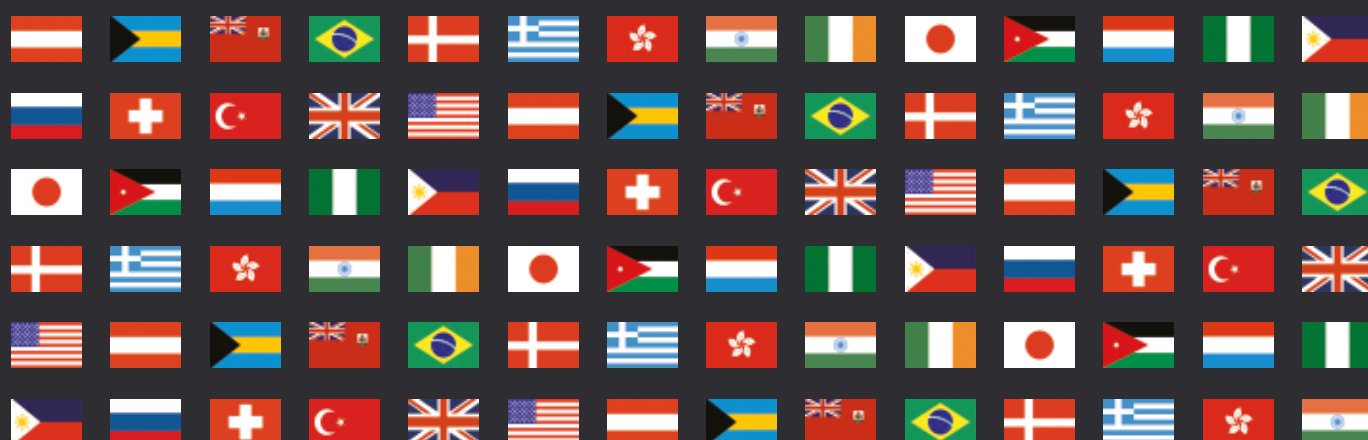


Enforcement of Foreign Judgments 2021

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Enforcement of Foreign Judgments 2021

Contributing editors

Oliver Browne and Tom Watret
Latham & Watkins

Lexology Getting The Deal Through is delighted to publish the tenth edition of *Enforcement of Foreign Judgments*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on the Bahamas, Denmark and Greece.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Oliver Browne and Tom Watret of Latham & Watkins, for their continued assistance with this volume.



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LEGISLATION

Treaties

- 1 | 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 3, 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 from countries to which Part 1 of the 2004 Act has not been extended, provided that such applications for enforcement are made within 12 months of the foreign judgment or within such time frame 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) dominions 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 into 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 suggests 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.

Intra-state variations

- 2 | 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.

Sources of law

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

The 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 Process Act, Chapter S6, Laws of the Federation of Nigeria 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.

Hague Convention requirements

- 4 | 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 the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters 1971. Its provisions, therefore, do not apply to the application for registration and enforcement of foreign judgments in Nigeria.

BRINGING A CLAIM FOR ENFORCEMENT

Limitation periods

- 5 | 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 of 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 of the date of the judgment or a longer period if allowed by the registering court. Therefore, where an application for registration of a foreign judgment is not brought within the statutory 12-month period, the application will be caught by limitation, except when time is extended for the judgment creditor by the court. This position was affirmed by the Supreme Court in *Marine & Gen Ass Co Plc v OU Ins Ltd* (2006) 4 NWLR (Part 971) 622. There are no circumstances stipulated by the Act under which an enforcing court would consider the statute of limitations of the foreign jurisdiction.

Types of enforceable order

- 6 | 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 that is conclusive between the parties thereto, 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).

Competent courts

- 7 | 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 Akingbola*, 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 grounds that the subject matter of the suit that 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 seised with jurisdiction would be the Federal High Court. The court, therefore, concluded

that the application to register should have been sought at the Federal High Court and quashed the registration of the judgment that was granted earlier. In *Kabo Air Limited v the O' Corporation Limited* (2014) LPELR-23616 (CA), the Court of Appeal also alluded to the fact that the subject matter of the judgment sought to be registered was in relation to aviation, which is within the exclusive jurisdiction of the Federal High Court, in holding that the Federal High Court had jurisdiction to entertain the application for registration of a judgment that was obtained in the Gambia.

Separation of recognition and enforcement

- 8 | 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 has been registered and is not 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, the 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 Process Act. These include execution by issuance of a writ of attachment that empowers court bailiffs to seize property of the judgment debtor, and execution through garnishee proceedings, which involves a court hearing by which moneys 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 the leave of the court must be sought before a writ of execution can be issued.

OPPOSITION

Defences

- 9 | 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 the 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.

Injunctive relief

- 10 | 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 *Kalu v FGN* (2014) 1 NWLR Part 1389, page 479, the Appeal Court held that injunctive relief, being in personam, is directed against

the litigant and not the court or its proceedings. The available remedy for a defendant, akin to a 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 2004 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 that 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.

REQUIREMENTS FOR RECOGNITION

Basic requirements for recognition

11 | 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 the 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 it 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 without any form of fraud;
- the foreign judgment must conform to public policy in Nigeria;
- the judgment creditor must be the applicant for 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.

Other factors

12 | 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 registration of a foreign judgment.

Procedural equivalence

13 | 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 correspond to due process in Nigeria.

JURISDICTION OF THE FOREIGN COURT

Personal jurisdiction

14 | 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 proceedings, was a person that under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of that court. With specific regard to enforcement under the Act, the foreign court is deemed to have jurisdiction and the foreign judgment is registrable and enforceable in Nigeria only if the judgment debtor voluntarily appeared or otherwise agreed to submit to 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.

Subject-matter jurisdiction

15 | 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 this can be inferred in certain circumstances. 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 visit the subject-matter jurisdiction of the original court. This is also contingent on whether the foreign judgment is in rem or in personam. Where the foreign judgment is in personam, section 6(2)(a) of the Act requires the registering court to consider the residence of the defendant in the original action; that is, whether the judgment debtor was resident in the foreign country at the time of the proceedings, or (if the judgment debtor was 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. Section 6(2)(b) of the Act deals with judgment in rem of which the subject matter is movable property. The registering court will have to consider before registration of the judgment whether the property (subject matter) was at the time of the proceedings before the original court situated in the country of that court. Finally, under the Act, the registering court will also consider subject-matter jurisdiction where there is controversy as to whether the proceedings of the original court ran contrary to an agreement by the parties to settle their dispute otherwise than by proceedings in the courts of the foreign country.

Service

16 | 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 have received actual notice of the proceedings of the original action in the foreign court within sufficient time to enable it 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 (which was the defendant in the original proceedings), it did not receive notice of those proceedings in sufficient time to enable it 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 case.

Fairness of foreign jurisdiction

- 17 | 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 judgment 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's jurisdiction, the registering court will not consider the relative inconvenience to the judgment debtor in the registration or setting aside proceedings.

EXAMINATION OF THE FOREIGN JUDGMENT

Vitiating by fraud

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

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

Public policy

- 19 | Will the court examine the foreign judgment for consistency with the enforcing jurisdiction's public policy and substantive laws?

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

Conflicting decisions

- 20 | 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, prior to the date of the judgment, been the subject of a final and conclusive judgment of another court having jurisdiction over the matter in the original foreign country. The 2004 Act does not specify whether the judgment obtained in the original proceedings must have been between the same parties or their privies, but the common rule applied by Nigerian courts in such cases is that a previous judgment is only binding between the same parties and on the same issue. The language of the 2004 Act suggests that where there are conflicting judgments, a subsequent or latter judgment will not be registered and enforced. Although there is no case law on the point in Nigeria in the event of conflicting judgments between the parties on the same issue, it appears from the language of the statute that the judgment that came first is that which will be registered and enforced.

Enforcement against third parties

- 21 | Will a court apply the principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor?

A judgment is a final decision of the court on a particular subject matter and is binding only on the parties to the action and their privies. The court cannot apply principles of agency or alter ego to enforce a

judgment against a party other than the named judgment debtor that 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 was not named as the judgment debtor in the foreign judgment.

Alternative dispute resolution

- 22 | What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?

Section 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 lacked 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.

Favourably treated jurisdictions

- 23 | Are judgments from some foreign jurisdictions given greater deference than judgments from others? If so, why?

No more deference is accorded to a judgment of any one foreign jurisdiction over others. However, only judgments of the courts of the United Kingdom, the Republic of Ireland and courts of other parts of Her Majesty's dominions and territories are registrable and enforceable under the 1958 Act. Under section 3 of the 2004 Act, the Minister of Justice may extend Part 1 of the Act, which permits registration and enforcement of foreign judgments within six years of the date of such judgment, to any country that accords reciprocal treatment to judgments of superior courts in Nigeria. The Minister of Justice has not extended the said part to any country to date. Section 9 of the 2004 Act applies 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 relates 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.

Alteration of awards

- 24 | Will a court ever recognise only part of a judgment, or alter or limit the damage award?

Where a foreign judgment is in various parts or on different matters, the registering court can register part of the judgment. Under section 4(4) of the 2004 Act, where part of the judgment has been satisfied and part unsatisfied, the court can register the part that is unsatisfied. Additionally, section 4(5) of the Act provides that where part of a judgment can be properly registered, the judgment may be registered in respect of that part alone. There is no provision under the Act for alteration or reduction of damages awarded in a foreign judgment. This would amount to exercising supervisory or appellate control over the foreign court, which is not permitted under Nigerian law.

AWARDS AND SECURITY FOR APPEALS

Currency, interest, costs

- 25 | In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest and court costs and exchange controls? If interest claims are allowed, which law governs the rate of interest?

Section 4(3) of the 2004 Act provides that where the sum payable under a judgment that is to be registered is expressed in a currency other than the currency of Nigeria, such a judgment shall be registered as if it were a judgment for such sum in the currency of Nigeria, based on the rate of exchange prevailing at the date of the judgment of the original court equivalent to the sum awarded. The registering court will, in addition to the original judgment sum, award interest and reasonable costs of and incidental to registration, including the costs of obtaining a certified true copy of the judgment from the original court. This is, however, applicable only to judgments of countries in respect of which the Minister of Justice has extended Part 1 of the 2004 Act. For judgments registered pursuant to section 10(a) of the 2004 Act or pursuant to the 1958 Act, the foreign judgment may be registered and enforced in foreign currency.

Security

- 26 | 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 recognising and enforcing 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. The judgment creditor may 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 and restrains it from moving its assets outside the jurisdiction or dissipating them below the adjudged sum within the jurisdiction.

ENFORCEMENT AND PITFALLS

Enforcement process

- 27 | 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 registration, all the processes by which a judgment of a superior court may be enforced in Nigeria are available to enforce the foreign judgment. They include, but are not limited to, writs of attachment of real and personal property (movable and immovable), garnishee proceedings and committal 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.

Pitfalls

- 28 | 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 that 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 section 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 an extension of time to the registering court. This usually results in such applications being defeated on a technical basis. Furthermore, after registration of foreign judgments, enforcement is sometimes stalled or slowed down by appeals that may continue for years and eventually reach the Supreme Court of Nigeria, resulting in significant delays.

UPDATE AND TRENDS

Hot topics

- 29 | Are there any emerging trends or hot topics in foreign judgment enforcement in your jurisdiction?

Rule 12 of the Rules of Court, made pursuant to section 6 of the 1958 Act, provides that:

The judgment debtor may at any time within the time limited by the order giving leave to register after service on him of the notice of the registration of the judgment apply by petition to a judge to set aside the registration or to suspend execution on the judgment and the judge on such application if satisfied that the case comes within one of the cases in which under section 3 (2) of the Ordinance no judgment can be ordered to be registered or that it is not just or convenient that the judgment be enforced in Nigeria or for other sufficient reason may order that the registration be set aside or execution on the judgment suspended either unconditionally or on such terms as he thinks fit and either altogether or until such time as he shall direct; provided that the judge may allow the application to be made at any time after the expiration of the time mentioned.

The courts have shown a willingness to strictly apply the provision of this rule as to the mode of commencing proceedings to set aside or stay the enforcement of a judgment that has been registered. In the cases of *Heyden Petroleum Ltd v Planet Maritime Co* (2018) and *Bronwen Energy Trading Ltd v Crescent Africa (Ghana) Ltd* (2018), the Court of Appeal held that such proceedings can only be commenced by petition, and that if they are commenced by any other means, the proceedings are bound to be struck out – as a jurisdictional non-compliance – regardless of the stage at which an objection is raised. The proceedings would not be dismissed on this ground, however. Thus, if they are struck out, they can be refiled by way of petition, subject to limitation of time. In both cases,

the judgment debtor or applicant came by way of motion on notice rather than petition.

Coronavirus

30 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

With respect to litigation, several states in Nigeria have adopted measures in order to adapt to the impact of the coronavirus pandemic on the judiciary. One such measure is the use of remote hearings to ensure cases are heard and disposed of urgently where possible. Thus, courts such as the High Court of Lagos State issued Practice Directions for the easy administration and dispensation of justice during the pandemic. Some courts, such as the High Court of the Federal Capital Territory, issued Practice Directions providing that time will not run during the period of the pandemic lockdown. With respect to taxation, a Bill entitled Emergency Economic Stimulus Bill 2020 was passed by the House of Representative. The Bill, which is yet to be passed at the Senate level, seeks to:

- grant a tax rebate of 50 per cent of the actual amount due or paid as Pay As You Earn Tax under the Personal Income Tax Act by employers who are registered under the Companies and Allied Matters Act and retain all their employees from 1 March 2020 to 31 December 2020;
- introduce a new moratorium on mortgage obligations of Nigerians under the National Housing Fund to the effect that all payment of mortgage obligations on residential mortgages obtained by individual contributors to the National Housing Fund be deferred for a period of 180 days; and
- suspend import duties on medical equipment, medicines and personal protective equipment required for the treatment and management of covid-19 for six months, effective from 1 March 2020.

Furthermore, the Federal Inland Revenue Service on 23 March 2020 announced certain tax relief measures to cushion the effect of the pandemic on taxpayers. These measures include:

- electronic filing of tax returns;
- use of electronic platforms for payment of taxes and processing of Tax Clearance Certificates;
- extension of the due date for filing of Value Added Tax and withholding tax returns from the 21st day to the last business day of the subsequent month;
- extension of the due date for filing of companies' income tax returns by one month;
- filing of tax returns by taxpayers without audited financial statements, which must be submitted within two months of the revised due date of filing;
- provision of a portal where documents required for desk reviews and tax audits can be uploaded;
- waiver of late returns penalty for taxpayers who pay their tax liabilities early but submit their tax returns later;
- taxpayers facing challenges in sourcing foreign exchange (FOREX) to settle tax liabilities on their FOREX-denominated transactions are permitted to pay the Naira equivalent, based on the prevailing Investors & Exporters FOREX window rate on the day of payment; and
- extension of personal income tax returns filing deadline for personnel of Foreign Affairs, Military and Police, and non-resident persons by three months from 31 March 2020 to 30 June 2020.

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