regulatory bodies may by regulation establish standards or requirements of conduct with which service providers or vendors carrying on business in or from within Nigeria shall comply. (2) A standard established by regulation made under subsection (1) may relate to one or more of the following matters – (a) the types of services that are permitted to be provided by service providers or vendors; (b) the types of customers to whom services may be provided by service providers or vendors; (c) the types of information permitted to be contained in a	(1) **NITDA** may by regulation establish standards or requirements of conduct with which service providers or vendors carrying on business in or from within Nigeria shall comply. Retained Retained Retained Retained	

	record for which services are provided by service providers or vendors;		
	(d) the contractual application of relevant codes of conduct or standards to customers of service providers or vendors;	Retained	
	(e) the information to be disclosed by service providers or vendors including the name, address, e-mail address, contact and registration details;	Retained	
	(f) the actions to be taken in the event of customers of service providers or vendors sending unsolicited records;	Retained	
	(g) the practical application of the relevant laws of the Federal Republic of Nigeria to service providers or vendors;	Retained	
	(h) procedures for dealing with complaints;	Retained	
	(i) procedures for dispute resolution;	Retained	
	(j) type and amount of compensation payable by service providers and vendors in the event of default in service delivery; and	Retained	
	(k) such other matters as the regulatory body may require.	Retained	
	(3) Regulation made under subsection (1) shall provide – (a) that any service provider or vendor who fails to comply with a standard prescribed in the regulations shall in the first instance be given a written warning by the regulatory body	Retained	
	(b) that the regulatory body may direct that person to cease or correct his practices; and,	Retained	

	(c) that if that person fails to do so within such period as may be stated in the direction, the person commits an offence and shall be liable to such penalties as may be prescribed.	Retained	
	(4) If the regulatory body is satisfied that a person, body or organisation represents service providers or vendors carrying on business in the Federal Republic of Nigeria, the regulatory body may, by notice given to the person, body or organisation, request that person, body or organisation to –	Retained	
	(a) develop standards or conduct requirements that apply to service providers or vendors as regards one or more specified matters relating to the provision of services by those service providers or vendors; and	Retained	
	(b) provide details relating to those standards or conduct requirements to the regulatory body within such time as may be specified in the request.	Retained	
	(5) If the regulatory body is satisfied with the standards and code of conduct provided under subsection (4), it shall approve such standards and conduct requirements by notice published and thereupon such standards and conduct requirements shall apply to such service providers or vendors as may be specified in the notice.	Retained	
	(6) If the regulatory body has approved any standard or code of conduct that applies to service providers or vendors, and	Retained	
	(a) It receives notice from a person, body or organisation representing service providers or vendors or proposals to amend the standard or code; or	Retained	
	(b) It no longer considers that the standard or code is	Retained	

	appropriate, it may by notice revoke or amend any existing standard or code		
44. Offences by Corporate Body.	(1) Where an offence under this Act or subsidiary regulation, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence. (2)Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.	(1) Where an offence under this **Bill** or subsidiary regulation, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence **and shall be liable to a fine not below One Million Naira.** Retained	
45. Interpretation.	In this Act: "**closed system**" includes a private network or intranet used and restricted to a specified group of persons; "court" means a court of record; "**data holder**" means, a person who either alone or jointly or in common with other persons determines the purposes for which and the manner in which any personal data is, or is to be, processed; "data **owner**" means an individual who is the subject of personal data;	In this **Bill**: Retained Retained Retained Retained	

	"**document**" includes a representation of Information in a precise formalised language in or on a medium from which it can be read or from which it can be retrieved in a form in which it can be read or perceived; a representation of data on or in a data medium from which it is retrievable, such that it is readable in or on the medium, or on its retrieval;	Retained	
	"**electronic agent**" includes a computer programme or other electronic or automated means configured and enabled by a person that is used to initiate or respond to electronic records or performance in whole or in part without review by an individual;	Retained	
	"**electronic data**" includes all data created, recorded, transmitted or stored in digital or other intangible form by electronic, magnetic, optical or by any other means, including non-paper means, that have capabilities for creation, recording, transmission or storage similar to those means. And except where the context so permits, "electronic" in this Act is used to include non-paper based media that have capabilities for creation, recording, transmission and storage in a manner similar to electronic means;	Retained	
	"**electronic signature**" means data attached to, incorporated in, or logically associated with other data and which is intended by the user to serve as a signature;	"**electronic signature**" means data in **electronic form** attached to, incorporated in, or logically associated with other **electronic** data and which is intended by the user to serve as a signature;	
	"**personal data**" means data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession	Retained	

	of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;		
	"**data**" means information represented in a form in which it can be processed;	Retained	
	"**Information**", includes facts, concepts, events images, sounds, codes, computer programs, software and databases;	Retained	
	"**Information system**" means a system for creating, generating, sending, receiving, storing, displaying or otherwise processing electronic data;	Retained	
	"**regulatory body**" includes any Agency of the Federal Government of Nigeria empowered by law to make regulations;	Retained	
	"**service provider**" includes any person or body corporate that provides services to other persons or entities;	Retained	
	"**subsidiary regulation**" means rules, guidelines or standards issued under this Bill by a regulatory Agency for the purpose of giving effect to any of the provisions of this Act within the mandate of that Agency as may be conferred by this Act or any subsisting law;	"**subsidiary regulation**" means rules, guidelines or standards issued under this Bill by a regulatory Agency for the purpose of giving effect to any of the provisions of this **Bill** within the mandate of that Agency as may be conferred by this **Bill** or any subsisting law;	
	"**transaction**" means the execution of an activity whether or not for consideration and whether or not of a commercial nature. It includes the communication of information to another person or body;	Retained	

	"Computer cookie" means a string of text data used in information systems to remember a user, or visitor to a website in order to indicate an appropriate content, and to differentiate users and maintain data related to the user during the navigation of a website or an information system; **NITDA** means the National Information Technology Development Agency.	Retained Retained **CBN means the Central Bank of Nigeria;** **NCC means the Nigerian Communications Commission;**	
Short Title.	This Act may be cited as the Electronic Transactions Act.	This Bill may be cited as the Electronic Transactions Bill 2015.	

EXPLANATORY MEMORANDUM

This Bill seeks to provide a legal and regulatory framework for conducting transactions using electronic or related media and the protection of the rights of consumers and other parties in electronic transactions and services as well as facilitating electronic commerce in Nigeria