The International Comparative Legal Guide to:

Enforcement of Foreign Judgments 2016

1st Edition

A practical cross-border insight into the enforcement of foreign judgments

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Chapter 23

Nigeria

S. P. A. Ajibade & Co.

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Benedict Oregbemhe

### 1 Country Finder

#### 1.1 Please set out the various regimes applicable to recognising and enforcing judgments in your jurisdiction and the names of the countries to which such special regimes apply.

<table>
<thead>
<tr>
<th>Applicable Law/Statutory Regime</th>
<th>Relevant Jurisdiction(s)</th>
<th>Corresponding Section Below</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reciprocal Enforcement of Judgments Ordinance, Cap. 175 Laws of the Federation of Nigeria 1958 (&quot;the 1922 Ordinance&quot;)</td>
<td>The 1922 Ordinance applies to reciprocal enforcement of judgments obtained in the United Kingdom and other parts of Her Majesty’s Dominions and Territories under Her Majesty’s protection. The 1922 Ordinance has been extended by proclamations to judgments of the Supreme Courts of the Gold Coast Colony (now Ghana) and of the Colony and Protectorate of Sierra Leone, the Supreme Court of the Colony of the Gambia, Supreme Court of Newfoundland, Supreme Court of New South Wales, Supreme Court of the State of Victoria, judgments of the Superior Court of Barbados, Bermuda, British Guiana, Gibraltar, Grenada, Jamaica, Leeward Islands, St Lucia, St Vincent and Trinidad and Tobago.</td>
<td>Section 2</td>
</tr>
<tr>
<td>Foreign Judgments (Reciprocal Enforcement) Act Cap. F35, Laws of the Federation of Nigeria 2004; (&quot;the 1961 Act&quot;)</td>
<td>Section 3(1) of the 1961 Act empowers the Minister of Justice to make an order extending Part 1 of the Act to any foreign country, specifying in that order the courts of that country that will be deemed to be superior courts for the purposes of enforcing their judgments in Nigeria. Before exercising this power, the minister is required to satisfy himself that judgments of superior courts in Nigeria will be accorded substantial reciprocity of treatment as regards enforcement in that foreign country. The Minister of Justice is yet to make an order extending Part 1 of the Act to any country.</td>
<td>Section 2</td>
</tr>
</tbody>
</table>

### 2 General Regime

#### 2.1 Absent any applicable special regime, what is the legal framework under which a foreign judgment would be recognised and enforced in your jurisdiction?

The general legal framework under which a foreign judgment would be recognised and enforced in Nigeria is at Common Law.

#### 2.2 What requirements (in form and substance) must a foreign judgment satisfy in order to be recognised and enforceable in your jurisdiction?

For a foreign judgment to be recognised and enforced in Nigeria either at Common Law, under the 1922 Ordinance or the 1961 Act, the judgment must satisfy the under-listed requirements:
1. the judgment must be a judgment of a superior court of the country of the original court;
2. the judgment must be a money judgment;
3. the judgment must be for a certain sum;
4. the judgment must be final and conclusive between the parties thereto; and
5. the judgment must not have been obtained by fraud.

#### 2.3 Is there a difference between recognition and enforcement of judgments? If so, what are the legal effects of recognition and enforcement respectively?

Yes, there is a difference between recognition and enforcement of a judgment. A judgment may be recognised as imposing an obligation/duty on a party against whom the judgment was given but may not be capable of enforcement.

A Nigerian court may recognise a foreign judgment as a basis for a party resisting an action in a Nigerian court where the foreign...
judgment and the subsequent action in Nigeria are based on the same set of facts. In this circumstance, the Nigerian court may recognise the foreign judgment as a basis for a plea of res judicata in the Nigerian action even though the foreign judgment is not enforceable in Nigeria.

2.4 Briefly explain the procedure for recognising and enforcing a foreign judgment in your jurisdiction.

The procedure for the recognition and enforcement of a foreign judgment at Common Law will be discussed here, while the procedure under the statutory regimes will be discussed under question 3.3.

At Common Law

At Common Law, a foreign judgment cannot be directly registered and enforced in Nigeria. A party seeking recognition and enforcement of a foreign judgment in Nigeria must bring an action on the judgment, i.e. sue on the foreign judgment in a Nigerian court. The judgment creditor may apply for summary judgment or come under the undefended list procedure. Either of these procedures is used where the Claimant/Plaintiff contends that the Defendant has no defence to the claim and that there is no need for a full trial. The judgment creditor may also come by way of an ordinary writ of summons.

The Summary Judgment and Undefended List Procedures

The hallmark of the summary judgment and the undefended list procedures is an assertion by the Claimant/Plaintiff that the Defendant has no defence to his claim.

In the summary judgment procedure, in order to make this assertion the Claimant/Plaintiff must file with his originating processes an application for summary judgment, which shall be supported by an affidavit stating the grounds for his belief and a written brief in respect thereof. A certified true copy of the foreign judgment shall be exhibited to the affidavit in support of the application for summary judgment. The application for summary judgment is by motion on notice and the affidavit in support need not be personally sworn by the foreign judgment creditor but may be sworn by any other person seized with the facts of the case and with the consent of the foreign judgment creditor.

In the undefended list procedure, at the time of filing the writ of summons, the Claimant/Plaintiff will apply for the suit to be placed on the undefended list. The writ of summons so filed must be accompanied with an affidavit setting forth the grounds upon which the claim is based and stating that in the deponent’s belief, there is no defence to the suit. A certified true copy of the foreign judgment must be exhibited to the affidavit. The writ of summons shall be marked undefended and shall be entered under the undefended list.

A Defendant served with originating processes accompanied with a motion for judgment pursuant to the summary judgment procedure shall file a statement of defence together with other defence processes, accompanied by a counter affidavit and a written brief in reply to the application for summary judgment.

Where it appears to the Judge that the Defendant has a good defence and ought to be permitted to defend the claim, he may be granted leave to so defend, but where the Judge is satisfied that the Defendant does not have a good defence to the claim, the Judge may thereupon enter judgment for the Claimant.

A Defendant served with a writ of summons under the undefended list must, within five days of the day fixed for hearing of the suit, file a notice in writing indicating that he intends to defend the suit, together with a counter-affidavit disclosing a defence on the merit. Upon a consideration of these processes, the court may give him leave to defend upon such terms as the court may deem fit to impose. Where leave to defend is granted to the Defendant, the suit shall be removed from the undefended list and placed on the ordinary cause list and the court may order pleadings, or proceed to hear without pleadings.

However, where a Defendant upon service of the processes neglects to deliver the notice of intention to defend and a counter-affidavit, or he is not granted leave by the court to defend, the suit shall be heard as an undefended suit and judgment given accordingly.

Under the General/Ordinary Cause List

An action at Common Law for recognition and enforcement of a foreign judgment under the general cause list may be commenced by writ or by originating summons. The Claimant/Plaintiff will commence the action using the foreign judgment as his cause of action. Where the action is commenced by a writ of summons, the writ of summons shall be accompanied with the following processes:

1. a statement of claim;
2. a list of witnesses to be called at the trial;
3. a written statement on oath of the witnesses to be called;
4. copies of every document to be relied on at the trial, which document shall include a certified true copy of the foreign judgment; and
5. a pre-action protocol Form 01.

Where the action is commenced by originating summons, the originating summons shall be accompanied with the following processes:

1. an affidavit setting out the facts relied upon;
2. all the exhibits to be relied upon which shall include a certified true copy of the foreign judgment;
3. a written address in support of the originating summons; and
4. a pre-action protocol Form 01.

The Claimant/Plaintiff is required to serve the Defendant with the above-mentioned processes. Once the Defendant is served, he/she may enter appearance and file defence processes, after which the matter will proceed to trial.

If judgment is delivered in favour of the Claimant/Plaintiff, the judgment creditor will proceed to enforce the judgment as a judgment of the Nigerian court, using one of the methods enumerated in question 4.1.

2.5 On what grounds can recognition/enforcement of a judgment be challenged? When can such a challenge be made?

The grounds upon which the recognition and enforcement of a foreign judgment at Common Law can be challenged will be discussed here, while a challenge under the statutory regime will be discussed under question 3.4 below.

At Common Law, a challenge to the recognition and enforcement of a foreign judgment may be made on the following grounds:

1. that the original court acted without jurisdiction;
2. that the judgment was obtained by fraud;
3. that the judgment debtor satisfies the Nigerian court that he was not given an opportunity or a reasonable opportunity to defend himself;
4. that the judgment debtor satisfies the Nigerian court that the judgment is not final and conclusive between the parties; or
5. that the judgment was in respect of a cause of action which was not given an opportunity or a reasonable opportunity to defend himself;

A challenge to the recognition and enforcement of a foreign judgment at Common Law will be made at the time the judgment creditor brings a fresh action suing on the judgment. The grounds for challenge will be pleaded as defences to the action.
2.6 What, if any, is the relevant legal framework applicable to recognising and enforcing foreign judgments relating to specific subject matters?

In addition to the Common Law, the 1922 Ordinance and the 1961 Act hereinbefore mentioned, the Constitution of the Federal Republic of Nigeria 1999 (as amended) (“the 1999 Constitution”) and the Admiralty Jurisdiction Act, Cap. A5, LFN 2004 (“the AJA”) to some extent affect or are relevant to the recognition and enforcement of foreign judgments in Nigeria. The 1999 Constitution is relevant because it allocates jurisdiction between the State High Courts and the Federal High Court in Nigeria according to subject matter. The Nigerian court will not recognise and enforce a foreign judgment that is incompatible with a local law on the same issue or subject matter. Where there is a conflicting local law on the same or similar issue as the foreign judgment for which recognition and enforcement is sought in Nigeria, the foreign judgment will be seen to be contrary to public policy and will not be recognised on that basis.

Conflicting Prior Judgment on the Same or Similar Issue

The existence of a local conflicting prior judgment on the same or similar issues but between different parties will not affect the willingness of a Nigerian court to recognise and enforce a foreign judgment, as the Nigerian court will not review the merits of the foreign judgment.

2.7 What is your court’s approach to recognition and enforcement of a foreign judgment when there is: (a) a conflicting local judgment between the parties relating to the same issue; or (b) local proceedings pending between the parties?

A Conflicting Local Judgment Between the Parties Relating to the Same Issue

If there is a conflicting local judgment between the parties relating to the same issues as have been dealt with in a foreign judgment, the Nigerian court will likely lean in favour of the decision in the local judgment as against the foreign judgment, except where the local judgment has been obtained by abusing the process of the court or by fraudulent concealment of the existence of the foreign suit.

Local Proceedings Pending Between the Parties

If there are local proceedings pending between the parties, and one party seeks recognition and enforcement of a foreign judgment between the same parties relating to the same subject matter as the local proceedings, the Nigerian courts may refuse recognition and enforcement to the foreign judgment, if the local proceedings were initiated before the action giving rise to the foreign judgment and were pending at the time, thus rendering the foreign proceedings an abuse of process. Other factors that will affect this determination are varied and will include questions as to whether the judgment debtor participated in the foreign proceedings or was otherwise subject to or submitted to the jurisdiction of the foreign court. Where the foreign judgment is not objectionable on any of these grounds, the Nigerian court may recognise the foreign judgment as the basis to resist the local proceedings by one of the parties on the principle of res judicata.

2.8 What is your court’s approach to recognition and enforcement of a foreign judgment when there is a conflicting local law or prior judgment on the same or a similar issue, but between different parties?

Conflicting Local Law on the Same or Similar Issue

The Nigerian court will not recognise and enforce a foreign judgment that is incompatible with a local law on the same issue or subject matter. Where there is a conflicting local law on the same or similar issue as the foreign judgment for which recognition and enforcement is sought in Nigeria, the foreign judgment will be seen to be contrary to public policy and will not be recognised on that basis.

2.9 What is your court’s approach to recognition and enforcement of a foreign judgment that purports to apply the law of your country?

If the foreign judgment that purports to apply Nigerian law satisfies the requirements of recognition and enforcement of a foreign judgment under the Common Law, the 1922 Ordinance or the 1961 Act, the court will recognise and enforce the foreign judgment, as the Nigerian courts do not have jurisdiction to review the merits or otherwise of a foreign judgment. The Nigerian court before whom recognition and enforcement of the foreign judgment is sought will not sit on appeal over the foreign judgment to determine whether or not Nigerian law was properly applied to the facts of the case.

2.10 Are there any differences in the rules and procedure of recognition and enforcement between the various states/regions/provinces in your country? Please explain.

There are no differences in the rules and procedure of recognition and enforcement of foreign judgments in Nigeria between the various States of the Federation, where recognition and enforcement is sought pursuant to any of the statutory regimes. This is because recognition and enforcement of foreign judgments in Nigeria is a subject within the exclusive legislative list of the 1999 Constitution and thus one on which only the National Assembly is competent to enact laws.

However, where recognition and enforcement is sought by way of an action on the foreign judgment at Common Law, the mode of commencement of such action will be regulated by the specific Rules of Civil Procedure applicable in the court in which such action is brought. Whilst these rules are all similar, they are not identical and have individual nuances that have to be noted and observed.

2.11 What is the relevant limitation period to recognise and enforce a foreign judgment?

Limitation Period at Common Law

Generally, the limitation period for enforcement of judgments in Nigeria is either ten (10) or twelve (12) years from the date of judgment, depending on the State where the enforcement of the judgment is sought.

Limitation Period under the 1922 Ordinance

Under the 1922 Ordinance, the limitation period for registration and enforcement of a foreign judgment is twelve (12) months.

Limitation Period under the 1961 Act

The 1961 Act provides for a limitation period of six (6) years for registration and enforcement of a foreign judgment in Nigeria.
2. The petition

1. By a petition made pursuant to the Ordinance and is as follows:

   (a) the judgment in Nigeria under the 1922 Ordinance is set out in Rules of the Nigerian court. The procedure for registration of a foreign judgment under the 1922 Ordinance or the 1961 Act as a judgment is as follows:

   1. the foreign judgment must be a judgment of a superior court of the country of the original court;
   2. the foreign judgment must be a money judgment;
   3. the foreign judgment must be for a sum certain;
   4. the foreign judgment must be final and conclusive between the parties thereto;
   5. the foreign judgment must not have been obtained by fraud;
   6. the original court must have acted with jurisdiction;
   7. enforcement of the foreign judgment in Nigeria must not be contrary to public policy or contrary to the provisions of a statute in force in Nigeria;
   8. the judgment must be capable of enforcement by execution in the country of the original court;
   9. the judgment must not have been wholly satisfied;
   10. the application for registration must be made within twelve (12) months or six (6) years from the date of the judgment as applicable; and
   11. the application for registration must be made to a superior court of record in Nigeria.

3 Special Enforcement Regimes Applicable to Judgments from Certain Countries

3.1 With reference to each of the specific regimes set out in question 1.1, what requirements (in form and substance) must the judgment satisfy in order to be recognised and enforceable under the respective regime?

For a foreign judgment to be directly registered and enforceable in Nigeria, the judgment must satisfy the following requirements:

1. the foreign judgment must be a judgment of a superior court of the country of the original court;
2. the foreign judgment must be a money judgment;
3. the foreign judgment must be for a sum certain;
4. the foreign judgment must be final and conclusive between the parties thereto;
5. the foreign judgment must not have been obtained by fraud;
6. the original court must have acted with jurisdiction;
7. enforcement of the foreign judgment in Nigeria must not be contrary to public policy or contrary to the provisions of a statute in force in Nigeria;
8. the judgment must be capable of enforcement by execution in the country of the original court;
9. the judgment must not have been wholly satisfied;
10. the application for registration must be made within twelve (12) months or six (6) years from the date of the judgment as applicable; and
11. the application for registration must be made to a superior court of record in Nigeria.

3.2 With reference to each of the specific regimes set out in question 1.1, does the regime specify a difference between recognition and enforcement? If so, what is the difference between the legal effect of recognition and enforcement?

Under the 1922 Ordinance or the 1961 Act as hereinbefore mentioned, enforcement of foreign judgments in Nigeria is by an application for registration and enforcement under the relevant applicable regime. Under these legal regimes, registration and enforcement of such foreign judgments implies automatic recognition.

At Common Law, foreign judgments are recognised and may be pleaded in defence to an action as res judicata, but to be enforceable in Nigeria, the judgment creditor must institute a fresh action using the foreign judgment as the basis or cause of action.

3.3 With reference to each of the specific regimes set out in question 1.1, briefly explain the procedure for recognising and enforcing a foreign judgment.

For a foreign judgment to be directly enforced, it must first be registered under the 1922 Ordinance or the 1961 Act as a judgment of the Nigerian court. The procedure for registration of a foreign judgment in Nigeria under the 1922 Ordinance is set out in Rules made pursuant to the Ordinance and is as follows:

1. By a petition ex parte or on notice to a Judge for leave to register the foreign judgment in Nigeria.
2. The petition ex parte or on notice shall be supported by an affidavit of the facts setting out the grounds on which the party moving intends to rely, exhibiting the original or certified true copy of the foreign judgment and other exhibits on which the judgment creditor wishes to rely.
3. The affidavit in support of the petition shall state that, to the best of the information and belief of the deponent, the judgment creditor is entitled to enforce the judgment and the judgment does not fall within any of the cases in which, under the 1922 Ordinance, a judgment cannot properly be ordered to be registered.
4. The affidavit must, so far as the deponent can, give the full names, title, trade or business and usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively.
5. The petition and affidavit shall be entitled “In the Matter of the Reciprocal Enforcement of Judgments Ordinance or Act, and in the matter of a judgment of the … (describing the original court) obtained in … (describing the cause or matter) and dated the … day of …”.
6. The petition and the affidavit in support shall be accompanied with a written address addressing all the legal issues involved in the matter.
7. On the day fixed for hearing of the petition, the judgment creditor’s legal representative shall argue the petition and, if the court finds merit in the petition, it shall order that the foreign judgment be registered as a judgment of the Nigerian court.
8. Upon the court granting leave to register the judgment debtor shall be notified by the registering court, the order granting leave to register the foreign judgment shall be drawn up by the court and served on the judgment debtor.
9. The drawn-up order shall state the time within which the judgment debtor is entitled to apply to set aside the registration.
10. The time for the judgment debtor to apply to set aside the registration will depend on whether the judgment debtor is ordinarily resident within the territory of the registering court. If the judgment debtor ordinarily resides within the territory of the registering court, the time shall be fourteen (14) days, and when the judgment debtor resides outside the territory of the registering court, the time shall depend on the distance from the town of the place where the judgment debtor resides and the postal facilities between the seat of the registering court and the place of residence of the judgment debtor.

3.4 With reference to each of the specific regimes set out in question 1.1, on what grounds can recognition/enforcement of a judgment be challenged under the special regime? When can such a challenge be made?

A challenge to recognition and enforcement of a foreign judgment in Nigeria may be done either under the 1922 Ordinance or the 1961 Act. The grounds for challenge, both under the 1922 Ordinance and the 1961 Act, are stated below:

**Grounds to Challenge Recognition and Enforcement of a Foreign Judgment under the 1922 Ordinance**

Under section 3(2) of the 1922 Ordinance, registration/enforcement of a foreign judgment may be challenged on the following grounds:

1. that the original court acted without jurisdiction;
2. that the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court;
3. that the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court, and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court;
4. that the judgment was obtained by fraud;
5. Have there been any noteworthy recent (in the last 12 months) legal developments in your jurisdiction relevant to the recognition and enforcement of foreign judgments or awards? Please provide a brief description.

In Unreported Suit No. M/563/2013: Access Bank Plc. vs. Akingbola, delivered on 18th February 2014, Justice Candide-Johnson of the Lagos State High Court sitting in Lagos held that the judgment of the High Court in England could not be registered and enforced in the Lagos State High Court, because the subject matter of the underlying suit was a matter within the exclusive jurisdiction of the Federal High Court under section 251(1)(e) of the Constitution of the Federal Republic of Nigeria 1999.

When an application was then brought seeking recognition and enforcement of the same judgment in the Federal High Court in Unreported Suit No. FHC/L/CP/469/2014: Access Bank Plc. vs. Akingbola, delivered on 17th November 2014, the Lagos Federal High Court refused the application for registration on the ground that the original court refused to grant leave to the judgment debtor to appeal against the judgment, which refusal for leave to appeal is contrary to section 241(1) of the 1999 Constitution. The court reasoned that if the case had been heard in Nigeria, the judgment debtor would have had a constitutional right to appeal without leave. These decisions are controversial and are both on appeal.

5.2 Are there any particular tips you would give, or critical issues that you would flag, to clients seeking to recognise and enforce a foreign judgment or award in your jurisdiction?

1. Litigants who intend to initiate an action in which recognition and enforcement of a resulting foreign judgment will be sought in Nigeria should seek advice from a Nigerian lawyer prior to filing the action so as to ensure that all the necessary prerequisites to obtaining an enforceable foreign judgment are met.

2. Judgment Creditor(s) of foreign judgment(s), who wish to seek registration of their judgments under the 1922 Ordinance should apply to register such judgment(s) within twelve (12) months of delivery of such judgment(s) or of the disposal of any appeal thereon to avoid the limitation period.

3. Judgment Creditor(s) of foreign judgment(s) should seek proper advice on the appropriate court with jurisdiction over the underlying cause of action before applying to register any foreign judgment in Nigeria as this may determine the court with the requisite jurisdiction to register and enforce the judgment.
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S. P. A. Ajibade & Co. is a leading Corporate and Commercial Law firm based in Nigeria with offices in Lagos, Abuja and Ibadan. Established in 1967, it has been at the forefront of developments in commercial practice in Nigeria and has continuously rendered sound technical advice and tailored customer solutions to its local and international partners.

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