



EXPERTISE:  
COMMITMENT:  
SOLUTIONS:

## WILL THE MANDATORY REQUIREMENT FOR THE USE OF THE NATIONAL IDENTIFICATION NUMBER BY PARTIES IN ARBITRATION PROCEEDINGS HAVE ANY EFFECT ON THE VALIDITY OF THE ARBITRATION?

### Introduction

In October 2017, Nigeria's National Identity Management Commission (the Commission) which was established under the National Identity Management Commission Act 2007 (the Act) issued regulations titled "Mandatory Use of the National Identification Number Regulations, 2017" (the Regulations). 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. Section 1[1] [u] of the 2017 Regulations includes among transactions that now require a NIN *"the filing and registration of criminal and civil actions in courts or other arbitration processes;"*

The Commission is empowered to conduct an audit of the state of affairs and operations of transactions or services carried out by applicable persons/entities to ensure compliance with the Regulations.

Section 5 of the Regulations states that in exercising its powers of enforcement and compliance, the Commission shall have power to demand for evidence of compliance from persons, public or private institutions and organizations. In respect of arbitration proceedings, it is unclear how the Commission will implement its regulatory oversight in order to ensure compliance since arbitration is a private means of dispute resolution and disclosures will impact upon the confidentiality of the process.

Because the Nigerian Arbitration Act provides that a party to an arbitration proceeding may be represented by a 'legal practitioner' of its choice, recent case law defining 'legal practitioner' as a person called to the Nigerian bar 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 the firm, being successfully upheld by the courts. While there is a concern that these new regulations will spawn a new basis of challenge to the validity of arbitration proceedings on the ground that a legal practitioner representing a party did not

have a NIN, it is doubtful whether such a challenge will be successful as the Regulations only require mandatory compliance 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 a NIN was requested for and not provided if the requirement for a NIN does not form part of the arbitration agreement.

Furthermore, arbitral proceedings are regulated by the arbitration rules agreed upon by the parties. It is unlikely that in commencing an arbitration, regard would be had to Regulations made under the National Identity Management Commission Act, 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 follows therefore that the requirement of using a NIN for commencing an action in court applies only to the Federal High Court and cannot be extended to state high courts or a magistrate court. As arbitration is in no wise equivalent to court proceedings, it follows that the Regulations' subtle attempt in Section 1[1] [u] to equate them by using the words, 'in courts or other arbitration processes, cannot be correct.

## Conclusion

It is not absurd for the federal government of Nigeria to require a NIN from its citizens as this practice applies in several countries. The requirement for NIN for the 43 items and transactions listed in the Regulations will go a long way in assisting the Federal Government in data collection and record keeping, as well as in solving identity issues and enhance governance and service delivery in Nigeria.

However, it remains unclear how the requirement for a NIN will be enforced in private transactions and what the effect of non-compliance will be on such transactions. 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 if that will have a nullifying effect on the arbitration award. This is because although the Act states that the breach of the Regulations is an offence punishable by a fine, it does not state that such breach will invalidate any transaction affected by the breach.