



Stamping Of Electronic Documents Under The Stamp Duties Act (As Amended By The Finance Act): Impact Of The FIRS' Clarification Circular



A. OVERVIEW

On April 29, 2020, the Federal Inland Revenue Service (“**FIRS**”) published a circular titled *Clarification on the Provisions of the Stamp Duties Act* (the “**Information Circular**”) in order to provide implementation guidance to taxpayers on various provisions of the Stamp Duties Act¹ (“**SDA**”) as amended by the Finance Act, 2019 (the “**Finance Act**”). The Finance Act amended the SDA by expanding the scope of instruments liable to stamp duties to include ‘electronic documents’. Consequent upon the amendment, ‘*electronic documents*’ are now liable to stamp duties such that stamp duties are required to be paid within 30 to 40 days after they have been executed or within 30 days after they have been received in Nigeria (if executed outside Nigeria).

expansion of the definition of “*instruments*” to include “*electronic documents*”.



Although the Finance Act expanded the scope of instruments to include ‘electronic documents’, the Finance Act did not define the term ‘*electronic documents*’ and did not clarify the meaning of the phrase ‘*after they have been received in Nigeria*’ with respect to documents executed abroad. Mindful of the aforementioned gaps in the Finance Act, the Information Circular provides some clarity on what will constitute an ‘*electronic document*’ and provides for circumstances under which an electronic document, receipt or instrument executed outside Nigeria will be deemed to be received in Nigeria for stamping purposes.

In light of the above, this article highlights relevant provisions of the SDA, Finance Act and Information Circular with a view to analyzing the impact of the

B. PRE-FINANCE ACT: EXTANT STAMP DUTIES ACT PROVISIONS

Section 22(4) of the SDA requires instruments executed in Nigeria (or relating to anything to be done in Nigeria) to be stamped in order for same to be admissible in evidence before Nigerian courts and to be enforceable by the said courts in civil proceedings. In addition, the SDA provides for timelines within which instruments should be stamped.² With respect to instruments chargeable with *ad valorem* stamp duties or any instrument executed outside Nigeria, Section 23(3) and (4) of the SDA provides that stamping of these instruments should be done within

¹ We note that Section 2, 4, 89, 90 and the Schedule to the Stamp Duties Act, CAP S8, Laws of the Federation of Nigeria (LFN) 2004 have been amended by the Finance Act 2020.

² See Sections 7(3), 23(1), (3) & (4), 23(6) and 47 of the Stamp Duties Act.

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thirty (30) days from the date they were first executed or after they have been received in Nigeria (if executed outside Nigeria).

Prior to the Finance Act, the SDA³ defined instrument to mean 'every written document' and thus only written documents were liable to stamp duties. By the previous provisions of the SDA, written documents could only be stamped with impressed stamps⁶ or adhesive stamps (and where duty was to be denoted by adhesive stamp, postage stamps could be used for the purpose).⁴

The SDA was also silent on the meaning of the phrase 'after they have been received in Nigeria' with respect to chargeable instruments executed abroad.⁵ Mindful that the SDA defined instruments to include "written documents" and given that written documents could only be stamped at that time by impressed stamps, market practitioners took the view that documents were not deemed to be received in Nigeria until physical copies of the documents (executed outside of Nigeria) were brought into Nigeria, at which point it would become possible for stamps to be impressed thereon. Thus, it was the market position that documents delivered via email to transaction parties in Nigeria were not received in Nigeria and therefore, not liable to stamp duties.

C. THE FINANCE ACT

The Finance Act amended certain provisions of the SDA (the "SDA Amendment"). Specifically, the definition of "instrument" under Section 2 of the SDA was amended to include "electronic documents". The SDA Amendment further introduced the concept of electronic stamps and electronic acknowledgements to denote a duty in the definitions of "stamp" and "stamped" as follows:

"stamp" means "an impressed pattern or mark by means of an engraved or inked block die as an adhesive stamp or an **electronic stamp or an electronic acknowledgment for denoting any duty or fee.**"

"stamped" means "with reference to instruments and material, applies to instruments and material impressed with stamps by means of an engraved or inked block die, adhesive stamp affixed thereto **as well as to instruments and material digitally tagged with electronic stamp or notional stamp on an electronic receipt.**"

Although, the Finance Act introduced electronic documents and electronic stamping, it did not: (i) define the term electronic documents; (ii) clarify when electronic documents would be deemed to have been received in Nigeria for stamping purposes; and (iii) provide the mechanics for electronic stamping or acknowledgments.



D. INFORMATION CIRCULAR CLARIFICATIONS

The Information Circular provides a generic list of instruments which are required to be stamped, as follows:

³. Section 2 of the SDA.
⁴. Section 5(1) & (2) of the SDA.
⁵. Nigerian courts had also not defined this phrase
⁶. Section 5(1) & (2) of the SDA

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- I. all written or printed dutiable instruments or receipts;
- II. all electronic dutiable instruments or receipts in the form of electronic media content, electronic documents or files, emails, , Short Message Services (“SMS”), Instant Messages (“IM”), any internet-based messaging service, website or cloud-based platform;
- III. all printed receipts (including Point-Of-Sale receipts, fiscalised device receipts, Automated Teller Machine (ATM) print-outs and other written or printed acknowledgments) ; and
- IV. all electronically generated receipts and any form of electronic acknowledgement of money for dutiable transactions.

In connection with items (ii) and (iv) above, the Information Circular, through illustrations, provides further clarity on what electronic dutiable instruments and electronically generated receipts mean.

With respect to item (ii), the Information Circular illustrates that: (a) an informal lease agreement whose terms and conditions are expressed via email correspondence; and (b) a lease agreement drafted and executed online with no physical document to evidence it, are both electronic dutiable instruments. Based on this illustration, it would mean that any other chargeable instruments such as contract agreements, loan agreements, all assets debentures, etc. that are executed online or whose terms and conditions are expressed in an email, would constitute electronic dutiable instruments.

With respect to item (iv), the Information Circular illustrates that a WhatsApp message acknowledging receipt of money constitutes a receipt for which



stamp duty is payable. Details of the underlying transaction for which the receipt was issued are required to be disclosed to the FIRS for assessment and payment of appropriate stamp duties.

The Information Circular also reiterates the provisions of the Finance Act by providing that in addition to the conventional modes of denoting stamp duties, that is, by affixing adhesive stamps on the instrument and impressing a die on the instrument, other modes include electronic stamping and impressions, electronic tagging, issuance of stamp duties certificate and any form of acknowledgment of payment for stamp duties. In this regard, the FIRS brought the attention of the public to the automated stamp duties collection portal (www.stampduty.gov.ng) where paying citizens, government agencies, institutions, private organisations and banks can log in and pay stamp duties as well as receive an electronic acknowledgment that stamp duties have been paid.⁷

Furthermore, the Information Circular acknowledges that an implication of the Finance Act is that electronic documents executed outside Nigeria but **received** in Nigeria must be presented for stamping within 30 days of being so received. Importantly, the Information Circular provides that an electronic document is deemed '**received**' in Nigeria if:

⁷. For further information on how this works please see: https://stampduty.gov.ng/stamp_duty_process (Last accessed: June 17, 2020)

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- I. it is retrieved or accessed in or from Nigeria;
- II. it (or an electronic copy of it) is stored on a device (including a computer, magnetic storage etc.) and brought into Nigeria; or
- III. it (or an electronic copy of it) is stored on a device or computer in Nigeria.

The illustrations provided in the Information Circular explain that **where electronic records of a transaction consummated outside Nigeria and stored on a server outside Nigeria, are downloaded or viewed in Nigeria, the electronic instrument is said to have been received in Nigeria.** In addition, where an electronic record of the transaction is stored on a computer in Nigeria, the electronic instrument is deemed to have been received in Nigeria.

E. OTHER NOTABLE PROVISIONS IN THE FINANCE ACT AND THE INFORMATION CIRCULAR

The Finance Act also introduces Section 89(3) of the SDA and imposes a one-off stamp duty of N50 on inter-bank and intra-bank deposits or transfers of the sum of N10,000 (Ten Thousand Naira) and above except deposits or transfers between accounts maintained by the same person in the same bank. In addition, the Information Circular reiterates that all banks are to pay stamp duty on particular dutiable transactions, including legal mortgages and loan agreements.⁸

Also, the Information Circular reiterates the provisions of Sections 49 and 50 of the SDA which require any person carrying out any sale or purchase of stock or marketable security to make and execute a contract note which should state the amount of stamp duties

in the charge for brokerage or agency. A failure by any broker or agent to charge the appropriate stamp duty will prevent such broker or agent from claiming any charge for brokerage, commission or agency.

Furthermore, the Information Circular provides that contracts with third party vendors are chargeable ad valorem at a flat rate of 1% (excluding Value Added Tax). All corporate entities, ministries, departments and agencies have an obligation to charge and remit stamp duties on all such contracts.

Lastly, a failure to comply with the SDA (as amended by the Finance Act) will attract prosecution for offences under the SDA, payment of penalties, and inability to admit chargeable but unstamped documents in evidence in civil proceedings.

F. IMPLICATIONS OF THE PROVISIONS OF THE FINANCE ACT AND THE INFORMATION CIRCULAR ON STAMP DUTY PAYMENTS

Based on the foregoing, it would appear that an electronic record of any dutiable transaction is effectively an electronic document for which stamp duties must be assessed and paid. This includes agreements concluded via email and over messaging apps such as WhatsApp or IM, as well as contracts executed through e-platforms like DocuSign or Adobe Sign. In addition, with respect to electronic instruments executed abroad, same would be



⁸ This is in line with the provisions of Section 23(3) of the SDA that requires the obligee or covenantee to pay stamp duties on instruments of any kind.

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deemed to have been received into Nigeria when they are downloaded, viewed, or stored on a computer in Nigeria. From our perspective, this means that once a transaction is consummated and electronic copies of the transaction documents are downloaded, viewed or stored on a computer in Nigeria (the “**Receipt Actions**”), the documents must be assessed and stamped within applicable timelines under the SDA from when such Receipt Action is taken. Undoubtedly, this would have implications on any advice, based on previous market practice, that documents be retained offshore to avoid the payment of stamp duties.

Notwithstanding, from a practical perspective, it remains unclear how the Stamp Duties Office (“**SDO**”) of the FIRS intends to ascertain when an electronic document is received into Nigeria for the purpose of triggering the payment of stamp duties and enforcing the payment of such duties.

The FIRS will also need to clarify whether all printed receipts, regardless of whether or not they are in respect of dutiable transactions, will need to be stamped. We do not believe that the intention is to impose stamp duties in respect of non-chargeable instruments or transactions.

This update is for general information purposes only and does not constitute legal advice. If you have any questions or require any assistance or clarification on how these measures could apply to you or your business, please contact the following persons:⁹

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