Enforcement of Foreign Judgments 2017

Contributing editor
Patrick Doris
Gibson, Dunn & Crutcher LLP

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<table>
<thead>
<tr>
<th>Country</th>
<th>Page</th>
<th>Authors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>5</td>
<td>Colin Loveday and Sheena McKie</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Clayton Utz</td>
</tr>
<tr>
<td>Austria</td>
<td>11</td>
<td>Katharina Kitzberger and Stefan Weber</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Weber &amp; Co Rechtsanwälte GmbH</td>
</tr>
<tr>
<td>Bermuda</td>
<td>16</td>
<td>Delroy B Duncan</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Trott &amp; Duncan Limited</td>
</tr>
<tr>
<td>Brazil</td>
<td>20</td>
<td>Gilberto Giusti</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Pinheiro Neto Advogados</td>
</tr>
<tr>
<td>Cayman Islands</td>
<td>24</td>
<td>James Corbett QC, Jalil Asif QC and Pamella Mitchell</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Kobre &amp; Kim</td>
</tr>
<tr>
<td>Chile</td>
<td>28</td>
<td>Francisco Aninat and Jorge Bofill</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bofill Escobar Abogados</td>
</tr>
<tr>
<td>China</td>
<td>33</td>
<td>Zhu Huafang and Shi Jayun</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Tiantong &amp; Partners</td>
</tr>
<tr>
<td>Cyprus</td>
<td>38</td>
<td>George Mountis and Yiannis Karamanolis</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Dr K Chrysostomides &amp; Co LLC</td>
</tr>
<tr>
<td>Ecuador</td>
<td>44</td>
<td>Rodrigo Jijón-Letort, Juan Manuel Marchán, Edgar Ulloa</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Balladares and Javier Jaramillo Troya</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Perez Bustamante &amp; Ponce</td>
</tr>
<tr>
<td>France</td>
<td>48</td>
<td>Anke Sprengel</td>
</tr>
<tr>
<td></td>
<td></td>
<td>EBA Endrös-Baum Associés</td>
</tr>
<tr>
<td>Germany</td>
<td>55</td>
<td>Christoph Wagner</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Heuking Kühn Lüer Wojtek</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>61</td>
<td>Randall Arthur, Gabrielle Liu and Calvin Koo</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Kobre &amp; Kim LLP</td>
</tr>
<tr>
<td>India</td>
<td>66</td>
<td>Namita Chadha and Sakshi Arora</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Chadha &amp; Co</td>
</tr>
<tr>
<td>Indonesia</td>
<td>70</td>
<td>Pheo M Hutabarat, Asido M Panjaitan and Yuris Hakim</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hutabarat Halim &amp; Rekan</td>
</tr>
<tr>
<td>Ireland</td>
<td>75</td>
<td>Julie Murphy-O’Connor and Gearoid Carey</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Matheson</td>
</tr>
<tr>
<td>Japan</td>
<td>81</td>
<td>Atsushi Izumi and Akira Karasawa</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Iwata Godo</td>
</tr>
<tr>
<td>Korea</td>
<td>85</td>
<td>Woo Young Choi, Sang Bong Lee and Ji Yun Seok</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hwang Mok Park PC</td>
</tr>
<tr>
<td>Mexico</td>
<td>90</td>
<td>Fernando Pérez Correa Camarena</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Solórzano, Carvajal, González y Pérez Correa, SC</td>
</tr>
<tr>
<td>Nigeria</td>
<td>94</td>
<td>Etigwe Uwa SAN, Adeyinka Aderemi and Chinasa Unaegbunam</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Streamsowers &amp; Köhn</td>
</tr>
<tr>
<td>Switzerland</td>
<td>99</td>
<td>Dieter A Hofmann and Oliver M Kunz</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Walder Wyss Ltd</td>
</tr>
<tr>
<td>Turkey</td>
<td>104</td>
<td>Pelin Baysal and Beril Yaya Sapan</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Gün + Partners</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>109</td>
<td>Patrick Doris, Rebecca Sambrook and Tom Halsey</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Gibson, Dunn &amp; Crutcher LLP</td>
</tr>
<tr>
<td>United States</td>
<td>118</td>
<td>Scott A Edelman, Perlette Michèle Jura, Miguel Loza Jr and Nathaniel L Bach</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Gibson, Dunn &amp; Crutcher LLP</td>
</tr>
<tr>
<td>Venezuela</td>
<td>123</td>
<td>Carlos Dominguez-Hernandez</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hoet Pelaez Castillo &amp; Duque</td>
</tr>
</tbody>
</table>
Nigeria

Etigwe Uwa SAN, Adeyinka Aderemi and Chinasa Unaegbunam
Streamowers & Köhn

1 Treaties
Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country’s approach to entering into these treaties and what if any amendments or reservations has your country made to such treaties?

At present, Nigeria is not a signatory to any multilateral or bilateral treaties for the reciprocal recognition and enforcement of foreign judgments. Foreign judgments are enforced in Nigeria by virtue of the Foreign Judgments (Reciprocal Enforcement) Act, Chapter F35, Laws of the Federation of Nigeria 2004 (the 2004 Act) and the Reciprocal Enforcement of Judgments Act 1922, Chapter 175, Laws of the Federation and Lagos 1958 (the 1958 Act). Section 5 under Part 1 of the 2004 Act (which contains provisions for the registration of foreign judgments) provides that where the Minister of Justice of the Federation of Nigeria is satisfied that in the event of the benefits conferred by Part 1 of the 2004 Act being extended to judgments given in the superior courts of any foreign country, substantial reciprocity of treatment will be assured with regard to the enforcement in that foreign country of judgments made by a superior court in Nigeria. The Minister may, by order, direct the extension of Part 1 to that foreign country. No such order has been made by the Minister of Justice to date. Section 10(a) of the 2004 Act allows the enforcement of foreign judgments of countries to which Part 1 of the 2004 Act has not been extended, provided that such applications for enforcement are made within 12 months after the foreign judgment or within such other time as the court may permit.

Certain foreign judgments may also be enforced under the 1958 Act. This Act deals with the registration and enforcement of judgments obtained in Nigeria and the United Kingdom and other parts of Her Majesty’s (Queen of the United Kingdom) dominion and territories, and was not repealed by the 2004 Act as decided by the Nigerian Supreme Court in the case of Witts & Busch Ltd v Dale Power Systems Plc. The constitutional approach in entering any bilateral or multilateral treaties is that until such an international treaty signed by Nigeria is enacted into law by the National Assembly, it has no force of law and its provisions will not be justiciable in the court of law within the country. This connotes that, before the enactment into law by the National Assembly of such a bilateral or multilateral treaty to which Nigeria is a signatory, the signed treaty has no force of law and Nigerian courts cannot give effect to it, as they can with other laws. This same process is applicable to every amendment made to any international treaty to which Nigeria is a signatory or party.

2 Intra-state variations
Is there uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country?

Nigeria operates a federal system of government comprising 36 states and a central federal government. Although each state has a legislative assembly, the authority to make laws on issues regarding the enforcement of foreign judgments is constitutionally vested in the National Assembly, which is the federal legislative body, as such powers are contained in the exclusive legislative list of the Constitution. There are therefore no intra-state variations and there is uniformity in the law on the enforcement of foreign judgments.

3 Sources of law
What are the sources of law regarding the enforcement of foreign judgments?

The primary sources of law are:
- the 1958 Act;
- the 2004 Act and the Rules of Court made pursuant to section 5 of the Act;
- the Sheriffs and Civil Processes Act Chapter 56, 2004;
- the various civil procedure rules of the superior courts before which registration and enforcement are sought; and
- the Judgment Enforcement Rules under section 94 of the Sheriffs and Civil Processes Act.

4 Hague Convention requirements
To the extent the enforcing country is a signatory of the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?

Nigeria is not a signatory to the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters. Its provisions, therefore, do not apply to the application for registration and enforcement of foreign judgments in Nigeria.

5 Limitation periods
What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?

A judgment creditor in respect of a judgment to which Part 1 of the 2004 Act applies may apply to a superior court in Nigeria to have the judgment registered at any time within six years after the date of the judgment, or where there have been proceedings by way of an appeal against the judgment after the date of the last judgment given in those proceedings. An appeal is defined under the Act to include any proceeding by way of discharging or setting aside a judgment, an application for a new trial or a stay of execution.

Notably, where the Minister is yet to make an order extending the application of Part 1 of the Act to a country, the applicable time limit will be, as provided under section 10 of the Act, 12 months or longer, depending on what is allowed by a superior court of record in Nigeria.

For applications for enforcement made pursuant to the 1958 Act, such applications may be brought within 12 months after the date of the judgment or a longer period if allowed by the registering court.

There are no circumstances stipulated by the Act under which an enforcing court would consider the statute of limitation of the foreign jurisdiction.

6 Types of enforceable order
Which remedies ordered by a foreign court are enforceable in your jurisdiction?

The only order made by a foreign court that is enforceable in Nigeria pursuant to the 2004 Act is a final judgment conclusive between the parties...
thereof, under which some money is payable (excluding sums that are payable in respect of taxes or other charges of a like nature, such as fines or penalties).

7 Competent courts

Must cases seeking enforcement of foreign judgments be brought in a particular court?

Yes, the 2004 Act requires registration of a foreign judgment to be sought before a superior court. A superior court is defined under the Act as the High Court of a State or of the Federal Capital Territory, Abuja, or the Federal High Court. After the foreign judgment is registered, it can then be enforced by the registering court. However, in exercising an abundance of caution, it is pertinent to seek registration of a foreign judgment in a court whose jurisdiction covers the subject matter of the original suit conducted outside Nigeria. In Access Bank Plc. v Akinbola, decided in 2014, the High Court of Lagos State ruled that the instant judgment of the High Court in England could not be registered and enforced in the Lagos State High Court. The court based this decision on the ground that the subject matter of the suit which led to the judgment was a matter within the exclusive jurisdiction of the Federal High Court under section 251(1)(e) of the Constitution of Federal Republic of Nigeria 1999 as a matter under the Companies and Allied Matters Act, and if the original action had been tried in Nigeria, the right court siesied with the jurisdiction would be the Federal High Court. The Court therefore concluded that the application to register same should have been sought at the Federal High Court and quashed the registration of the judgment which was earlier granted in respect of the judgment.

8 Separation of recognition and enforcement

To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?

The process of recognition involves a court hearing by a judge who must first consider an application for the registration of the foreign judgment. Should the application be granted, the judgment will be registered in the Register of Judgments. Once the judgment is registered and has not been set aside on appeal, it can then be enforced by the judgment creditor. Enforcement, on the other hand, may or may not involve a court hearing. Upon recognition or registration of a foreign judgment, a judgment creditor may seek to enforce the foreign judgment (which is now deemed to be the judgment of the court that registered it) by the various means of execution provided under the Sheriffs and Civil Processes Act. This includes execution by issuance of a writ of attachment that empowers court bailiffs to seize property of the judgment debtor, and execution via garnishee proceedings that will involve a court hearing by which monies due to the judgment debtor from third parties are attached in satisfaction of the judgment debt. Where property is to be attached, the judgment creditor must obtain a writ of execution or fieri facias from the relevant court. The process of obtaining a writ of execution is mostly administrative and very rarely involves a court hearing except in certain situations stipulated under the rules of the various courts, where it is necessary that the leave of the court must be sought before a writ of execution can be issued.

9 Defences

Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?

A defendant cannot raise merits-based defences to liability or defences as to the scope of the award. The grounds for setting aside the registration of a foreign judgment are clearly stipulated under the 2004 Act and are limited to issues such as fraud, public policy, jurisdiction, lack of service or lack of sufficient time after service to respond to the action in the foreign court prior to the entry of judgment. The courts in Nigeria have held that a registering court has no appellate jurisdiction over the foreign court and cannot therefore embark upon a merits-based assessment of the foreign judgment sought to be registered.

10 Injunctive relief

May a party obtain injunctive relief to prevent foreign judgment enforcement proceedings in your jurisdiction?

There is no provision in the 2004 Act for a party to obtain injunctive relief seeking to prevent the enforcement of foreign judgment proceedings in Nigeria. In Kala v FGN (2014) 1 NWLR Part 1389, page 479, the Appeal Court held that injunctive remedy being in personam is directed against the litigant and not the court or its proceedings. The available remedy for a defendant, akin to mandatory injunction, is to bring an application to set aside the registration of a foreign judgment. However, this can only be entertained if the foreign judgment was registered in contravention of the Act, if the original court that gave it lacked jurisdiction, if it was obtained by fraud or if the rights under it are not vested in the person who made the application for registration. Similarly, the registering court can set aside a judgment if the judgment debtor did not receive notice of the proceedings in the original court that gave it and thereby did not appear, making the said judgment a default judgment.

11 Basic requirements for recognition

What are the basic mandatory requirements for recognition of a foreign judgment?

The mandatory requirements for registration or recognition of a foreign judgment are as follows:

- the 2004 Act must be applicable to such judgment and the judgment must be a final judgment;
- the judgment debtor as defendant in the original action must have received notice of the proceedings (beside service of the processes) in sufficient time to enable him or her to defend the proceedings;
- the foreign court must have jurisdiction in the circumstances of the case and the foreign judgment must be enforceable by execution in the country of the original court;
- the judgment must have been obtained regularly without any form of fraud;
- the foreign judgment must conform to public policy in Nigeria;
- the judgment creditor must be the applicant for the registration of the judgment;
- the judgment must not have been wholly satisfied; and
- the judgment must be one under which some money is payable not being sums that are payable in respect of taxes or other charges of a like nature, or fines or penalties.

12 Other factors

May other non-mandatory factors for recognition of a foreign judgment be considered and if so what factors?

No non-mandatory factors that are outside the provisions of the 2004 Act may be considered in an application for the registration of a foreign judgment.

13 Procedural equivalence

Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction, and if so, how is that requirement evaluated?

There is no requirement under the 2004 Act that the judicial proceedings in the foreign court must correspond to due process in Nigeria.

14 Personal jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had personal jurisdiction over the defendant, and if so, how is that requirement met?

The Nigerian courts do examine whether the foreign court had personal jurisdiction over a defendant. One of the grounds under the 2004 Act for setting aside the registration of a foreign judgment is whether the original court had no jurisdiction in the circumstances of the case. The Act further defines for this purpose ‘when the original court shall be deemed to have jurisdiction and when the original court shall be deemed not to have jurisdiction’ for judgments in an action in personam or in an action in rem. For an action in personam, the original court shall be deemed not to have jurisdiction if the judgment debtor, being a defendant in the original
The judgment debtor must receive actual notice of the proceedings of the original court. Section 6(2)(a) of the Act deals with judgment in rem. This is also contingent on whether the foreign judgment is in rem or in personam. Section 6(2)(b) of the Act deals with judgment in rem of which the subject matter is moveable property. The registering court will have to consider before registration of the judgment if the property (subject matter) was at the time of the proceedings in rem or in personam. Section 6(2)(a) of the Act deals with judgment in personam, the registering court will have to consider the residence of the defendant in the original action, that is, whether the judgment debtor was resident in the jurisdiction of the relevant foreign court, or the judgment debtor was resident in the jurisdiction of the relevant foreign court at the time when the proceedings were instituted.

15 Subject-matter jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had subject-matter jurisdiction over the controversy, and if so, how is that requirement met?

The 2004 Act does not specifically direct the enforcing court to examine whether the original court had subject-matter jurisdiction over the controversy, but by inference this is implied. In considering the mandatory conditions for registration, such as the foreign court’s jurisdiction in the circumstances of the case, the enforceability by execution of the foreign judgment and whether the foreign judgment was obtained by fraud or not, the registering court may have to consider the subject-matter jurisdiction of the original court.

This is also contingent on whether the foreign judgment is in rem or in personam. Section 6(2)(b) of the Act deals with judgment in rem of which the subject matter is moveable property. The registering court will have to consider before registration of the judgment if the property (subject matter) was at the time of the proceedings before the original court situated in the country of that court. Section 6(2)(a) of the Act deals with judgment in personam, the registering court will have to consider the residence of the defendant in the original action, that is, whether the judgment debtor was resident in the country of the foreign court at the time of the proceedings, or (if the judgment debtor is a body corporate) whether its principal place of business is in the original country or the business being the subject matter was to be performed or executed in the country of that court.

Finally, under the Act, the registering court will also consider the subject-matter jurisdiction where there is controversy as to whether the proceedings of the original court ran contrary to an agreement by parties to settle their dispute otherwise than by proceedings in the courts of the foreign country.

16 Service

Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice sufficient? How much notice is usually considered sufficient?

The judgment debtor must receive actual notice of the proceedings of the original action in the foreign court within sufficient time to enable him or her to appear and defend the proceedings. Under section 6(1)(a)(iii) of the 2004 Act, one of the grounds for setting aside a registered foreign judgment is that, notwithstanding that the processes in the original court may have been duly served on the judgment debtor (who is a defendant in the original proceedings), he or she did not receive notice of those proceedings in sufficient time to enable him or her to defend the proceedings and did not appear.

There is no stipulation of the length of notice that will be considered as sufficient, but Nigerian courts will usually in such cases follow the common law rules of reasonable notice, which will be subject to the circumstances of each particular case.

17 Fairness of foreign jurisdiction

Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?

The relative inconvenience of the foreign jurisdiction to the defendant is not one of the grounds for declining to register or enforce a foreign judgment under the 2004 Act. Where the parties by whatever agreement under which the dispute arose or by conduct voluntarily appeared or submitted to the foreign court jurisdiction, the registering court will not consider relative inconvenience.

18 Vitiation by fraud

Will the court examine the foreign judgment for allegations of fraud upon the defendant or the court?

One of the grounds for setting aside a registration of a foreign judgment under the 2004 Act is that judgment was obtained by fraud. The courts, therefore, ordinarily examine the foreign judgment for any allegation of fraud.

19 Public policy

Will the court examine the foreign judgment for consistency with the enforcing jurisdiction’s public policy and substantive laws?

One of the grounds for setting aside the registration of a foreign judgment is that the enforcement of the judgment would be contrary to public policy in Nigeria. There is no specific requirement that the foreign judgment should be consistent with substantive laws in Nigeria.

20 Conflicting decisions

What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?

The registering court may set aside the registration of a foreign judgment if it is satisfied that the matter in dispute in the proceedings in the original court had previously on the date of the judgment been the subject of a final and conclusive judgment of another court having jurisdiction in the matter in the original foreign country. The 2004 Act does not specify whether the
A judgment is a final decision of the court on a particular subject matter and such judgment is binding only on the parties to the action and parties affected by the judgment. The court cannot apply the principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor. A judgment debtor is the person who was the defendant in the proceedings that led to the judgment. The alter ego is a distinct person; hence, no judgment delivered against a specific person can be enforced on the alter ego. The principle of agency is equally not applicable and a foreign judgment cannot be enforced against a third party agent that is not named as the judgment debtor in the foreign judgment.

Subsection 6(3)(b) of the 2004 Act provides that, if the bringing of proceedings in the original court was contrary to an agreement under which the dispute in question was to be settled other than by proceedings in that court, the court in Nigeria will hold that the foreign court lacks jurisdiction and will refuse to register the foreign judgment, and if registration had been procured by the judgment creditor ex parte, such registration may be set aside by the registering court.

More deference is accorded to a judgment of any one foreign jurisdiction than judgments from others. However, judgments of the courts of the United Kingdom and Ireland, and courts of other parts of Her Majesty’s dominions and territories are registrable and enforceable under the 1958 Act. Subsection 3 of the 2004 Act, the Minister of Justice may extend Part 1 of the Act to judgments of courts of all Commonwealth countries. Accordingly, in respect of judgments of such Commonwealth countries, an application for registration may be made within six years of the date of such judgment. Aside from the foregoing, which relate to the applicability of Part 1 of the 2004 Act to certain countries, no special or greater deference is accorded to the judgments of the courts of any one country.
26 Security

Is there a right to appeal from a judgment recognising or enforcing a foreign judgment? If so, what procedures, if any, are available to ensure the judgment will be enforceable against the defendant if and when it is affirmed?

A party may appeal to a higher court, in this case the Court of Appeal, against a decision recognising and enforcing a foreign judgment. The appeal process is distinct from the process of setting aside the recognition and enforcement of the foreign judgment that is made at the High Court before which the judgment is first sought to be recognised and enforced. Where the High Court has made a final order recognising the award, the judgment debtor may thereafter appeal to the Court of Appeal seeking to set aside the order of the High Court.

Where a foreign judgment has been registered and an appeal is pending, the Court of Appeal in Purification Tech v A-G Lagos State (2004) 9 NWLR Part 879, page 665 held that the existence of an order of stay of execution of judgment does not preclude a judgment creditor from seeking to use garnishee proceedings to enforce judgment. This suggests, therefore, that the judgment creditor may apply for a garnishee order attaching sums of money due to the judgment debtor from third parties, which in Nigeria are mostly commercial banks, in the face of a pending appeal and application for stay. The judgment creditor may also apply for a post-judgment Mareva order of injunction that freezes the judgment debtor’s accounts pending the hearing and determination of the appeal. This effectively freezes the bank accounts of the judgment debtor or restrains him or her from moving his or her assets outside the jurisdiction or dissipating them below the adjudged sum within the jurisdiction.

27 Enforcement process

Once a foreign judgment is recognised, what is the process for enforcing it in your jurisdiction?

Once registered, the foreign judgment shall for the purpose of execution be of the same force and effect as a judgment of a superior court of record in Nigeria. Proceedings may be taken on the registered judgment, the sum for which the judgment is registered shall carry interest and the registering court shall have the same control over the execution of a registered judgment as if the judgment had been originally given in the registering court and entered on the date of registration.

After registering, all the processes by which a judgment of a superior court may be enforced in Nigeria are available to the enforcement of a foreign judgment. They include, but are not limited to, writs of attachment of real and personal property (moveable and immovable), garnishee proceedings and attachment of the person of the judgment debtor to prison where he or she is unable to pay the debt after other means of enforcement have failed. A judgment creditor may also apply to the court for the issuance of judgment summons and writ of sequestration in order to enforce the registered judgment.

28 Pitfalls

What are the most common pitfalls in seeking recognition or enforcement of a foreign judgment in your jurisdiction?

The most common pitfall is where a defendant ignores a foreign court process that eventually results in a judgment that is sought to be enforced under the provisions of the 1958 Act. The case of Grosvenor Casinos v Halaoui (2009) 10 NWLR, Part 1149, page 309 is authority for the principle that a foreign judgment entered against a defendant resident in Nigeria who does not willingly appear in the foreign court or otherwise submit to its jurisdiction is not registrable in Nigeria under the 1958 Act. In such cases, it is better to proceed under sections 9 or 10 of the 2004 Act. Although Part 1 of the 2004 Act provides a limitation period of six years, because that part has not been extended to any country by the Minister of Justice, the limitation period for applying for registration of foreign judgments (except judgments to which section 9 of the 2004 Act applies) is 12 months from the date of such judgment. Frequently, applications for registration of foreign judgments are made outside the limitation period of 12 months without an application for extension of time to the registering court. This usually results in such applications being defeated on a technical basis. Furthermore, applications for registration of foreign judgments are sometimes stalled or slowed down by appeals that may continue for years and reach the Supreme Court of Nigeria, resulting in significant delays.
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Enforcement of Foreign Judgments
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Mediation
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Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Banking & Wealth Management
Private Client
Private Equity
Product Liability
Product Recall
Project Finance
Public-Private Partnerships
Public Procurement
Real Estate
Restructuring & Insolvency
Right of Publicity
Securities Finance
Securities Litigation
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