

Will requirement for use of NIN in arbitration proceedings affect validity of arbitration?

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Introduction

Concerns

Comment

Introduction

In October 2017 the National Identity Management Commission – which was established under the National Identity Management Commission Act 2007 – issued the Mandatory Use of the National Identification Number Regulations 2017. The act contains a list of transactions that require the use of a national identity number (NIN) and empowers the commission to make additions to the list. By Section 1(1)(u) of the regulations, "the filing and registration of criminal and civil actions in courts or other arbitration processes" is now included in the list of transactions that require an NIN.

Concerns

The commission is empowered to audit the state of affairs and operations of transactions or services carried out by applicable persons and entities to ensure compliance with the regulations.

Section 5 of the regulations states that in exercising its enforcement and compliance powers, the commission can demand evidence of compliance from persons, public and private institutions and organisations. In respect of arbitration proceedings, it is unclear how the commission will implement its regulatory oversight in order to ensure compliance, as arbitration is a private means of dispute resolution and disclosures will affect the confidentiality of the process.

The Arbitration and Conciliation Act provides that a party to an arbitration proceeding may be represented by a legal practitioner of its choice (recent case law defined a 'legal practitioner' as a person called to the Nigerian Bar). This has resulted in recent challenges to awards on the ground that a notice of arbitration must be signed by an individual and not in the name of a firm, which the courts have successfully upheld. While there is a concern that these new regulations will form the basis of a new challenge to the validity of arbitration proceedings on the ground that a legal practitioner representing a party did not have an NIN, it is doubtful whether such a challenge will be successful, as the regulations require mandatory compliance only by the government agencies listed in the First Schedule to the act.

It is also unclear whether a party can successfully challenge an arbitrator, a party or a party representative on the ground that an NIN was requested and not provided if the requirement for an NIN does not form part of the arbitration agreement.

Further, arbitral proceedings are regulated by the arbitration rules agreed by the parties. It is unlikely that regard would be had to regulations made under the National Identity Management Commission Act when commencing an arbitration, as the parties are bound only by the agreed rules.

With respect to litigation, the interpretation provision of the regulations defines 'court' to mean the Federal High Court. It therefore follows that the requirement of using an NIN for commencing an action in court applies only to the Federal High Court and cannot be extended to state high courts or

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magistrate courts. As arbitration is not equivalent to court proceedings, it follows that the subtle attempt to equate them in Section 1(1)(u) of the regulations with the wording "in courts or other arbitration processes" cannot be correct.

Comment

The federal government's requirement that citizens provide an NIN is legitimate, as this practice applies in several other countries. The requirement that an NIN be provided for the 43 items and transactions listed in the regulations will assist the federal government in data collection and record keeping, as well as in resolving identity issues and enhancing governance and service delivery in Nigeria.

However, how the NIN requirement will be enforced in private transactions and the effects of non-compliance on such transactions remain unclear. For instance, parties to an arbitration can dispense with the NIN if it does not form part of their arbitration agreement and it is doubtful whether this will have a nullifying effect on the arbitration award. This is because although the act states that a breach of the regulations is an offence punishable by a fine, it does not state that such a breach will invalidate any transaction affected by the breach.

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