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## The Draft Framework on Alternative Dispute Resolution for the ICT Sector: Highlights and Issues Arising

Given the increase in the use of technology and the internet by individuals and businesses over the last decade, it is inevitable that disputes in respect of the usage of internet and Information Communication Technology (ICT) would arise. Considering also that ICT is quite technical and complex, it has become particularly important to create a robust dispute resolution framework in which qualified experts are involved in the settlement of ICT related disputes.

Currently, Nigeria's judicial system is ill-equipped to resolve these disputes because the court system is slow, expensive while judges and lawyers lack the requisite expertise in the field of ICT. In what appears to be a solution to this problem, the National Information Technology Development Agency (NITDA) recently issued the draft framework on the Alternative Dispute Resolution for the ICT Sector ("ADR Framework") for feedback from the public.

The ADR Framework essentially sets out a blueprint for the implementation of an alternative dispute resolution system for the ICT sector in a manner that enables the speedy resolution of ICT related disputes. Conflicts which may be submitted through the ADR Framework include:

1. ICT projects that are not making headway.
2. professional errors by ICT experts.
3. an organizational change process that has gotten out of hand.
4. software piracy and violation of software rights.
5. determining the consequence and price of extended or cancelled work.
6. mistaken advice from consultants.

The ADR Framework can be invoked only in respect of contracts where parties have expressly agreed to submit themselves to the ADR Framework.

### Highlights of the ADR Framework

#### 1. Mechanisms for Dispute Resolution under the ADR Framework

The Alternative Dispute Resolution (ADR) mechanisms provided under the ADR Framework are Mediation,

Arbitration, Expert Report and ICT Conflict Prevention.

Expert Report forms part of the Arbitration process under the ADR Framework. It is a report from an ICT specialist that gives answers to questions posed by arbitrators or by the parties to a dispute. The Expert Report is used when the parties want a clearer picture of how experts in the ICT field view their conflict before deciding if legal action is necessary.

The ADR Framework defines "ICT Conflict Prevention" as a body that ensures that conflicts in an agreement or ongoing ICT projects are identified at an early stage, resolved and prevented from escalating further.

#### 2. Scope and Applicability of the ADR Framework

The ADR Framework would cover all technical, commercial or legal conflicts and apply to disputes on contractual obligations stemming from hardware and software transactions, consultancy, telecommunication the internet, online sales and service contracts between consumers within Nigeria and a trade established in Nigeria using the internet services.

#### 3. Establishment of an Alternative Dispute Resolution Body for Resolution of ICT Disputes

The ADR Framework provides that a specialised alternative dispute resolution body would be established. This body will comprise of experts in the field of ICT conflict management who will offer and utilise ADR options for the settlement of ICT related disputes.

#### 4. Establishment of an Online Dispute Resolution Platform

One of the more interesting and novel parts of the ADR Framework is the establishment of an Online Dispute Resolution ("ODR") platform. The ODR platform will facilitate the resolution of disputes by allowing the filling of forms online, the neutral appointment of arbitrators, online discussions, and the rendering of binding settlements. It is expected that the ODR will foster the growth of cross-border transactions.

#### 5. Data Protection, Confidentiality and Security

The Nigeria Data Protection Regulation 2019 (NDPR) will also apply with regard to the collection and processing of data under the ADR Framework.

**The existing framework for dispute resolution in Nigeria already incorporates ADR as a means of resolving ICT-related disputes. These include the Lagos Multi-Door Courthouse, and other independent arbitration and mediation bodies. These ADR organizations have frameworks in place for the resolution of all kinds of specialized disputes (including ICT-related disputes). Therefore, it can be argued that there is no need to create a parallel framework specially for ICT disputes under the NITDA when the same can be resolved by the various ADR bodies already in existence.**

### Areas of Concern

The efforts of NITDA in drafting and publishing the draft ADR Framework is quite commendable. However, there are some areas of concern which should be addressed before the issuance of the final ADR Framework. These issues are listed below.

#### 1. Regulatory over-reach beyond the scope of enabling statute

The NITDA has purported to issue the ADR Framework pursuant to Section 6(a), (l), and (m) of the

NITDA Act. However, the NITDA Act does not confer the NITDA with either the power to resolve disputes between parties to an ICT related contract or the power to setup a body/framework for that purpose. The only provisions of the NITDA Act which enable the NITDA to resolve disputes are Section 6(m) of the NITDA Act and the Second Schedule of the NITDA Act which empowers the NITDA to determine through arbitration, "any dispute concerning the interpretation of the memorandum and articles of association of the organization". The "organisation" referred to in this context is "any organization incorporated under the laws of Nigeria to manage and administer Nigeria's country code top level domain (.ng)".

Perhaps, in recognition of this statutory limitation, the draft ADR Framework provides that the ADR Framework will not apply except parties to an agreement expressly submit themselves to its provisions. Therefore, the efficacy of the ADR Framework will not be derived from the NITDA Act itself, but from the consent of the disputing parties who must have incorporated the ADR Framework into their agreement as the means for resolving disputes.

#### 2. Duplication

The existing framework for dispute resolution in Nigeria already incorporates ADR as a means of resolving ICT-related disputes. These include the Lagos Multi-Door Courthouse, and other independent arbitration and mediation bodies. These ADR organizations have frameworks in place for the resolution of all kinds of specialized disputes (including ICT-related disputes). Therefore, it can be argued that there is no need to create a parallel framework specially for ICT disputes under the NITDA when the same can be resolved by the various ADR bodies already in existence. There is also no special innovation which will make the ADR Framework more attractive to industry players compared to existing frameworks.

These matters are worth considering, because without addressing them, the objectives of the ADR Framework may be defeated.