

DRAFT FRAMEWORK ON ALTERNATIVE DISPUTE RESOLUTION FOR THE ICT SECTOR 2020

The clamour for a specialist dispute resolution framework for Information and Communications Technology (ICT) related disputes is not new. Due to the technicalities of ICT contracts, time sensitivities and confidential proprietary properties, litigation as the traditional means of dispute resolution, is not ideal for resolving ICT disputes.

Recently, the National Information Technology Development Agency (“NITDA”), Nigeria’s primary data protection agency and driver of information technology related policies, released a Draft Framework on Alternative Dispute Resolution for the information communications technology (ICT) Sector 2020 (the “**Draft Framework**”/ “**Framework**”).

The Draft Framework is primarily aimed at creating a more commercial friendly out-of-court dispute management and resolution alternative to litigation. The Framework identifies the need for a faster, seamless and more tech-friendly way to resolve technology disputes without necessarily compromising on the commercial objectives of the parties.

DRAFT FRAMEWORK ON ALTERNATIVE DISPUTE RESOLUTION FOR THE ICT SECTOR

The Draft Framework seeks to establish an alternative dispute resolution institutional framework that will be available to contracting parties across the Nigerian ICT sector. Particularly, it recognizes the importance of having an effective dispute resolution mechanism for ICT contracts and projects that enables the resolution of ICT disputes in a swift and efficient manner whilst also promoting

innovation and the growth of tech business in Nigeria.

In this regard, Section 1.2 of the Framework highlights the importance of out-of-court settlement of ICT disputes given that it essentially serves both the interest of the consumer and the service provider.

The scope of the Draft Framework comprises all ICT related conflicts whether organizational, technical, commercial, or legal and the proposed methodology for resolution of disputes under the Framework includes mediation, arbitration, expert report and ICT conflict prevention.

Legal Basis of the Framework

The Draft Framework is based on NITDA’s mandate under the NITDA Act 2007 to introduce appropriate regulatory policies and incentives to encourage private sector investment in the ICT sector.

Although the Draft Framework has been issued by NITDA in its statutory capacity as a regulator, it should be noted that its proposed applicability is entirely contractual, as parties desirous of resolving their technology disputes under the Framework, must provide for arbitration under NITDA in the relevant ICT contract and take steps to initiate the process through the submission of a complaint in line with an established complaint procedure.

ICT Dispute Resolution Body

Section 3.1 seeks to establish a specialist body (the “**Institution**”) that would serve as the dispute resolution centre where all technology disputes will be resolved.

The Institution shall comprise of ICT conflict management specialists with various specialties including arbitrators, lawyers and other professionals.

The multidisciplinary approach aims to enable the appropriate allocation of disputes to subject matter experts in a manner that guarantees that the interest of parties who have submitted themselves to ADR under the Framework is protected.

The Online Dispute Resolution Platform

Laudably, the Framework also establishes an online dispute resolution platform (the “**ODRP**”) that enables the initiation and resolution of dispute via an online platform as opposed to conventional physical centres of dispute resolution.

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The ODRP will enable the filing of disputes, neutral selection for arbitrators, online discussions, and the delivery of binding settlements under a safe and secure web environment that will guarantee the security of contractual data.

Cost Implications

The Draft Framework identifies the need for a swift and cost-effective means of dispute resolution albeit without specifying the mechanism for achieving such low-cost guarantee. It is hoped that this issue will subsequently be addressed in a more definitive manner in order to achieve NITDA’s objective of being a more affordable means of dispute resolution.

CONCLUSION

A prevalent challenge with alternative dispute resolution is enforcement. Arbitration awards or expert determinations often find their way back to the courts for enforcement and this could be likened to a one step forward, two steps back scenario. However, given that the dispute resolution centre and the entire ADR mechanism will be warehoused within NITDA, it is expected that as the industry regulator, the enforcement of decisions arising from this process should be less problematic.

One thing is certain, the proposed Framework is a welcome development. Given that it is still in draft form, it is expected that the NITDA will continue to engage relevant stakeholders with the aim of improving on the quality of the Draft Framework before it is formally adopted.



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